

Enrolled
Senate Bill 387

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Estate Planning Section)

CHAPTER

AN ACT

Relating to Uniform Principal and Income Act; creating new provisions; amending ORS 129.355 and 129.420; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 129.355 is amended to read:

129.355. [(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 a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.*]

[(2) *Except as provided in subsection (5) of this section, 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 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) *Except as provided in subsection (5) of this section, 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 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.*]

[(5)(a) *An increase in value of the following obligations over the value of the obligations at the time of acquisition by the trust is distributable as income:*]

[(A) *A zero coupon security.*]

[(B) *A deferred annuity contract surrendered wholly or partially before annuitization.*]

[(C) *A life insurance contract surrendered wholly or partially before the death of the insured.*]

[(D) Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable or discretionary schedule of appreciation in excess of the price at which it was issued.]

[(b) For purposes of this subsection, the increase in value of an obligation is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or partially liquidated, the cash available must be attributed first to the increase. The increase is distributable to the income beneficiary who is the beneficiary at the time the cash is received.]

[(6) This section does not apply to payments to which ORS 129.360 applies.]

(1) In this section, the following terms have the following meanings:

(a) "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 (4), (5), (6) and (7) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

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

(2) Except as provided in subsection (8) of this section, 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 that portion of 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) Except as provided in subsection (8) of this section, 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 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) Except as provided in subsection (5) of this section, subsections (6) and (7) of this section apply, and subsections (2) and (3) of this section do not apply, in determining the allocation of a payment made from a separate fund to either of the following:

(a) A trust for which an election has been made to qualify for a marital deduction under 26 U.S.C. 2056(b)(7), as in effect on the effective date of this 2011 Act; or

(b) A trust that qualifies for the marital deduction under 26 U.S.C. 2056(b)(5), as in effect on the effective date of this 2011 Act.

(5) Subsections (4), (6) and (7) of this section do not apply in determining the allocation of a series of payments made from a separate fund if and to the extent that the series of payments would, without the application of subsection (4) of this section, qualify for the marital deduction under 26 U.S.C. 2056(b)(7)(C), as in effect on the effective date of this 2011 Act.

(6) Except as provided in subsection (7) of this section, 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.

(7) 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 in effect on the effective date of this 2011 Act, for the month preceding the accounting period for which the computation is made.

(8)(a) An increase in value of the following obligations over the value of the obligations at the time of acquisition by the trust is distributable as income:

(A) A zero coupon security.

(B) A deferred annuity contract surrendered wholly or partially before annuitization.

(C) A life insurance contract surrendered wholly or partially before the death of the insured.

(D) Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable or discretionary schedule of appreciation in excess of the price at which it was issued.

(b) For purposes of this subsection, the increase in value of an obligation is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or partially liquidated, the cash available must be attributed first to the increase. The increase is distributable to the income beneficiary who is the beneficiary at the time the cash is received.

(9) This section does not apply to a payment to which ORS 129.360 applies.

SECTION 2. (1) Except as provided in subsection (2) of this section, the amendments to ORS 129.355 by section 1 of this 2011 Act apply to the determination of the allocation of payments from separate funds made on or after January 1, 2011.

(2) The amendments to ORS 129.355 by section 1 of this 2011 Act apply to the determination of the allocation of payments from separate funds made on or after the death of the grantor if:

(a) The trust established by the grantor is not funded on or before January 1, 2011; or

(b) The trust established by the grantor is first funded in calendar year 2011.

SECTION 3. ORS 129.420 is amended to read:

129.420. (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 **only** to income; [*and*]

(b) From principal to the extent that[.:]

[(A)] receipts from the entity are allocated **only** to principal; [*and*]

[(B) *The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (a) of this subsection and subparagraph (A) of this paragraph*]

(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) to (3) of this section, 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.**

SECTION 4. The amendments to ORS 129.420 by section 3 of this 2011 Act apply to taxes payable by a trustee on or after January 1, 2011.

SECTION 5. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 7, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 26, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State