

# HOUSE BILL No. 5154

November 8, 2011, Introduced by Reps. Walsh, Crawford, Haveman, Lyons, Heise and Johnson and referred to the Committee on Tax Policy.

A bill to amend 2004 PA 159, entitled  
"Uniform principal and income act,"  
by amending sections 409 and 505 (MCL 555.809 and 555.905) and by  
adding section 606.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 409. (1) As used in this section: ~~,"payment"~~

2       **(A) "PAYMENT"** means a payment that a trustee may receive over  
3 a fixed number of years or during the life of 1 or more individuals  
4 because of services rendered or property transferred to the payer  
5 in exchange for future payments. The term includes a payment made  
6 in money or property from the payer's general assets or from a  
7 separate fund created by the payer. ~~,"including"~~ **FOR PURPOSES OF**  
8 **SUBSECTIONS (4) TO (7), PAYMENT ALSO INCLUDES ANY PAYMENT FROM ANY**  
9 **SEPARATE FUND, REGARDLESS OF THE REASON FOR THE PAYMENT.**

10       **(B) "SEPARATE FUND" INCLUDES** a private or commercial annuity,

1 an individual retirement account, or a pension, profit-sharing,  
2 stock-bonus, or stock-ownership plan.

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

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

19 ~~(4) If, to obtain an estate tax marital deduction for a trust,~~  
20 ~~a trustee must allocate more of a payment to income than provided~~  
21 ~~for by this section, the trustee shall allocate to income the~~  
22 ~~additional amount necessary to obtain the marital deduction.~~ **EXCEPT**  
23 **AS OTHERWISE PROVIDED IN SUBSECTION (5), SUBSECTIONS (6) AND (7)**  
24 **APPLY, AND SUBSECTIONS (2) AND (3) DO NOT APPLY, IN DETERMINING THE**  
25 **ALLOCATION OF A PAYMENT MADE FROM A SEPARATE FUND TO EITHER OF THE**  
26 **FOLLOWING:**

27 (A) A TRUST TO WHICH AN ELECTION TO QUALIFY FOR A MARITAL

1 DEDUCTION UNDER SECTION 2056(B) (7) OF THE INTERNAL REVENUE CODE OF  
2 1986, 26 USC 2056, HAS BEEN MADE.

3 (B) A TRUST THAT QUALIFIES FOR THE MARITAL DEDUCTION UNDER  
4 SECTION 2056(B) (5) OF THE INTERNAL REVENUE CODE OF 1986, 26 USC  
5 2056.

6 (5) SUBSECTIONS (4), (6), AND (7) DO NOT APPLY IF AND TO THE  
7 EXTENT THAT THE SERIES OF PAYMENTS WOULD, WITHOUT THE APPLICATION  
8 OF SUBSECTION (4), QUALIFY FOR THE MARITAL DEDUCTION UNDER SECTION  
9 2056(B) (7) (C) OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 2056.

10 (6) A TRUSTEE SHALL DETERMINE THE INTERNAL INCOME OF EACH  
11 SEPARATE FUND FOR THE ACCOUNTING PERIOD AS IF THE SEPARATE FUND  
12 WERE A TRUST SUBJECT TO THIS ACT. UPON REQUEST OF THE SURVIVING  
13 SPOUSE, THE TRUSTEE SHALL DEMAND THAT THE PERSON ADMINISTERING THE  
14 SEPARATE FUND DISTRIBUTE THE INTERNAL INCOME TO THE TRUST. THE  
15 TRUSTEE SHALL ALLOCATE A PAYMENT FROM THE SEPARATE FUND TO INCOME  
16 TO THE EXTENT OF THE INTERNAL INCOME OF THE SEPARATE FUND AND  
17 DISTRIBUTE THAT AMOUNT TO THE SURVIVING SPOUSE. THE TRUSTEE SHALL  
18 ALLOCATE THE BALANCE OF THE PAYMENT TO PRINCIPAL. UPON REQUEST OF  
19 THE SURVIVING SPOUSE, THE TRUSTEE SHALL ALLOCATE PRINCIPAL TO  
20 INCOME TO THE EXTENT THE INTERNAL INCOME OF THE SEPARATE FUND  
21 EXCEEDS PAYMENTS MADE FROM THE SEPARATE FUND TO THE TRUST DURING  
22 THE ACCOUNTING PERIOD.

23 (7) IF A TRUSTEE CANNOT DETERMINE THE INTERNAL INCOME OF A  
24 SEPARATE FUND BUT CAN DETERMINE THE VALUE OF THE SEPARATE FUND, THE  
25 INTERNAL INCOME OF THE SEPARATE FUND IS DEEMED TO EQUAL 3.5% OF THE  
26 FUND'S VALUE, ACCORDING TO THE MOST RECENT STATEMENT OF VALUE  
27 PRECEDING THE BEGINNING OF THE ACCOUNTING PERIOD. IF THE TRUSTEE

1 CAN DETERMINE NEITHER THE INTERNAL INCOME OF THE SEPARATE FUND NOR  
 2 THE FUND'S VALUE, THE INTERNAL INCOME OF THE FUND IS DEEMED TO  
 3 EQUAL THE PRODUCT OF THE INTEREST RATE AND THE PRESENT VALUE OF THE  
 4 EXPECTED FUTURE PAYMENTS, AS DETERMINED UNDER SECTION 7520 OF THE  
 5 INTERNAL REVENUE CODE OF 1986, 26 USC 7520, FOR THE MONTH PRECEDING  
 6 THE ACCOUNTING PERIOD FOR WHICH THE COMPUTATION IS MADE.

7 (8) ~~(5)~~ This section does not apply to payments to which  
 8 section 410 applies.

9 Sec. 505. (1) A tax required to be paid by a trustee based on  
 10 receipts allocated to income shall be paid from income.

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

14 (3) A tax required to be paid by a trustee on the trust's  
 15 share of an entity's taxable income must be paid ~~proportionately as~~  
 16 follows:

17 (a) From income to the extent that receipts from the entity  
 18 are allocated **ONLY** to income.

19 (b) From principal to the extent that +

20 ~~—— (i) Receipts~~ **RECEIPTS** from the entity are allocated **ONLY** to  
 21 principal.

22 ~~—— (ii) The trust's share of the entity's taxable income exceeds~~  
 23 ~~the total receipts described in subdivision (a) and subparagraph~~  
 24 ~~(i).~~

25 (C) **PROPORTIONATELY FROM PRINCIPAL AND INCOME TO THE EXTENT**  
 26 **THAT RECEIPTS FROM THE ENTITY ARE ALLOCATED TO BOTH INCOME AND**  
 27 **PRINCIPAL.**

1 (D) FROM PRINCIPAL TO THE EXTENT THAT THE TAX EXCEEDS THE  
2 TOTAL RECEIPTS FROM THE ENTITY.

3 (4) ~~For purposes of this section, receipts allocated to~~  
4 ~~principal or income must be reduced by the amount distributed to a~~  
5 ~~beneficiary from principal or income for which the trust receives a~~  
6 ~~deduction in calculating the tax.~~ AFTER APPLYING SUBSECTIONS (1) TO  
7 (3), THE TRUSTEE SHALL ADJUST INCOME OR PRINCIPAL RECEIPTS TO THE  
8 EXTENT THAT THE TRUST'S TAXES ARE REDUCED BECAUSE THE TRUST  
9 RECEIVES A DEDUCTION FOR PAYMENTS MADE TO A BENEFICIARY.

10 SEC. 606. SECTION 409 APPLIES TO A TRUST DESCRIBED IN SECTION  
11 409(4) ON AND AFTER THE FOLLOWING DATES:

12 (A) IF THE TRUST IS NOT FUNDED AS OF THE EFFECTIVE DATE OF THE  
13 AMENDATORY ACT THAT ADDED THIS SECTION, THE DATE OF THE DECEDENT'S  
14 DEATH.

15 (B) IF THE TRUST IS INITIALLY FUNDED BEGINNING JANUARY 1 OF  
16 THE CALENDAR YEAR IN WHICH THE AMENDATORY ACT THAT ADDED THIS  
17 SECTION TAKES EFFECT, THE DATE OF THE DECEDENT'S DEATH.

18 (C) IF THE TRUST IS NOT DESCRIBED IN SUBDIVISION (A) OR (B),  
19 JANUARY 1 OF THE CALENDAR YEAR IN WHICH THE AMENDATORY ACT THAT  
20 ADDED THIS SECTION TAKES EFFECT.