

SENATE BILL 787

N2

2lr2240
CF 2lr2237

By: **Senator Forehand**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Maryland Uniform Principal and Income Act – Certain**
3 **Payments to and from Trusts**

4 FOR the purpose of establishing certain requirements concerning allocation of
5 principal and income for a distribution to a marital trust from an individual
6 retirement account, qualified retirement plan account, or certain similar
7 account or plan, or annuity; requiring a trustee of a marital trust to perform
8 certain duties on request of a surviving spouse under certain circumstances;
9 requiring a marital trust to increase receipts payable to a beneficiary under
10 certain circumstances; requiring payment of income tax on receipts from a
11 certain business entity to be charged in a certain manner; altering a certain
12 definition; defining a certain term; and generally relating to the Maryland
13 Uniform Principal and Income Act and certain payments to and from certain
14 trusts.

15 BY repealing and reenacting, with amendments,
16 Article – Estates and Trusts
17 Section 15–516 and 15–527
18 Annotated Code of Maryland
19 (2011 Replacement Volume and 2011 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Estates and Trusts**

23 15–516.

24 (a) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
25 **MEANINGS INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) (I)** [In this section, “payment”] **“PAYMENT”** means a payment
2 that a trustee may receive over a fixed number of years or during the life of one or
3 more individuals because of services rendered or property transferred to the payer in
4 exchange for future payments.

5 **[(2)] (II)** “Payment” includes:

6 1. [a] A payment made in money or property from the
7 payer’s general assets or from a separate fund created by the payer[, including]; **OR**

8 2. **FOR THE PURPOSES OF SUBSECTION (D), (E), (F),**
9 **OR (G) OF THIS SECTION, ANY PAYMENT FROM A SEPARATE FUND, REGARDLESS**
10 **OF THE REASON FOR THE PAYMENT.**

11 **(3) “SEPARATE FUND” INCLUDES** a private or commercial annuity,
12 an individual retirement account, and a pension, profit-sharing, stock-bonus, or
13 stock-ownership plan.

14 (b) To the extent that a payment is characterized as interest or a dividend or
15 a payment made in lieu of interest [or], a dividend, **OR A PAYMENT MADE IN LIEU OF**
16 **INTEREST OR A DIVIDEND**, a trustee shall allocate [it] **THE PAYMENT** to income.
17 The trustee shall allocate to principal the balance of the payment and any other
18 payment received in the same accounting period that is not characterized as interest, a
19 dividend, or an equivalent payment.

20 (c) If no part of a payment is characterized as interest, a dividend, or an
21 equivalent payment, and all or part of the payment is required to be made, a trustee
22 shall allocate to income 10 percent of the part that is required to be made during the
23 accounting period and the balance to principal. If no part of a payment is required to
24 be made or the payment received is the entire amount to which the trustee is entitled,
25 the trustee shall allocate the entire payment to principal. For purposes of this
26 subsection, a payment is not “required to be made” to the extent that it is made
27 because the trustee exercises a right of withdrawal.

28 (d) [If, to obtain an estate tax marital deduction for a trust, a trustee must
29 allocate more of a payment to income than provided for by this section, the trustee
30 shall allocate to income the additional amount necessary to obtain the marital
31 deduction.] **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS**
32 **SECTION, SUBSECTIONS (F) AND (G) OF THIS SECTION APPLY, AND SUBSECTIONS**
33 **(B) AND (C) OF THIS SECTION DO NOT APPLY, IN DETERMINING THE**
34 **ALLOCATION OF A PAYMENT MADE FROM A SEPARATE FUND TO:**

1 (1) A TRUST TO WHICH AN ELECTION TO QUALIFY FOR A MARITAL
2 DEDUCTION UNDER § 2056(B)(7) OF THE INTERNAL REVENUE CODE OF 1986
3 HAS BEEN MADE; OR

4 (2) A TRUST THAT QUALIFIES FOR THE MARITAL DEDUCTION
5 UNDER § 2056(B)(5) OF THE INTERNAL REVENUE CODE OF 1986.

6 (E) SUBSECTIONS (D), (F), AND (G) OF THIS SECTION DO NOT APPLY IF,
7 AND TO THE EXTENT THAT, THE SERIES OF PAYMENTS WOULD, WITHOUT THE
8 APPLICATION OF SUBSECTION (D) OF THIS SECTION, QUALIFY FOR THE
9 MARITAL DEDUCTION UNDER § 2056(B)(7)(C) OF THE INTERNAL REVENUE
10 CODE OF 1986.

11 (F) (1) A TRUSTEE SHALL DETERMINE THE INTERNAL INCOME OF
12 EACH SEPARATE FUND FOR THE ACCOUNTING PERIOD AS IF THE SEPARATE
13 FUND WERE A TRUST SUBJECT TO THIS SUBTITLE.

14 (2) ON REQUEST OF THE SURVIVING SPOUSE, THE TRUSTEE
15 SHALL DEMAND THAT THE PERSON ADMINISTERING THE SEPARATE FUND
16 DISTRIBUTE THE INTERNAL INCOME TO THE TRUST.

17 (3) THE TRUSTEE SHALL ALLOCATE:

18 (I) A PAYMENT FROM THE SEPARATE FUND TO INCOME TO
19 THE EXTENT OF THE AMOUNT OF THE INTERNAL INCOME OF THE SEPARATE
20 FUND AND DISTRIBUTE THAT AMOUNT TO THE SURVIVING SPOUSE; AND

21 (II) THE BALANCE OF THE PAYMENT TO PRINCIPAL.

22 (4) ON REQUEST OF THE SURVIVING SPOUSE, THE TRUSTEE
23 SHALL ALLOCATE PRINCIPAL TO INCOME TO THE EXTENT THE INTERNAL
24 INCOME OF THE SEPARATE FUND EXCEEDS PAYMENTS MADE FROM THE
25 SEPARATE FUND TO THE TRUST DURING THE ACCOUNTING PERIOD.

26 (G) (1) IF A TRUSTEE CANNOT DETERMINE THE INTERNAL INCOME
27 OF A SEPARATE FUND BUT CAN DETERMINE THE VALUE OF THE SEPARATE
28 FUND, THE INTERNAL INCOME OF THE SEPARATE FUND IS DEEMED TO EQUAL
29 4% OF THE FUND'S VALUE, ACCORDING TO THE MOST RECENT STATEMENT OF
30 VALUE BEFORE THE BEGINNING OF THE ACCOUNTING PERIOD.

31 (2) IF THE TRUSTEE CANNOT DETERMINE BOTH THE INTERNAL
32 INCOME OF THE SEPARATE FUND AND THE FUND'S VALUE, THE INTERNAL
33 INCOME OF THE FUND IS DEEMED TO EQUAL THE PRODUCT OF THE INTEREST

1 RATE AND THE PRESENT VALUE OF THE EXPECTED FUTURE PAYMENTS, AS
2 DETERMINED UNDER § 7520 OF THE INTERNAL REVENUE CODE OF 1986 FOR
3 THE MONTH PRECEDING THE ACCOUNTING PERIOD FOR WHICH THE
4 COMPUTATION IS MADE.

5 [(e)] (H) This section does not apply to payments to which § 15-517 of this
6 subtitle applies.

7 15-527.

8 (a) A tax required to be paid by a trustee based on receipts allocated to
9 income shall be paid from income.

10 (b) A tax required to be paid by a trustee based on receipts allocated to
11 principal shall be paid from principal, even if the tax is called an income tax by the
12 taxing authority.

13 (c) A tax required to be paid by a trustee on the trust's share of an entity's
14 taxable income shall be paid [proportionately]:

15 (1) From income to the extent that receipts from the entity are
16 allocated **ONLY** to income; [and]

17 (2) From principal to the extent that[:

18 (i) Receipts] **RECEIPTS** from the entity are allocated **ONLY** to
19 principal; [and

20 (ii) The trust's share of the entity's taxable income exceeds the
21 total receipts described in paragraphs (1) and (2)(i) of this subsection]

22 **(3) PROPORTIONATELY FROM PRINCIPAL AND INCOME TO THE**
23 **EXTENT THAT RECEIPTS FROM THE ENTITY ARE ALLOCATED TO BOTH INCOME**
24 **AND PRINCIPAL; AND**

25 **(4) FROM PRINCIPAL TO THE EXTENT THAT THE TAX EXCEEDS**
26 **THE TOTAL RECEIPTS FROM THE ENTITY.**

27 (d) [For purposes of this section, receipts allocated to principal or income
28 must be reduced by the amount distributed to a beneficiary from principal or income
29 for which the trust receives a deduction in calculating the tax] **AFTER APPLYING**
30 **SUBSECTIONS (A) THROUGH (C) OF THIS SECTION, THE TRUSTEE SHALL ADJUST**
31 **INCOME OR PRINCIPAL RECEIPTS TO THE EXTENT THAT THE TRUST'S TAXES**
32 **ARE REDUCED BECAUSE THE TRUST RECEIVES A DEDUCTION FOR PAYMENTS**
33 **MADE TO A BENEFICIARY.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2012.