

SENATE BILL NO. 333

INTRODUCED BY J. SHOCKLEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING MONTANA LAW TO THE 2008 AMENDMENTS TO
5 THE UNIFORM PRINCIPAL AND INCOME ACT; CHANGING THE MARITAL DEDUCTION REQUIREMENTS
6 TO ALLOW A TRUST TO QUALIFY FOR THE FEDERAL MARITAL DEDUCTION REQUIREMENTS;
7 PROVIDING FOR THE ALLOCATION OF TAXABLE INCOME FOR THE DETERMINATION OF TAXES ON
8 UNDISTRIBUTED ENTITY TAXABLE INCOME; PROVIDING A TRANSITION PROVISION; AMENDING
9 SECTIONS 72-34-441 AND 72-34-452, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 72-34-441, MCA, is amended to read:
14 **"72-34-441. Payments characterized as interest or dividend -- allocation to income -- allocation**
15 **of other payments -- excess allocation to income in order to obtain estate tax marital deduction.** (1) In this

16 section:
17 (a) ~~"payment"~~ "Payment" means a payment that a trustee may receive over a fixed number of years or
18 during the life of one or more individuals because of services rendered or property transferred to the payer in
19 exchange for future payments. The term includes a payment made in money or property from the payer's general
20 assets or from a separate fund created by the payer, ~~including.~~ For purposes of subsections (4), (5), (6), and (7),
21 the term also includes any payment from any separate fund, regardless of the reason for the payment.

22 (b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a
23 pension, profit-sharing, stock-bonus, or stock-ownership plan.

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

28 (3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or
29 part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to
30 be made during the accounting period and the balance to principal. If no part of a payment is required to be made

1 or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire
2 payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that
3 it is made because the trustee exercises a right of withdrawal.

4 ~~(4) If, to obtain an estate tax marital deduction for a trust, a trustee allocates more of a payment to~~
5 ~~income than provided by this section, the trustee shall allocate to income the additional amount necessary to~~
6 ~~obtain the marital deduction.~~

7 (4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply and subsections (2)
8 and (3) do not apply in determining the allocation of a payment made from a separate fund to:

9 (a) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal
10 Revenue Code, 26 U.S.C. 2056(b)(7), as amended, has been made; or

11 (b) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code,
12 26 U.S.C. 2056(b)(5), as amended.

13 (5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would,
14 without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the
15 Internal Revenue Code, 26 U.S.C. 2056(b)(7)(C), as amended.

16 (6) A trustee shall determine the internal income of each separate fund for the accounting period as if
17 the separate fund were a trust subject to this part. Upon request of the surviving spouse, the trustee shall demand
18 that the person administering the separate fund distribute the internal income to the trust. The trustee shall
19 allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and
20 distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal.
21 Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal
22 income of the separate fund exceeds payments made from the separate fund to the trust during the accounting
23 period.

24 (7) If a trustee cannot determine the internal income of a separate fund but can determine the value of
25 the separate fund, the internal income of the separate fund is deemed to equal 3% of the fund's value, according
26 to the most recent statement of value preceding the beginning of the accounting period. If the trustee can
27 determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund
28 is deemed to equal the product of the interest rate and the present value of the expected future payments, as
29 determined under section 7520 of the Internal Revenue Code, 26 U.S.C. 7520, as amended, for the month
30 preceding the accounting period for which the computation is made.

1 ~~(5)(8)~~ This section does not apply to payments to which 72-34-442 applies."

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3 **Section 2.** Section 72-34-452, MCA, is amended to read:

4 "**72-34-452. Payment of taxes.** (1) A tax required to be paid by a trustee based on receipts allocated
5 to income must be paid from income.

6 (2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from
7 principal, even if the tax is called an income tax by the taxing authority.

8 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid
9 ~~proportionately as follows:~~

10 (a) from income to the extent that receipts from the entity are allocated only to income;

11 (b) from principal to the extent that ~~both of the following apply:~~

12 ~~—— (i) receipts from the entity are allocated only to principal; and~~

13 ~~—— (ii) the trust's share of the entity's taxable income exceeds the total receipts described in subsection (3)(a)
14 and subsection (3)(b)(i):~~

15 (c) proportionately from principal and income to the extent that receipts from the entity are allocated to
16 both income and principal; and

17 (d) from principal to the extent that the tax exceeds the total receipts from the entity.

18 (4) ~~For purposes of this section, receipts allocated to principal or income must be reduced by the amount~~
19 ~~distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~
20 After applying subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that
21 the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary."

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23 **NEW SECTION. Section 3. Transitional matters.** Section 72-34-441, as amended by [section 1],
24 applies to a trust described in 72-34-441(4) on and after the following dates:

25 (1) if the trust is not funded as of [the effective date of section 1], the date of the decedent's death;

26 (2) if the trust is initially funded in the calendar year beginning January 1, 2012, the date of the
27 decedent's death; or

28 (3) if the trust is not described in subsection (1) or (2), January 1, 2012.

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30 **NEW SECTION. Section 4. Effective date.** [This act] is effective January 1, 2012.

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