An Act To Amend the Uniform Principal and Income Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 18-A MRSA §7-749, as enacted by PL 2001, c. 544, §2, is amended to read:

§ 7-749.Deferred compensation, annuities and similar payments

(a). 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 payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.~~:

(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 payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor. For the purposes of subsections (d), (d1), (d2) and (d3), "payment" also includes any payment from any separate fund, regardless of the reason for the payment; and

(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 ~~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.

(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 10% 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). ~~If, to obtain an estate tax marital deduction for~~Except as otherwise provided in subsection (d1), subsections (d2) and (d3) apply and subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to 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.~~:

(1). To which an election to qualify for a marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7) (2010), as amended, has been made; or

(2). That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(5) (2010), as amended.

(d-1). Subsections (d), (d2) and (d3) 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 the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7)(C) (2010), as amended.

(d-2). 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 Part. 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.

(d-3). 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 4% 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 the federal Internal Revenue Code, 26 United States Code, Section 7520 (2010), as amended, for the month preceding the accounting period for which the computation is made.

(e). This section does not apply to ~~payments~~a payment to which section 7-750 applies.

Sec. 2. 18-A MRSA §7-765, as enacted by PL 2001, c. 544, §2, is amended to read:

§ 7-765.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 ~~proportionately~~:

(1). From income to the extent that receipts from the entity are allocated only to income; ~~and~~

(2). From principal to the extent that~~:~~receipts from the entity are allocated only to principal;

~~(i) Receipts from the entity are allocated to principal; and~~

~~(ii) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (i).~~

(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). ~~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.~~

(e). After applying subsections (a) to (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.

Sec. 3. 18-A MRSA §7-774 is enacted to read:

§ 7-774. Transitional matters

Section 7-749 applies to a trust described in section 7-749, subsection (d) on and after the following dates:

(1). If the trust is not funded as of January 1, 2012, the date of the decedent's death;

(2). If the trust is initially funded in the calendar year beginning January 1, 2012, the date of the decedent's death; or

(3). If the trust is not described in subsection (1) or (2), January 1, 2012.

Sec. 4. Effective date. This Act takes effect January 1, 2012.

SUMMARY

This bill incorporates the 2008 amendments to the Uniform Principal and Income Act approved by the National Conference of Commissioners on Uniform State Laws. The Uniform Comments as updated in 2008 are included for the changes to current law in the Uniform Principal and Income Act, the Maine Revised Statutes, Title 18A, sections 7749 and 7765. According to the National Conference of Commissioners on Uniform State Laws, these amendments were drafted to clarify two discrete portions of the Uniform Principal and Income Act, sections 409 (Title 18A, section 7749 in Maine law) and 505 (Title 18A, section 7765 in Maine law), and a new transition section 606 (Title 18A, section 7774 in Maine law) to facilitate the technical implementation of the amendments. The amendments to Title 18A, section 7-749 should serve to resolve issues brought about by IRS Revenue Ruling 2006-26 and assist separate funds within a trust in qualifying for the IRS estate tax marital deduction safe harbors. The Title

18A, section 7-765 amendments should allow mandatory income trusts that own an entity to retain the proper amount of funds from distributions to meet their existing tax obligations.

Title 18A, section 7-774 is added to provide that the changes in Title 18A, section 7-749 apply on the date of the decedent's death for trusts not funded as of January 1, 2012, the effective date provided in this bill, and for trusts initially funded during 2012. For all other trusts, the changes apply on January 1, 2012.