

1                                   **UNIFORM LAWS - UNIFORM PRINCIPAL**  
2                                   **AND INCOME ACT AMENDMENTS**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Lyle W. Hillyard**

6                                   House Sponsor: Fred R Hunsaker

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8   **LONG TITLE**

9   **General Description:**

10           This bill makes updates to the Uniform Principal and Income Act.

11   **Highlighted Provisions:**

12           This bill:

- 13           ▶ clarifies the allocation of payments to trustees over a fixed number of years;
- 14           ▶ defines what is considered a separate fund;
- 15           ▶ allows for special consideration of trusts which qualify for a marital deduction;
- 16           ▶ specifies where taxes the trustee must pay shall be paid from according to the
- 17   source of the funds on which the taxes are being paid; and
- 18           ▶ has retroactive effect under specific conditions.

19   **Monies Appropriated in this Bill:**

20           None

21   **Other Special Clauses:**

22           None

23   **Utah Code Sections Affected:**

24   AMENDS:

25           **22-3-409**, as enacted by Laws of Utah 2004, Chapter 285

26           **22-3-505**, as enacted by Laws of Utah 2004, Chapter 285

27   ENACTS:

28           **22-3-604**, Utah Code Annotated 1953

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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **22-3-409** is amended to read:

32 **22-3-409. Receipts normally apportioned -- Deferred compensation, annuities,**  
33 **and similar payments.**

34 (1) ~~[In]~~ As used in this section~~[-,"payment"]~~:

35 (a) "Payment" means a payment that a trustee may receive over a fixed number of  
36 years or during the life of one or more individuals because of services rendered or property  
37 transferred to the payer in exchange for future payments. The term includes a payment made  
38 in money or property from the payer's general assets or from a separate fund created by the  
39 payer~~[-,including]~~. For the purposes of Subsections (4), (5), (6), and (7), the term also  
40 includes any payment from a separate fund, regardless of the reason for the payment.

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

43 (2) To the extent that a payment is characterized as interest ~~[or]~~, a dividend or a  
44 payment made in lieu of interest or a dividend, a trustee shall allocate ~~[it]~~ the payment to  
45 income. The trustee shall allocate to principal the balance of the payment and any other  
46 payment received in the same accounting period that is not characterized as interest, a  
47 dividend, or an equivalent payment.

48 (3) If no part of a payment is characterized as interest, a dividend, or an equivalent  
49 payment, and all or part of the payment is required to be made, a trustee shall allocate to  
50 income 10% of the part that is required to be made during the accounting period and the  
51 balance to principal. If no part of a payment is required to be made or the payment received is  
52 the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment  
53 to principal. For purposes of this Subsection (3), a payment is not "required to be made" to  
54 the extent that it is made because the trustee exercises a right of withdrawal.

55 ~~[(4) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate~~  
56 ~~more of a payment to income than provided for by this section, the trustee shall allocate to~~  
57 ~~income the additional amount necessary to obtain the marital deduction.]~~

58           (4) Except as otherwise provided in Subsection (5), Subsections (6) and (7) apply, and  
59 Subsections (2) and (3) do not apply, in determining the allocation of a payment made from a  
60 separate fund to:

61           (a) a trust to which an election to qualify for a marital deduction under Section  
62 2056(b)(7) of the Internal Revenue Code of 1986 has been made; or

63           (b) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the  
64 Internal Revenue Code of 1986.

65           (5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of  
66 payments would, without the application of Subsection (4), qualify for the marital deduction  
67 under Section 2056(b)(7)(C) of the Internal Revenue Code of 1986.

68           (6) A trustee shall determine the internal income of each separate fund for the  
69 accounting period as if the separate fund were a trust subject to this chapter. Upon request of  
70 the surviving spouse, the trustee shall demand of the person administering the separate fund  
71 that this internal income be distributed to the trust. The trustee shall allocate a payment from  
72 the separate fund to income to the extent of the internal income of the separate fund and  
73 distribute that amount to the surviving spouse. The trustee shall allocate the balance to  
74 principal. Upon request of the surviving spouse, the trustee shall allocate principal to income  
75 to the extent the internal income of the separate fund exceeds payments made from the  
76 separate fund to the trust during the accounting period.

77           (7) If a trustee cannot determine the internal income of a separate fund but can  
78 determine the value of the separate fund, the internal income of the separate fund is considered  
79 to equal 4% of the fund's value, according to the most recent statement of value preceding the  
80 beginning of the accounting period. If the trustee can determine neither the internal income of  
81 the separate fund nor the fund's value, the internal income of the fund is considered to equal  
82 the product of the interest rate and the present value of the expected future payments, as  
83 determined under Section 7520 of the Internal Revenue Code of 1986 for the month preceding  
84 the accounting period for which the computation is made.

85           [~~(5)~~] (8) This section does not apply to [~~payments~~] a payment to which Section

86 22-3-410 applies.

87 Section 2. Section **22-3-505** is amended to read:

88 **22-3-505. Income taxes.**

89 (1) A tax required to be paid by a trustee based on receipts allocated to income must  
90 be paid from income.

91 (2) A tax required to be paid by a trustee based on receipts allocated to principal must  
92 be paid from principal, even if the tax is called an income tax by the taxing authority.

93 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable  
94 income must be paid [~~proportionately~~]:

95 (a) from income to the extent that receipts from the entity are allocated only to  
96 income; [~~and~~]

97 (b) from principal to the extent that [~~:(i)~~] receipts from the entity are allocated only to  
98 principal; [~~and~~]

99 [~~(ii) the trust's share of the entity's taxable income exceeds the total receipts described~~  
100 ~~in Subsections (3)(a) and (3)(b)(i).]~~

101 [~~(4) For purposes of this section, receipts allocated to principal or income must be~~  
102 ~~reduced by the amount distributed to a beneficiary from principal or income for which the~~  
103 ~~trust receives a deduction in calculating the tax.]~~

104 (c) proportionately from principal and income to the extent that receipts from the  
105 entity are allocated to both income and principal; and

106 (d) from principal to the extent that the tax exceeds the total receipts from the entity.

107 (4) After applying Subsections (1) through (3), the trustee shall adjust income or  
108 principal receipts to the extent that the trust's taxes are reduced because the trust receives a  
109 deduction for payments made to a beneficiary.

110 Section 3. Section **22-3-604** is enacted to read:

111 **22-3-604. Transitional provisions.**

112 Section 22-3-409 applies to a trust described in Subsection 22-3-409(4) as follows:

113 (1) If the trust is not funded as of May 12, 2009, then Section 22-3-409 applies to the

114 trust on the date of the decedent's death.

115           (2) If the trust is initially funded in the calendar year beginning January 1, 2009, then  
116 Section 22-3-409 applies to the trust on the date of the decedent's death.

117           (3) If the trust is not described in Subsection (1) or (2), then Section 22-3-409 applies  
118 to the trust as of January 1, 2009.