

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

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
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8 Relating to trusts; to amend Sections 19-3A-409 and  
9 19-3A-505 of the Code of Alabama 1975, relating to the Alabama  
10 Principal and Income Act, to further distinguish between the  
11 principal of a trust and the distribution of income from a  
12 trust; and to add Section 19-3A-607 to the Code of Alabama  
13 1975, to provide for certain transitional matters in the  
14 application of the changes by this act.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§19-3A-409.

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

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

1 and (g), the term also includes any payment from any separate  
2 fund, regardless of the reason for the payment.

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

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

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

25 ~~"(d) If, to obtain an estate tax marital deduction~~  
26 ~~for a trust, a fiduciary must allocate more of a payment to~~  
27 ~~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  
26 the separate fund to distribute the internal income to the  
27 trust. The fiduciary shall allocate a payment from the

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

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

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

26 "§19-3A-505.

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

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

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

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

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

19           "(3) Proportionately from principal and income to  
20 the extent that receipts from the entity are allocated to both  
21 income and principal; and

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

24           "~~(d) For purposes of this section, receipts~~  
25 ~~allocated to principal or income shall be reduced by the~~  
26 ~~amount distributed to a beneficiary from principal or income~~  
27 ~~for which the trust receives a deduction in calculating the~~

1 ~~tax.~~ After applying subsections (a) through (c), the fiduciary  
2 shall adjust income or principal receipts to the extent that  
3 the trust's taxes are reduced because the trust receives a  
4 deduction for payments made to a beneficiary."

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

7 §19-3A-607.

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

11 (1) If the trust is not funded as of January 1,  
12 2013, the date of the decedent's death.

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

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

18 Section 3. This act shall become effective on  
19 January 1, 2013.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... . . . . . 08-FEB-12

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 01-MAR-12

Read for the third time and passed  
as amended..... . . . . . 17-APR-12

Yeas 94, Nays 0, Abstains 1

Greg Pappas  
Clerk