

1 HB222
2 135427-5
3 By Representatives Beckman and Jones
4 RFD: Judiciary
5 First Read: 08-FEB-12

1
2 ENROLLED, An Act,

3 Relating to trusts; to amend Sections 19-3A-409 and
4 19-3A-505 of the Code of Alabama 1975, relating to the Alabama
5 Principal and Income Act, to further distinguish between the
6 principal of a trust and the distribution of income from a
7 trust; and to add Section 19-3A-607 to the Code of Alabama
8 1975, to provide for certain transitional matters in the
9 application of the changes by this act.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 19-3A-409 and 19-3A-505 of the
12 Code of Alabama 1975, are amended to read as follows:

13 "§19-3A-409.

14 "(a) In this section, ~~"payment"~~:

15 "(1) "Payment" means a payment that a fiduciary may
16 receive over a fixed number of years or during the life of one
17 or more individuals because of services rendered or property
18 transferred to the payer in exchange for future payments. The
19 term includes a payment made in money or property from the
20 payer's general assets or from a separate fund created by the
21 payer, ~~including~~. For purposes of subsections (d), (e), (f),
22 and (g), the term also includes any payment from any separate
23 fund, regardless of the reason for the payment.

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

4 "(b) To the extent that a payment or portion thereof
5 is characterized by other sections of this chapter as income
6 in the hands of the payer, a fiduciary shall allocate such
7 payment or portion thereof to income. The fiduciary shall
8 allocate to principal the balance of the payment and any other
9 payment received in the same accounting period that is not
10 characterized as income to the payer by other sections of this
11 chapter.

12 "(c) To the extent that a payment is not allocated
13 between income and principal pursuant to subsection (b), a
14 fiduciary shall allocate to income ten percent (10%) of the
15 part that is required to be made during the accounting period
16 and the balance to principal. If no part of a payment is
17 required to be made or if the payment received by the
18 fiduciary is the entire amount to which the fiduciary is
19 entitled, then the fiduciary shall allocate the entire payment
20 to principal. For purposes of this subsection, a payment is
21 not "required to be made" to the extent that it is made
22 because the fiduciary exercises a right of withdrawal.

23 "~~(d) If, to obtain an estate tax marital deduction~~
24 ~~for a trust, a fiduciary must allocate more of a payment to~~
25 ~~income than that provided for by this section, then the~~

1 ~~fiduciary shall allocate to income the additional amount~~
 2 ~~necessary to obtain the marital deduction. Except as otherwise~~
 3 ~~provided in subsection (e), subsections (f) and (g) apply and~~
 4 ~~subsections (b) and (c) do not apply in determining the~~
 5 ~~allocation of a payment made from a separate fund to:~~

6 "(1) A trust to which an election to qualify for a
 7 marital deduction under Section 2056(b) (7) of the Internal
 8 Revenue Code of 1986, as amended, 26 U.S.C. Section
 9 2056(b) (7), as amended, has been made; or

10 "(2) A trust that qualifies for the marital
 11 deduction under Section 2056(b) (5) of the Internal Revenue
 12 Code of 1986, as amended, 26 U.S.C. Section 2056(b) (5), as
 13 amended.

14 "(e) Subsections (d), (f), and (g) do not apply if
 15 and to the extent that the series of payments would, without
 16 the application of subsection (d), qualify for the marital
 17 deduction under Section 2056(b) (7) (C) of the Internal Revenue
 18 Code of 1986, as amended, 26 U.S.C. Section 2056(b) (7) (C), as
 19 amended.

20 "(f) A fiduciary shall make a reasonable effort to
 21 determine the internal income of each separate fund for the
 22 accounting period as if the separate fund were a trust subject
 23 to this chapter. Upon request of the surviving spouse, the
 24 fiduciary shall make a demand that the person administering
 25 the separate fund distribute the on the person administering

1 the separate fund to distribute the internal income to the
2 trust. The fiduciary shall allocate a payment from the
3 separate fund to income to the extent of the internal income
4 of the separate fund and distribute that amount to the
5 surviving spouse. The fiduciary shall allocate the balance of
6 the payment to principal. Upon request of the surviving
7 spouse, the fiduciary shall allocate principal to income to
8 the extent the internal income of the separate fund exceeds
9 payments made from the separate fund to the trust during the
10 accounting period.

11 "(g) If a fiduciary cannot determine the internal
12 income of a separate fund pursuant to subsection (f) but can
13 determine the value of the separate fund, the internal income
14 of the separate fund for the accounting period is deemed to
15 equal four percent of the fund's value, according to the most
16 recent statement of value preceding the beginning of the
17 accounting period. If the fiduciary can determine neither the
18 internal income of the separate fund nor the fund's value, the
19 internal income of the fund for the accounting period is
20 deemed to equal the product of the interest rate and the
21 present value of the expected future payments, as determined
22 under Section 7520 of the Internal Revenue Code of 1986, as
23 amended, 26 U.S.C. Section 7520, as amended, for the month
24 preceding the accounting period for which the computation is
25 made.

1 "~~(e)~~ (h) This section does not apply to ~~payments a~~
2 payment to which Section 19-3A-410 applies.

3 "§19-3A-505.

4 "(a) A tax required to be paid by a fiduciary based
5 on receipts allocated to income shall be paid from income.

6 "(b) A tax required to be paid by a fiduciary based
7 on receipts allocated to principal shall be paid from
8 principal, even if the tax is called an income tax by the
9 taxing authority.

10 "(c) A tax required to be paid by a fiduciary on the
11 trust's share of an entity's taxable income shall be paid
12 proportionately as follows:

13 "(1) From income to the extent that ~~allocation from~~
14 ~~the entity of the items giving rise to the tax either are or~~
15 ~~would be, if distributed by the entity, allocated to income;~~
16 and receipts from the entity are allocated only to income;

17 "(2) From principal to the extent that ~~allocation~~
18 ~~from the entity of the items giving rise to the tax either are~~
19 ~~or would be, if distributed by the entity, allocated to~~
20 principal. receipts from the entity are allocated only to
21 principal;

22 "(3) Proportionately from principal and income to
23 the extent that receipts from the entity are allocated to both
24 income and principal; and

1 "(4) From principal to the extent that the tax
2 exceeds the total receipts from the entity.

3 ~~"(d) For purposes of this section, receipts~~
4 ~~allocated to principal or income shall be reduced by the~~
5 ~~amount distributed to a beneficiary from principal or income~~
6 ~~for which the trust receives a deduction in calculating the~~
7 ~~tax. After applying subsections (a) through (c), the fiduciary~~
8 ~~shall adjust income or principal receipts to the extent that~~
9 ~~the trust's taxes are reduced because the trust receives a~~
10 ~~deduction for payments made to a beneficiary."~~

11 Section 2. Section 19-3A-607 is added to the Code of
12 Alabama 1975, to read as follows:

13 §19-3A-607.

14 Section 19-3A-409, as amended by the act adding this
15 section, applies to a trust described in Section 409(d) on and
16 after the following dates:

17 (1) If the trust is not funded as of January 1,
18 2013, the date of the decedent's death.

19 (2) If the trust is initially funded in the calendar
20 year beginning January 1, 2013, the date of the decedent's
21 death.

22 (3) If the trust is not described in subdivision (1)
23 or (2), January 1, 2013.

24 Section 3. This act shall become effective on
25 January 1, 2013.

