

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

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8 SYNOPSIS: Under existing law, the Alabama Principal
9 and Income Act, which is based on the Uniform
10 Principal and Income Act, provides procedures for
11 the trustee of a trust to distinguish between the
12 principal of a trust which is generally preserved
13 for the remainder beneficiaries and the income of a
14 trust which is distributed to the income
15 beneficiaries.

16 This bill would amend the Alabama Principal
17 and Income Act to incorporate changes in the
18 Uniform Principal and Income Act. The bill would
19 update the act to reflect current policy of the
20 Internal Revenue Service and to clarify technical
21 language regarding withholdings; clarify
22 allocations of acquired assets, such as those from
23 corporate distributions; include an "unincorporated
24 entity" concept to deal with businesses operated by
25 a trustee, including farming and livestock
26 operations, and investment activities in rental
27 real estate, natural resources, and timber; and

1 conform the changes to the Alabama Uniform Prudent
2 Investor Act, especially the provisions related to
3 investing for total return instead of for a certain
4 level of income.

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6 A BILL
7 TO BE ENTITLED
8 AN ACT
9

10 Relating to trusts; to amend Sections 19-3A-409 and
11 19-3A-505 of the Code of Alabama 1975, relating to the Alabama
12 Principal and Income Act, to further distinguish between the
13 principal of a trust and the distribution of income from a
14 trust; and to add Section 19-3A-607 to the Code of Alabama
15 1975, to provide for certain transitional matters in the
16 application of the changes by this act.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 "§19-3A-409.

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

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

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

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

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

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

26 ~~"(d) If, to obtain an estate tax marital deduction~~
27 ~~for a trust, a fiduciary must allocate more of a payment to~~

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

7 "(1) A trust to which an election to qualify for a
8 marital deduction under Section 2056(b) (7) of the Internal
9 Revenue Code of 1986, as amended, 26 U.S.C. Section
10 2056(b) (7), as amended, has been made; or

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

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

21 "(f) A fiduciary shall determine the internal income
22 of each separate fund for the accounting period as if the
23 separate fund were a trust subject to this chapter. Upon
24 request of the surviving spouse, the fiduciary shall demand
25 that the person administering the separate fund distribute the
26 internal income to the trust. The fiduciary shall allocate a
27 payment from the separate fund to income to the extent of the

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

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

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

24 "§19-3A-505.

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

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

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

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

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

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

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

22 "~~(d) For purposes of this section, receipts~~
23 ~~allocated to principal or income shall be reduced by the~~
24 ~~amount distributed to a beneficiary from principal or income~~
25 ~~for which the trust receives a deduction in calculating the~~
26 ~~tax.~~ After applying subsections (a) through (c), the fiduciary
27 shall adjust income or principal receipts to the extent that

1 the trust's taxes are reduced because the trust receives a
2 deduction for payments made to a beneficiary."

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

5 §19-3A-607.

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

9 (1) If the trust is not funded as of January 1,
10 2013, the date of the decedent's death.

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

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

16 Section 3. This act shall become effective on
17 January 1, 2013.