

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5171

Chapter 365, Laws of 2009

61st Legislature
2009 Regular Session

PRINCIPAL AND INCOME ACT--ESTATE TAX MARITAL DEDUCTIONS

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 19, 2009
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 6, 2009
YEAS 94 NAYS 2

FRANK CHOPP

Speaker of the House of Representatives

Approved May 6, 2009, 2:07 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5171** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 8, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5171

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline and Rockefeller; by request of Uniform Legislation Commission)

READ FIRST TIME 01/29/09.

1 AN ACT Relating to modifying the Washington principal and income
2 act of 2002; amending RCW 11.104A.180; adding a new section to chapter
3 11.104A RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 11.104A.180 and 2002 c 345 s 409 are each amended to
6 read as follows:

7 (a) In this section(~~(7)~~):

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

17 (2) "Separate fund" includes a private or commercial annuity, an
18 individual retirement account, and a pension, profit-sharing, stock-
19 bonus, or stock-ownership plan.

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

7 (c) If no part of a payment is characterized as interest, a
8 dividend, or an equivalent payment, a trustee shall allocate to income
9 four percent of the total value of the interests of the trustee in the
10 plan, annuity, or similar payment (~~(as of the first business day)~~)
11 according to the most recent statement of value preceding the beginning
12 of the accounting period and the balance to principal.

13 (~~(If, to obtain an estate tax marital deduction for a trust, a~~
14 ~~trustee must allocate more of a payment to income than provided for by~~
15 ~~this section, the trustee shall allocate to income the additional~~
16 ~~amount necessary to obtain the marital deduction.~~

17 ~~(e))~~ Except as otherwise provided in subsection (e) of this
18 section, subsections (f) and (g) of this section apply, and subsections
19 (b) and (c) of this section do not apply, in determining the allocation
20 of a payment made from a separate fund to:

21 (1) A trust to which an election to qualify for a marital deduction
22 under 26 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of
23 1986, as amended as of the effective date of this act, has been made;
24 or

25 (2) A trust that qualifies for the marital deduction under 26
26 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as
27 amended as of the effective date of this act.

28 (e) Subsections (d), (f), and (g) of this section do not apply if
29 and to the extent that the series of payments would, without the
30 application of subsection (d) of this section, qualify for the marital
31 deduction under 26 U.S.C. Sec. 2056(b)(7)(C) of the federal internal
32 revenue code of 1986, as amended as of the effective date of this act.

33 (f) A trustee shall determine the internal income of each separate
34 fund for the accounting period as if the separate fund were a trust
35 subject to this section. Upon request of the surviving spouse, the
36 trustee shall demand that the person administering the separate fund
37 distribute the internal income to the trust. The trustee shall
38 allocate a payment from the separate fund to income to the extent of

1 the internal income of the separate fund and distribute that amount to
2 the surviving spouse. The trustee shall allocate the balance of the
3 payment to principal. Upon request of the surviving spouse, the
4 trustee shall allocate principal to income to the extent the internal
5 income of the separate fund exceeds payments made from the separate
6 fund to the trust during the accounting period.

7 (g) If a trustee cannot determine the internal income of a separate
8 fund but can determine the value of the separate fund, the internal
9 income of the separate fund is deemed to equal four percent of the
10 fund's value, according to the most recent statement of value preceding
11 the beginning of the accounting period. If the trustee can determine
12 neither the internal income of the separate fund nor the fund's value,
13 the internal income of the fund is deemed to equal the product of the
14 interest rate and the present value of the expected future payments, as
15 determined under 26 U.S.C. Sec. 7520 of the federal internal revenue
16 code of 1986, as amended as of the effective date of this act, for the
17 month preceding the accounting period for which the computation is
18 made.

19 (h) This section does not apply to a payment((s)) to which RCW
20 11.104A.190 applies.

21 NEW SECTION. Sec. 2. A new section is added to chapter 11.104A
22 RCW, to be codified as RCW 11.104A.906, to read as follows:

23 TRANSITIONAL MATTERS. RCW 11.104A.180 applies to a trust described
24 in RCW 11.104A.180(d) on and after the following dates:

25 (a) If the trust is not funded as of the effective date of this
26 act, the date of the decedent's death.

27 (b) If the trust is initially funded in the calendar year beginning
28 January 1, 2009, the date of the decedent's death.

29 (c) If the trust is not described in subsection (a) or (b) of this
30 section, January 1, 2009.

31 NEW SECTION. Sec. 3. Captions used in this act are not any part
32 of the law.

Passed by the Senate April 19, 2009.

Passed by the House April 6, 2009.

Approved by the Governor May 6, 2009.

Filed in Office of Secretary of State May 8, 2009.