



## Ohio Revised Code

### Section 5812.32 Deferred compensation, annuities and similar payments.

Effective: April 6, 2017

Legislation: House Bill 432 - 131st General Assembly

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(A) As used in this 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. "Payment" 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 divisions (D), (E), (F), and (G) of this section, "payment" also includes any payment made from any separate fund regardless of the reason for the payment.

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

(B) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate 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 per cent 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 division, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(D) Except as otherwise provided in division (E) of this section, divisions (F) and (G) of this section apply, and divisions (B) and (C) of this section do not apply, in determining the allocation of a payment made from a separate fund to either of the following:



(1) A trust for which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, 26 U.S.C. 2056(b)(7), as amended, has been made;

(2) A trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 2056(b)(5), as amended.

(E) Divisions (D), (F), and (G) of this section do not apply if and to the extent that the series of payments would, without the application of division (D) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, 26 U.S.C. 2056(b)(7)(C), as amended.

(F) 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 sections 5812.01 to 5812.52 of the Revised Code. 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 the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(G) 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 per cent 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 value of the fund, 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 of 1986, 26 U.S.C. 7520, as amended, 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 5812.33 of the Revised Code applies.



(I)(1) This section applies to a trust described in division (D) of this section on and after any of the following dates:

(a) If the trust has not received a payment from a separate fund on the effective date of the amendment of this section, the date of the decedent's death;

(b) If the trust receives the first payment from any and all separate funds payable to the trust in the calendar year beginning January 1 of the year in which the amendment of this section takes effect, the date of the decedent's death;

(c) If the trust is not described in division (I)(1)(a) or (b) of this section, January 1 of the year in which the amendment of this section takes effect.

(2) For purposes of division (I)(1) of this section, "decedent" means the individual by reason of whose death the trust may receive a payment from the separate fund.