

## Assembly Bill No. 1545

### CHAPTER 152

An act to amend Sections 16361 and 16374 of, and to add Section 16361.1 to, the Probate Code, relating to the Uniform Principal and Income Act.

[Approved by Governor August 5, 2009. Filed with  
Secretary of State August 6, 2009.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1545, Committee on Revenue and Taxation. Uniform Principal and Income Act: trust administration: income and payments.

(1) Existing law, the Uniform Principal and Income Act, requires a trust to be administered, as specified, with due regard to the respective interests of defined income beneficiaries and remainder beneficiaries. For purposes of the act, "payment" is defined to mean 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, or a payment that a trustee may receive pursuant to an income tax advantaged contractual, custodial, or trust arrangement, as prescribed.

This bill would revise that definition to, instead, specify that, for purposes of the act, "payment" also includes any payment from a separate fund, as described, regardless of the reason for the payment, and would prescribe requirements for the allocation of a payment, as determined by any portion of the payment that is characterized by the payer as interest, a dividend, or a payment made in lieu of interest or a dividend, as provided.

(2) The act requires that a tax required to be paid by a trustee based on receipts allocated to income be paid from income. The act further requires the trustee, in order to obtain an estate tax marital deduction for a trust, to allocate more of a payment to income, in accordance with prescribed requirements.

This bill would revise the requirements for determining the amount of a payment that is required to be allocated to income for purposes of qualifying for a marital tax deduction under federal law, as specified, and for calculating the amount of tax required to be paid by a trustee based on income, as determined by receipts allocated to income. For purposes of the marital tax deduction, the bill would require, if the separate fund payer provides documentation reflecting the internal income of the separate fund to the trustee, that the trustee allocate the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the act, except as provided. The bill would require the trustee to allocate the balance to the principal.

*The people of the State of California do enact as follows:*

SECTION 1. Section 16361 of the Probate Code is amended to read:

16361. (a) For purposes of this section, the following terms have the following meanings:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of an individual because of services rendered or property transferred to the payer in exchange for future payments. The term also includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subdivisions (d), (e), (f), and (g), "payment" also includes any payment from a 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 any portion of the payment is characterized by the payer as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate that portion of the payment to income. The trustee shall allocate to principal the balance of the 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 subdivision, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Subdivisions (f) and (g) shall apply, except as provided in subdivision (e), and subdivisions (b) and (c) shall not apply, in determining the allocation of a payment made from a separate fund to either of the following:

(1) A trust to which an election to qualify for a marital deduction is made under Section 2056(b)(7) of the Internal Revenue Code.

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

(e) Subdivisions (d), (f), and (g) shall not apply if the series of payments would, without the application of subdivision (d), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(f) If the separate fund payer provides documentation reflecting the internal income of the separate fund to the trustee, the trustee shall allocate the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall require that the person administering the separate fund distribute this 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 to principal. Upon 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) If the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, but the trustee can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, 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.

(h) This section does not apply to a payment to which Section 16362 applies.

SEC. 2. Section 16361.1 is added to the Probate Code, to read:

16361.1. Section 16361, as amended by the act adding this section, applies to a trust described in subdivision (d) of Section 16361, on and after the following dates:

(a) If the trust is not funded as of January 1, 2010, the date of the decedent's death.

(b) If the trust is initially funded in the calendar year beginning January 1, 2010, the date of the decedent's death.

(c) If the trust is not described in subdivision (a) or (b), on January 1, 2010.

SEC. 3. Section 16374 of the Probate Code is amended to read:

16374. (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 as follows:

(1) From income to the extent that receipts from the entity are allocated only to income.

(2) From principal to the extent that receipts from the entity are allocated only to principal.

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal.

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subdivisions (a), (b), and (c), 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.

O