

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2010-181  
HOUSE BILL 620**

AN ACT TO MAKE CHANGES TO THE STATUTES CONCERNING BEQUESTS OR DEVICES IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL, AND TO MAKE REVISIONS TO THE UNIFORM PRINCIPAL AND INCOME ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 31-4.1 is repealed.

**SECTION 2.** G.S. 31-4.2 is repealed.

**SECTION 3.** G.S. 37A-4-409 reads as rewritten:

**"§ 37A-4-409. Deferred compensation, annuities, and similar payments.**

(a) In this section, "~~payment~~"-section:

(1) "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. 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 a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan.~~ payer. For purposes of subsections (d), (d1), (d2), and (d3) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "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~~ interest, 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 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 marital deduction for a trust, a trustee shall 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 (d1) of this section, subsections (d2) and (d3) of this section apply, and subsections (b) and (c) of this section do not apply in determining the allocation of a payment from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code has been made, or

(2) A trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code.

(d1) Subsections (d), (d2), and (d3) 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 section 2056(b)(7)(C) of the Internal Revenue Code.



(d2) 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 section. Upon request of the surviving spouse, 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 the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent that the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(d3) 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 four percent (4%) of the fund's value, according to the most recent statement of value preceding 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) This section does not apply to payments to which G.S. 37A-4-410 applies."

**SECTION 4.** G.S. 37A-5-505 reads as rewritten:

**"§ 37A-5-505. Income taxes.**

(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~~:paid:

(1) From income to the extent that receipts from the entity are only allocated to income; ~~and~~

(2) From principal to the extent ~~that:~~

a. ~~Receipts~~ receipts from the entity are only allocated to ~~principal~~; and

b. ~~The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and sub-subdivision (2)a. of this subsection.~~principal;

(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 shall 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 5.** Sections 1, 2, and 5 of this act become effective July 1, 2010. The failure of an attorney to comply with either the affidavit requirement under G.S. 31-4.1 or the drafting disclosure requirement of G.S. 31-4.2 does not invalidate a will or a codicil. The remainder of this act becomes effective January 1, 2011.

In the General Assembly read three times and ratified this the 9<sup>th</sup> day of July, 2010.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 4:32 p.m. this 2<sup>nd</sup> day of August, 2010