

ORIGINAL HOUSE  
BILL NO. 0251

ENROLLED ACT NO. 49, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2009 GENERAL SESSION

AN ACT relating to trusts; providing procedures for valuing the income from retirement funds in trust; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 2-3-819 and 2-3-907(a)(i), (ii) and by creating a new paragraph (iii) are amended to read:

**2-3-819. Deferred compensation, annuities and similar payments.**

(a) As used in this section:

(i) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, ~~including~~ For the purposes of subsections (d) through (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment;

(ii) "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 by the separate fund as interest, ~~or~~ a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment

ORIGINAL HOUSE  
BILL NO. 0251

ENROLLED ACT NO. 49, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2009 GENERAL SESSION

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 by the separate fund 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 ten percent (10%) 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~~ Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section shall apply, and subsection (b) and (c) of this section shall not apply in determining the allocation of a payment made from a separate fund to:

(i) A trust to which an election to qualify for a 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~~ under section 2056(b)(7) of the Internal Revenue Code has been made;

(ii) A trust that qualifies for the marital deduction ~~under section 2056(b)(5) of the Internal Revenue Code; or~~

ORIGINAL HOUSE  
BILL NO. 0251

ENROLLED ACT NO. 49, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2009 GENERAL SESSION

(iii) A trust which requires payment of all trust income to the trust beneficiaries during the accounting period.

(e) Paragraph (d)(i) and subsections (f) and (g) of this section shall not apply if, and to the extent that, the series of payments would, without the application of paragraph (d)(i) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a separate trust fund subject to this act. Upon request of the surviving spouse or other trust beneficiaries with the right to all the trust income, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to or for the benefit of the surviving spouse or other trust beneficiaries with the right to all the trust income. The trustee shall allocate the balance of the payment to the principal. Upon request of the surviving spouse or other trust beneficiaries with the right to all the trust income, 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) 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 three percent (3%) of the fund's value, according to the most recent statement of value preceding

ORIGINAL HOUSE  
BILL NO. 0251

ENROLLED ACT NO. 49, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2009 GENERAL SESSION

the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor 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 section 7520 of the Internal Revenue Code for the month preceding the accounting period for which the computation is made.

~~(e)~~(h) This section does not apply to payments to which W.S. 2-3-820 applies.

**2-3-907. Valuations.**

(a) The fair market value of a trust subject to this act shall be determined, at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate except that:

(i) The trustee shall not include in the fair market value the value of any residential property or any tangible personal property that the income beneficiary has the right to occupy or use;~~and~~

(ii) The trustee shall not limit or restrict any right of the beneficiary to use the excluded property in accordance with the governing instrument;~~and~~ and

(iii) Where the terms of the trust do not provide contrary direction, the trustee shall include in the fair market value the value of:

(A) The portion of any private or commercial annuity from which the trustee is receiving distributions as a designated beneficiary of the annuity; and

ORIGINAL HOUSE  
BILL NO. 0251

ENROLLED ACT NO. 49, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2009 GENERAL SESSION

(B) The portion of any individual retirement account and pension, profit-sharing, stock bonus or stock ownership plan retirement account from which the trustee is receiving distributions as a designated beneficiary of the account.

**Section 2.** This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk