

THE HOUSE OF REPRESENTATIVES

Monday, April 13, 2009

ENGROSSED
Senate Bill No. 981

ENGROSSED SENATE BILL NO. 981 - By: MAZZEI AND IVESTER of the Senate and HICKMAN of the House.

An Act relating to property; amending 60 O.S. 2001, Sections 175.409 and 175.505, which relate to the Oklahoma Uniform Principal and Income Act; modifying and adding definitions; specifying procedures for determining payments from separate funds; modifying procedure for determining payment of taxes by certain trusts; specifying applicability of certain changes; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 60 O.S. 2001, Section 175.409, is amended to
2 read as follows:

3 Section 175.409

4 DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS

5 A. In this section, "payment":

6 1. "Payment" means a payment that a trustee may receive over a fixed number of
7 years or during the life of one or more individuals because of services rendered or
8 property transferred to the payer in exchange for future payments. The term includes a
9 payment made in money or property from the payer's general assets or from a separate
10 fund created by the payer, including. For purposes of subsections D, E, F, and G of this

1 section, the term also includes any payment from any separate fund, regardless of the
2 reason for the payment; and

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

5 B. To the extent that a payment is characterized as interest or a dividend or a
6 payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The
7 trustee shall allocate to principal the balance of the payment and any other payment
8 received in the same accounting period that is not characterized as interest, a dividend,
9 or an equivalent payment.

10 C. If no part of a payment is characterized as interest, a dividend, or an equivalent
11 payment, and all or part of the payment is required to be made, a trustee shall allocate to
12 income ten percent (10%) of the part that is required to be made during the accounting
13 period and the balance to principal. If no part of a payment is required to be made or the
14 payment received is the entire amount to which the trustee is entitled, the trustee shall
15 allocate the entire payment to principal. For purposes of this subsection, a payment is
16 not "required to be made" to the extent that it is made because the trustee exercises a
17 right of withdrawal.

18 D. ~~If, to obtain an estate tax marital deduction for a trust, a trustee must allocate~~
19 ~~more of a payment to income than provided for by this section, the trustee shall allocate~~
20 ~~to income the additional amount necessary to obtain the marital deduction~~ Except as
21 otherwise provided in subsection E of this section, subsections F and G of this section

1 apply, and subsections B and C of this section do not apply in determining the allocation
2 of a payment made from a separate fund to:

3 1. A trust to which an election to qualify for a marital deduction under Section
4 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

5 2. A trust that qualifies for the marital deduction under Section 2056(b)(5) of the
6 Internal Revenue Code of 1986, as amended.

7 E. Subsections D, F, and G of this section do not apply if and to the extent that the
8 series of payments would, without the application of subsection D of this section, qualify
9 for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code of
10 1986, as amended.

11 F. A trustee shall determine the internal income of each separate fund for the
12 accounting period as if the separate fund were a trust subject to the Oklahoma Uniform
13 Principal and Income Act. Upon request of the surviving spouse, the trustee shall
14 demand that the person administering the separate fund distribute the internal income
15 to the trust. The trustee shall allocate a payment from the separate fund to income to
16 the extent of the internal income of the separate fund and distribute that amount to the
17 surviving spouse. The trustee shall allocate the balance of the payment to principal.
18 Upon request of the surviving spouse, the trustee shall allocate principal to income to the
19 extent the internal income of the separate fund exceeds payments made from the
20 separate fund to the trust during the accounting period.

21 G. If a trustee cannot determine the internal income of a separate fund but can
22 determine the value of the separate fund, the internal income of the separate fund shall

1 be an amount of not less than three percent (3%) or more than four percent (4%) of the
2 fund's value, as determined annually by the trustee in a manner that fulfills the trustee's
3 duty of impartiality between the income and remainder beneficiaries, according to the
4 most recent statement of value preceding the beginning of the accounting period. If the
5 trustee can determine neither the internal income of the separate fund nor the fund's
6 value, the internal income of the fund is deemed to equal the product of the interest rate
7 and the present value of the expected future payments, as determined under Section
8 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the
9 accounting period for which the computation is made.

10 H. This section does not apply to ~~payments~~ a payment to which Section ~~19~~ 175.410
11 of this ~~act~~ title applies.

12 SECTION 2. AMENDATORY 60 O.S. 2001, Section 175.505, is amended to
13 read as follows:

14 Section 175.505

15 INCOME TAXES

16 A. A tax required to be paid by a trustee based on receipts allocated to income must
17 be paid from income.

18 B. A tax required to be paid by a trustee based on receipts allocated to principal
19 must be paid from principal, even if the tax is called an income tax by the taxing
20 authority.

21 C. A tax required to be paid by a trustee on the trust's share of an entity's taxable
22 income must be paid ~~proportionately~~:

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

3 2. From principal to the extent that:

4 a. receipts from the entity are allocated only to principal, ~~and~~

5 b. ~~the trust's share of the entity's taxable income exceeds the total~~
6 ~~receipts described in paragraph 1 and subparagraph a of paragraph 2~~
7 ~~of this section;~~

8 3. Proportionately from principal and income to the extent that receipts from the
9 entity are allocated to both income and principal; and

10 4. From principal to the extent that the tax exceeds the total receipts from the
11 entity.

12 D. ~~For purposes of this section, receipts allocated to principal or income must be~~
13 ~~reduced by the amount distributed to a beneficiary from principal or income for which~~
14 ~~the trust receives a deduction in calculating the tax~~ After applying subsections A through
15 C of this section, the trustee shall adjust income or principal receipts to the extent that
16 the trust's taxes are reduced because the trust receives a deduction for payments made to
17 a beneficiary.

18 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
19 Statutes as Section 175.603 of Title 60, unless there is created a duplication in
20 numbering, reads as follows:

21 TRANSITIONAL MATTERS

1 Section 175.409 of Title 60 of the Oklahoma Statutes applies to a trust described in
2 subsection D of Section 175.409 of Title 60 of the Oklahoma Statutes on and after the
3 following dates:

4 1. If the trust is not funded as of November 1, 2009, the date of the decedent's
5 death;

6 2. If the trust is initially funded in the calendar year beginning January 1, 2009,
7 the date of the decedent's death; or

8 3. If the trust is not described in paragraph 1 or 2 of this section, January 1, 2009.

9 SECTION 4. This act shall become effective November 1, 2009.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
11 dated 04-09-09 - DO PASS.