

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

SENATE BILL 217

5 By: Senators Luker, M. Lamoureux  
6 By: Representatives Carter, Wright  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE UNIFORM PRINCIPAL AND INCOME ACT  
10 TO BRING IT INTO COMPLIANCE WITH THE INTERNAL REVENUE  
11 SERVICE POSITION FOR ALLOCATING INDIVIDUAL RETIREMENT  
12 ACCOUNT DISTRIBUTIONS; TO PROVIDE A FORMULA FOR  
13 CALCULATING TRUST DISTRIBUTIONS; TO CLARIFY PAYMENT  
14 OF TAXES; AND FOR OTHER PURPOSES.  
15

## Subtitle

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18 TO AMEND THE UNIFORM PRINCIPAL AND INCOME  
19 ACT.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 28-70-409 is amended to read as follows:  
25 28-70-409. Deferred compensation, annuities, and similar payments.

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

27 (1) "Payment" means a payment that a trustee may receive over a  
28 fixed number of years or during the life of one (1) or more individuals  
29 because of services rendered or property transferred to the payer in exchange  
30 for future payments. The term includes a payment made in money or property  
31 from the payer's general assets or from a separate fund created by the payer,  
32 including. For purposes of subsections (d), (e), (f), and (g) the term also  
33 includes a payment from any separate fund, regardless of the reason for the  
34 payment.

35 (2) "Separate fund" includes a private or commercial annuity, an  
36 individual retirement account, and a pension, profit-sharing, stock-bonus, or



1 stock-ownership plan.

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

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

17 (d) ~~If, to obtain an estate tax marital deduction for a trust, a~~  
18 ~~trustee must allocate more of a payment to income than provided for by this~~  
19 ~~section, the trustee shall allocate to income the additional amount necessary~~  
20 ~~to obtain the marital deduction. Except as otherwise provided in subsection~~  
21 ~~(e), subsections (f) and (g) apply, and subsections (b) and (c) do not apply,~~  
22 ~~in determining the allocation of a payment made from a separate fund to:~~

23 (1) a trust to which an election to qualify for a marital  
24 deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, 26  
25 U.S.C. § 2056(b)(7), as in effect January 1, 2011, has been made; or

26 (2) a trust that qualifies for the marital deduction under  
27 Section 2056(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. §  
28 2056(b)(5), as in effect January 1, 2011.

29 (e) Subsections (d), (f), and (g) do not apply if and to the extent  
30 that the series of payments would, without the application of subsection (d),  
31 qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal  
32 Revenue Code of 1986, 26 U.S.C. § 2056(b)(7)(C), as in effect January 1,  
33 2011.

34 (f) A trustee shall determine the internal income of each separate  
35 fund for the accounting period as if the separate fund were a trust subject  
36 to this chapter. Upon request of the surviving spouse, the trustee shall

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

9 (g) If a trustee cannot determine the internal income of a separate  
 10 fund but can determine the value of the separate fund, the internal income of  
 11 the separate fund is deemed to equal three percent of the fund's value,  
 12 according to the most recent statement of value preceding the beginning of  
 13 the accounting period. If the trustee can determine neither the internal  
 14 income of the separate fund nor the fund's value, the internal income of the  
 15 fund is deemed to equal the product of the interest rate and the present  
 16 value of the expected future payments, as determined under Section 7520 of  
 17 the Internal Revenue Code of 1986, 26 U.S.C. § 7520, as in effect January 1,  
 18 2011, for the month preceding the accounting period for which the computation  
 19 is made.

20 ~~(e)~~(h) This section does not apply to ~~payments~~ a payment to which §  
 21 28-70-410 applies.

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 23 SECTION 2. Arkansas Code § 28-70-505 is amended to read as follows:  
 24 28-70-505. Income taxes.

25 (a) A tax required to be paid by a trustee based on receipts allocated  
 26 to income must be paid from income.

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

30 (c) A tax required to be paid by a trustee on the trust's share of an  
 31 entity's taxable income must be paid ~~proportionately~~:

32 (1) from income to the extent that receipts from the entity are  
 33 allocated only to income; ~~and~~

34 (2) from principal to the extent that+

35 ~~(A)~~ receipts from the entity are allocated only to  
 36 principal; ~~and~~

1                   ~~(B) the trust's share of the entity's taxable income~~  
2 ~~exceeds the total receipts described in paragraphs (1) and (2)(A).~~

3                   (3) proportionately from principal and income to the extent that  
4 receipts from the entity are allocated to both income and principal; and

5                   (4) from principal to the extent that the tax exceeds the total  
6 receipts from the entity.

7                   ~~(d) For purposes of this section, receipts allocated to principal or~~  
8 ~~income must be reduced by the amount distributed to a beneficiary from~~  
9 ~~principal or income for which the trust receives a deduction in calculating~~  
10 ~~the tax. After applying subsections (a) through (c), the trustee shall adjust~~  
11 income or principal receipts to the extent that the trust's taxes are reduced  
12 because the trust receives a deduction for payments made to a beneficiary.

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14                   SECTION 3. Arkansas Code Title 28, Chapter 70, Subchapter 6 is amended  
15 to add an additional section to read as follows:

16                   28-70-606. Transitional matters.

17                   Section 28-70-409, as amended by this act, applies to a trust described  
18 in § 28-70-409(d) on and after the following dates:

19                   (1) If the trust is not funded as of the effective date of this  
20 act, the date of the decedent's death.

21                   (2) If the trust is initially funded in the calendar year  
22 beginning January 1, 2011, the date of the decedent's death.

23                   (3) If the trust is not described in paragraph (1) or (2)  
24 January 1, 2012.

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27                   **APPROVED: 02/24/2011**  
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