

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

7
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 source
- 17 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

29

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) ~~[It]~~ 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 in
38 money or property from the payer's general assets or from a separate fund created by the payer~~;~~
39 ~~including~~. For the purposes of Subsections (4), (5), (6), and (7), the term also includes any
40 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 dividend,
47 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 to
53 principal. For purposes of this Subsection (3), a payment is not "required to be made" to the
54 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 more~~
56 ~~of a payment to income than provided for by this section, the trustee shall allocate to income~~
57 ~~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 separate
76 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 the
82 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 be

90 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 income;
96 [~~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 trust~~
103 ~~receives a deduction in calculating the tax.]~~

104 (c) proportionately from principal and income to the extent that receipts from the entity
105 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 3, 2004, 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, 2004, 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.

Legislative Review Note
as of 12-31-08 9:49 AM

Office of Legislative Research and General Counsel

S.B. 103 - Uniform Laws - Uniform Principal and Income Act Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
