

## Chapter 302

(House Bill 772)

AN ACT concerning

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

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

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

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

#### **Article – Estates and Trusts**

15–516.

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

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

(2) (II) “Payment” includes:

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

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

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

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

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

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

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

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

**(E) SUBSECTIONS (D), (F), AND (G) OF THIS SECTION DO NOT APPLY IF, AND TO THE EXTENT THAT, THE SERIES OF PAYMENTS WOULD, WITHOUT THE**

APPLICATION OF SUBSECTION (D) OF THIS SECTION, QUALIFY FOR THE MARITAL DEDUCTION UNDER § 2056(B)(7)(C) OF THE INTERNAL REVENUE CODE OF 1986.

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

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

(3) THE TRUSTEE SHALL ALLOCATE:

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

(II) THE BALANCE OF THE PAYMENT TO PRINCIPAL.

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

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

(2) IF THE TRUSTEE CANNOT DETERMINE BOTH THE INTERNAL INCOME OF THE SEPARATE FUND AND THE FUND'S VALUE, THE INTERNAL INCOME OF THE FUND IS DEEMED TO EQUAL THE PRODUCT OF THE INTEREST RATE AND THE PRESENT VALUE OF THE EXPECTED FUTURE PAYMENTS, AS DETERMINED UNDER § 7520 OF THE INTERNAL REVENUE CODE OF 1986 FOR THE MONTH PRECEDING THE ACCOUNTING PERIOD FOR WHICH THE COMPUTATION IS MADE.

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

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

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

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

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

(2) From principal to the extent that[:

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That § 15-516 of the Estates and Trusts Article, as enacted by Section 1 of this Act, applies to a trust described in § 15-516(d) on and after the following dates:

(1) if the trust is not funded on or before October 1, 2012, the date of the decedent's death;

(2) if the trust is initially funded in calendar year 2012, the date of the decedent's death; or

(3) if the trust is not described in item (1) or (2) of this section, January 1, 2012.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this Act, this Act shall take effect October 1, 2012.

**Approved by the Governor, May 2, 2012.**