



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
TRUSTS, ESTATES AND SURROGATE'S COURTS COMMITTEE**

**A.1185
S.4952**

**M. of A. Weinstein
Sen. Bonacic**

AN ACT to amend the estates, powers and trusts law, in relation to the payment of interest on delayed legacies; and to repeal paragraphs (d) and (e) of section 11-1.5 of the estates, powers and trusts law and subdivision 7 of section 2102 of the surrogate's court procedure act relating thereto.

THIS BILL IS APPROVED

This brief memorandum is offered by the Trusts, Estates and Surrogate's Courts Committee of the New York City Bar Association (the "Committee") in support of A.1185/S.4952, which proposes amendments to EPTL 11-1.5, EPTL 11-A-2.1, and SCPA 2102. The amendments would make three principal changes to current law, as follows:

(1) If a legacy has not been paid within 7 months from the date of issuance of letters to the fiduciary, subject to a contrary provision in a governing instrument, interest on the legacy would become automatically payable to the legatee. This would be a change from current law, which requires a legatee seeking interest to make a demand for the interest and then initiate a judicial proceeding. The Committee believes that the requirement to initiate a judicial proceeding can present an unduly expensive and time-consuming burden. Furthermore, as described in more detail in the New York State Bar Association's memorandum in support of this proposal, different Surrogate's Courts have interpreted the requirements incumbent on the legatee differently, leading to a great amount of uncertainty as to the application of the law. The Committee feels the amendment would relieve this uncertainty and eliminate the need for uneconomical judicial proceedings.

(2) The interest rate used to calculate the interest payable on delayed legacies would be the federal funds rate as of January 1 of the applicable year, less 1% (with a floor of 0.5%). Under current law, the interest rate is fixed at 6%. The Committee believes that, because the burden of paying interest on delayed legacies is effectively borne by the residuary beneficiaries of the estate, there should be a relationship between the interest paid and the interest that the estate is actually earning. In a low interest rate environment, a fixed 6% interest rate artificially enriches the legatee to the detriment of the residuary beneficiaries. The opposite is true in a high interest rate environment. By keying the interest rate to the federal funds rate, the interest rate applied will more closely mirror current market returns, thus reducing this distortion.

Furthermore, because the federal funds rate on the first day of the year would be applicable for the whole year, calculating the interest would not be overly burdensome on the fiduciary.

(3) The interest paid on delayed legacies would be recharacterized under EPTL 11-A as accounting income. This would in turn mean that distributable net income would be carried out to the legatee, allowing the estate to obtain an income tax deduction for the income it pays. The Committee is in favor of this change as it would remedy a tax inefficiency: currently a legatee must report the interest as income but the income is not deductible to the estate.

For the foregoing reasons, the Committee supports the enactment of A.1185/S.4952.

Committee on Trusts, Estates & Surrogate's Courts
Sharon L. Klein, Chair

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