

THE OTHER INTERESTS IN THE ESTATE OF THE DECEDENT, OR GOVERNED BY THE INSTRUMENT, BECAUSE OF:

(1) AN INCREASE IN THE AMOUNT OR SIZE OF THE GIFT RESULTING FROM AN ELECTION BY THE FIDUCIARY, UNDER THE TAX LAW, TO TREAT ESTATE ADMINISTRATION EXPENSES AS INCOME TAX DEDUCTIONS OVER THE AMOUNT OR SIZE OF THE GIFT HAD THE CONTRARY ELECTION BEEN MADE, OR

(2) ANY INCREASE OR DECREASE IN THE AMOUNT OR SIZE OF THE GIFT RESULTING FROM AN ELECTION BY THE FIDUCIARY, UNDER THE TAX LAW, OF AN ESTATE TAX VALUATION DATE OTHER THAN THE DATE OF THE DEATH OF THE DECEDENT AS COMPARED WITH THE AMOUNT OR SIZE OF THE GIFT HAD THE CONTRARY ELECTION BEEN MADE.

(C) ELECTION NOT REQUIRED.

UNLESS OTHERWISE EXPRESSLY PROVIDED BY A WILL OR OTHER CONTROLLING INSTRUMENT, UNDER WHICH A GIFT IS MADE TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE OF A DECEDENT WHICH QUALIFIES FOR AN ESTATE TAX MARITAL DEDUCTION UNDER ~~[[A]]~~ THE TAX LAW OF THE UNITED STATES AND THE AMOUNT OR SIZE OF THE GIFT IS DEFINED BY THE TERMS OF THE WILL OR OTHER CONTROLLING INSTRUMENT~~[[,]]~~ IN TERMS OF THE MAXIMUM MARITAL DEDUCTION ALLOWABLE UNDER THE TAX LAW, THE DEFINITIONS DO NOT CONSTITUTE A DIRECTION BY THE DECEDENT TO THE FIDUCIARY TO EXERCISE AN ELECTION RESPECTING THE DEDUCTION OF ESTATE ADMINISTRATION EXPENSES OR THE DETERMINATION OF THE ESTATE TAX VALUATION DATE, WHICH THE FIDUCIARY MAY HAVE UNDER THE TAX LAW, ONLY IN A MANNER AS WILL RESULT IN A LARGER ALLOWABLE ESTATE TAX MARITAL DEDUCTION THAN IF THE CONTRARY ELECTION HAD BEEN MADE.

REVISOR'S NOTE: This section presently appears as Art. 93, §11-106. The only changes are in style and language.

11-107. ~~[[DISTRIBUTION]]~~ DISTRIBUTION IN KIND, USING FEDERAL ESTATE TAX VALUES.

WHENEVER A WILL OR OTHER GOVERNING INSTRUMENT:

(1) SPECIFICALLY AUTHORIZES A FIDUCIARY TO SATISFY A LEGACY OR TRANSFER BY SELECTION AND DISTRIBUTION OF ASSETS IN KIND; AND

(2) PROVIDES THAT THE VALUE OF THE ASSETS TO BE DISTRIBUTED SHALL BE DETERMINED BY REFERENCE TO THEIR VALUE FOR PURPOSES OF PAYMENT OF FEDERAL ESTATE TAXES, THE FIDUCIARY SHALL DISTRIBUTE ASSETS, INCLUDING CASH, HAVING AN AGGREGATE FAIR MARKET VALUE AT THE DATE OR