

HOUSE BILL NO. HB0251

Trusts-retirement funds accounting.

Sponsored by: Representative(s) Gingery and Brown and
Senator(s) Perkins

A BILL

for

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

4

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

6

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

9

10 **2-3-819. Deferred compensation, annuities and similar**
11 **payments.**

12

13 (a) As used in this section:7

14

15 (i) "Payment" means a payment that a trustee may
16 receive over a fixed number of years or during the life of

1 one (1) or more individuals because of services rendered or
2 property transferred to the payer in exchange for future
3 payments. The term includes a payment made in money or
4 property from the payer's general assets or from a separate
5 fund created by the payer. ~~, including~~ For the purposes of
6 subsections (d) through (g) of this section, the term also
7 includes any payment from any separate fund, regardless of
8 the reason for the payment;

9
10 (ii) "Separate fund" includes a private or
11 commercial annuity, an individual retirement account, and a
12 pension, profit-sharing, stock-bonus or stock-ownership
13 plan.

14
15 (b) To the extent that a payment is characterized by
16 the separate fund as interest, ~~or~~ a dividend or a payment
17 made in lieu of interest or a dividend, a trustee shall
18 allocate it to income. The trustee shall allocate to
19 principal the balance of the payment and any other payment
20 received in the same accounting period that is not
21 characterized as interest, a dividend or an equivalent
22 payment.

23

1 (c) If no part of a payment is characterized by the
2 separate fund as interest, a dividend or an equivalent
3 payment, and all or part of the payment is required to be
4 made, a trustee shall allocate to income ten percent (10%)
5 of the part that is required to be made during the
6 accounting period and the balance to principal. If no part
7 of a payment is required to be made or the payment received
8 is the entire amount to which the trustee is entitled, the
9 trustee shall allocate the entire payment to principal. For
10 purposes of this subsection, a payment is not "required to
11 be made" to the extent that it is made because the trustee
12 exercises a right of withdrawal.

13

14 (d) ~~If, to obtain an estate tax~~ Except as otherwise
15 provided in subsection (e) of this section, subsections (f)
16 and (g) of this section shall apply, and subsection (b) and
17 (c) of this section shall not apply in determining the
18 allocation of a payment made from a separate fund to:

19

20 (i) A trust to which an election to qualify for
21 a marital deduction ~~for a trust, a trustee must allocate~~
22 ~~more of a payment to income than provided for by this~~
23 ~~section, the trustee shall allocate to income the~~

1 ~~additional amount necessary to obtain~~ under section
2 2056(b)(7) of the Internal Revenue Code has been made;

3
4 (ii) A trust that qualifies for the marital
5 deduction- under section 2056(b)(5) of the Internal Revenue
6 Code; or

7
8 (iii) A trust which requires payment of all
9 trust income to the trust beneficiaries during the
10 accounting period.

11
12 (e) Paragraph (d)(i) and subsections (f) and (g) of
13 this section shall not apply if, and to the extent that,
14 the series of payments would, without the application of
15 paragraph (d)(i) of this section, qualify for the marital
16 deduction under section 2056(b)(7)(C) of the Internal
17 Revenue Code.

18
19 (f) A trustee shall determine the internal income of
20 each separate fund for the accounting period as if the
21 separate fund were a separate trust fund subject to this
22 act. Upon request of the surviving spouse or other trust
23 beneficiaries with the right to all the trust income, the
24 trustee shall demand that the person administering the

1 separate fund distribute the internal income to the trust.
2 The trustee shall allocate a payment from the separate fund
3 to income to the extent of the internal income of the
4 separate fund and distribute that amount to or for the
5 benefit of the surviving spouse or other trust
6 beneficiaries with the right to all the trust income. The
7 trustee shall allocate the balance of the payment to the
8 principal. Upon request of the surviving spouse or other
9 trust beneficiaries with the right to all the trust income,
10 the trustee shall allocate principal to income to the
11 extent the internal income of the separate fund exceeds
12 payments made from the separate fund to the trust during
13 the accounting period.

14
15 (g) If a trustee cannot determine the internal income
16 of a separate fund but can determine the value of the
17 separate fund, the internal income of the separate fund is
18 deemed to equal three percent (3%) of the fund's value,
19 according to the most recent statement of value preceding
20 the beginning of the accounting period. If the trustee can
21 determine neither the internal income of the separate fund
22 nor the fund's value, the internal income of the fund is
23 deemed to equal the product of the interest rate and the
24 present value of the expected future payments, as

1 determined under section 7520 of the Internal Revenue Code
2 for the month preceding the accounting period for which the
3 computation is made.

4
5 ~~(e)~~(h) This section does not apply to payments to
6 which W.S. 2-3-820 applies.

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8 **2-3-907. Valuations.**

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

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

19

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

23

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

4
5 (A) The portion of any private or
6 commercial annuity from which the trustee is receiving
7 distributions as a designated beneficiary of the annuity;
8 and

9
10 (B) The portion of any individual
11 retirement account and pension, profit-sharing, stock bonus
12 or stock ownership plan retirement account from which the
13 trustee is receiving distributions as a designated
14 beneficiary of the account.

15
16 **Section 2.** This act is effective immediately upon
17 completion of all acts necessary for a bill to become law
18 as provided by Article 4, Section 8 of the Wyoming
19 Constitution.

20

21

(END)