

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 80**

Introduced by Nelson, 6.

Read first time January 8, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to decedents' estates; to amend sections  
2 30-3116, 30-3135, and 30-3146, Reissue Revised Statutes  
3 of Nebraska; to change provisions relating to the Uniform  
4 Principal and Income Act; to provide for applicability;  
5 to harmonize provisions; and to repeal the original  
6 sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 30-3116, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           30-3116 Sections 30-3116 to 30-3149 and section 4 of this  
4 act shall be known and may be cited as the Uniform Principal and  
5 Income Act.

6           Sec. 2. Section 30-3135, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           30-3135 (a) In this section:

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

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

21           (b) To the extent that a payment is characterized as  
22 interest, ~~or~~ a dividend, or a payment made in lieu of interest  
23 or a dividend, a trustee shall allocate ~~it~~ the payment to income.  
24 The trustee shall allocate to principal the balance of the payment  
25 and any other payment received in the same accounting period that

1 is not characterized as interest, a dividend, or an equivalent  
2 payment.

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

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

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

21 (1) a trust to which an election to qualify for a marital  
22 deduction under section 2056(b)(7) of the Internal Revenue Code of  
23 1986, as amended, has been made; or

24 (2) a trust that qualifies for the marital deduction  
25 under section 2056(b)(5) of the Internal Revenue Code of 1986, as

1 amended.

2 (e) Subsections (d), (f), and (g) do not apply if and  
3 to the extent that the series of payments would, without the  
4 application of subsection (d) of this section, qualify for the  
5 marital deduction under section 2056(b)(7)(C) of the Internal  
6 Revenue Code of 1986, as amended.

7 (f) A trustee shall determine the internal income of each  
8 separate fund for the accounting period as if the separate fund  
9 were a trust subject to the Uniform Principal and Income Act. Upon  
10 request of the surviving spouse, the trustee shall demand that  
11 the person administering the separate fund distribute the internal  
12 income to the trust. The trustee shall allocate a payment from  
13 the separate fund to income to the extent of the internal income  
14 of the separate fund and distribute that amount to the surviving  
15 spouse. The trustee shall allocate the balance of the payment to  
16 principal. Upon request of the surviving spouse, the trustee shall  
17 allocate principal to income to the extent the internal income of  
18 the separate fund exceeds payments made from the separate fund to  
19 the trust during the accounting period.

20 (g) If a trustee cannot determine the internal income of  
21 a separate fund but can determine the value of the separate fund,  
22 the internal income of the separate fund is deemed to equal at  
23 least three percent of the fund's value, according to the most  
24 recent statement of value preceding the beginning of the accounting  
25 period. If the trustee can determine neither the internal income of

1 the separate fund nor the fund's value, the internal income of the  
 2 fund is deemed to equal the product of the interest rate and the  
 3 present value of the expected future payments, as determined under  
 4 section 7520 of the Internal Revenue Code of 1986, as amended, for  
 5 the month preceding the accounting period for which the computation  
 6 is made.

7 ~~(e)~~ (h) This section does not apply to ~~payments~~ a payment  
 8 to which section 30-3136 applies.

9 Sec. 3. Section 30-3146, Reissue Revised Statutes of  
 10 Nebraska, is amended to read:

11 30-3146 (a) A tax required to be paid by a trustee based  
 12 on receipts allocated to income must be paid from income.

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

16 (c) A tax required to be paid by a trustee on the trust's  
 17 share of an entity's taxable income must be paid: ~~proportionately:~~

18 (1) from income to the extent that receipts from the  
 19 entity are allocated to income; and

20 (2) from principal to the extent that ~~that~~ ~~(A)~~ receipts from  
 21 the entity are allocated only to principal; and

22 ~~(B) the trust's share of the entity's taxable income~~  
 23 ~~exceeds the total receipts described in subdivisions (1) and (2) (A)~~  
 24 ~~of this subsection.~~

25 ~~(d) For purposes of this section, receipts allocated to~~

1 ~~principal or income must be reduced by the amount distributed to a~~  
2 ~~beneficiary from principal or income for which the trust receives a~~  
3 ~~deduction in calculating the tax.~~

4 (3) proportionately from principal and income to the  
5 extent that receipts from the entity are allocated to both income  
6 and principal; and

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

9 (d) After applying subsections (a) through (c) of this  
10 section, the trustee shall adjust income or principal receipts to  
11 the extent that the trust's taxes are reduced because the trust  
12 receives a deduction for payments made to a beneficiary.

13 Sec. 4. Section 30-3135, as amended by this legislative  
14 bill, applies to a trust described in subsection (d) of section  
15 30-3135 on and after the following dates:

16 (1) If the trust is not funded as of the effective date  
17 of this act, the date of the decedent's death;

18 (2) If the trust is initially funded in the calendar year  
19 beginning January 1, 2010, the date of the decedent's death; or

20 (3) If the trust is not described in subdivision (1) or  
21 (2) of this section, January 1, 2010.

22 Sec. 5. Original sections 30-3116, 30-3135, and 30-3146,  
23 Reissue Revised Statutes of Nebraska, are repealed.