As Introduced

124th General Assembly
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H. B. No. 522

REPRESENTATIVES Willamowski, Seitz

A BILL

To amend sections 1340.35, 2109.67, and 2109.68, to enact sections 1340.40 to 1340.42, 1340.46, 1340.47, 1340.51 to 1340.53, 1340.57 to 1340.59, 1340.63 to 1340.66, 1340.70 to 1340.77, 1340.81 to 1340.86, 1340.90, and 1340.91 and to repeal sections 1340.01, 1340.02, 1340.03, 1340.031, 1340.04, 1340.05, 1340.06, 1340.07, 1340.08, 1340.09, 1340.10, 1340.11, 1340.12, and 1340.13 of the Revised Code to revise Fiduciary Law by adopting the Uniform Principal and Income Act (1997) regarding the apportionment and distribution of income to trust beneficiaries and regarding a fiduciary's allocation of receipts and disbursements to or between principal and income, and by specifying the extent of a trustee's liability with respect to authorized adjustments between principal and income.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1340.35, 2109.67, and 2109.68 be amended and sections 1340.40, 1340.41, 1340.42, 1340.46, 1340.47, 1340.51, 1340.52, 1340.53, 1340.57, 1340.58, 1340.59, 1340.63, 1340.64, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 1340.83, 1340.84, 1340.85, 1340.86, 1340.90, and 1340.91 of the Revised Code be enacted to read as follows:

Sec. 1340.35. Nothing in section 2109.67, sections ~~1340.01~~ 1340.40 to ~~1340.13~~ 1340.91, or any other section of the Revised Code limits or restricts the definition of income in division (A) of section 1340.32 of the Revised Code or limits or restricts a governing board of an institution from requesting, or a trustee from making, distributions from an institutional trust fund in accordance with sections 1340.31 to 1340.37 of the Revised Code.

Sec. 1340.40. As used in sections 1340.40 to 1340.91 of the Revised Code:

(A) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. "Accounting period" includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(B) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(C) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(D) "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 1340.57 to 1340.77 of the Revised Code.

(E) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(F) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require or authorize it to be distributed in the trustee's discretion.

(G) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(H) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under sections 1340.40 to 1340.91 of the Revised Code to or from income during the period.

(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(J) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(K) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(L) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(M) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Sec. 1340.41. <u>(A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 1340.46 to 1340.53 of the Revised Code, all of the following apply:</u>

<u>(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in sections 1340.40 to 1340.91 of the Revised Code.</u>

<u>(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by any provision of sections 1340.40 to 1340.91 of the Revised Code.</u>

<u>(3) A fiduciary shall administer a trust or estate in accordance with sections 1340.40 to 1340.91 of the Revised Code if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.</u>

<u>(4) A fiduciary shall add a receipt, or charge a disbursement, to principal to the extent that the terms of the trust and any provision of sections 1340.40 to 1340.91 of the Revised Code do not provide for allocating the receipt or disbursement to or between principal and income.</u>

<u>(B) In exercising the power to adjust under division (A) of section 1340.42 of the Revised Code or a discretionary power of administration regarding a matter within the scope of sections 1340.40 to 1340.91 of the Revised Code, whether granted by the terms of a trust, a will, or a provision of any such section, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to</u>

the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 1340.40 to 1340.91 of the Revised Code is presumed to be fair and reasonable to all of the beneficiaries.

Sec. 1340.42. (A) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages the trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying division (A) of section 1340.41 of the Revised Code, that the trustee is unable to comply with division (B) of that section.

(B) In deciding whether and to what extent to exercise the power conferred by division (A) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including all of the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under sections

1340.40, 1340.41, and sections 1340.46 to 1340.91 of the Revised Code; and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) The anticipated tax consequences of an adjustment.

(C) A trustee shall not make an adjustment if any of the following applies:

(1) The adjustment diminishes the income interest in a trust that requires all of the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment.

(2) The adjustment reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) The adjustment changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

(5) If possessing or exercising the power to make the adjustment causes an individual to be treated as the owner of all

or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make the adjustment;

(6) If possessing or exercising the power to make the adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make the adjustment;

(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(D) If division (C)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(E) A trustee may release the entire power conferred by division (A) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in division (C)(1), (2), (3), (4), (5), (6), or (8) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in division (C) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(F) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by division (A) of this section.

(G) The liability of a trustee relative to the exercise of adjustment authority conferred by divisions (A) to (F) of this section shall be limited in the following manner:

(1) Unless a court determines that a trustee has acted in bad faith, no trustee shall be held liable for damages for choosing not to make an adjustment.

(2) Unless a court determines that a trustee has acted in bad faith with respect to an adjustment, the sole remedy to be ordered by a court shall be a prospective correction of the adjustment.

(3) For purposes of this section, and subject to division (C) of this section, a trustee may make a safe-harbor adjustment to increase net trust accounting income up to and including an annual unitrust payment of four per cent of the trust's fair market value determined as of the beginning of each year. If a trustee determines to make this safe-harbor adjustment, the propriety of this adjustment shall be conclusively presumed. Nothing in division (G)(3) of this section prohibits any other type of adjustment authorized under any provision of this section.

Sec. 1340.46. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, all of the following apply:

(A) The fiduciary of the estate or of the terminating income interest shall determine, under the provisions of sections 1340.51 to 1340.86 of the Revised Code that apply to trustees and under division (E) of this section, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(B) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of sections 1340.51 to 1340.86 of the Revised Code that apply to trustees and by doing all of the following:

(1) Including in net income all income from property used to discharge liabilities;

(2) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes. However, the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.

(3) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(C) A fiduciary shall distribute to a beneficiary that receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under division (B) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(D) A fiduciary shall distribute the net income remaining after distributions required by division (C) of this section, in the manner described in section 1340.47 of the Revised Code, to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable, general power of appointment over the trust.

(E) A fiduciary shall not reduce principal or income receipts from property described in division (A) of this section because of a payment described in section 1340.81 or 1340.82 of the Revised Code to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Sec. 1340.47. (A) Each beneficiary described in division (D) of section 1340.46 of the Revised Code is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one that does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of the decedent's death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(B) In determining a beneficiary's share of net income for the purpose of this section, all of the following apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(C) If a fiduciary does not distribute all of the collected but undistributed net income described in divisions (A) and (B) of this section to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each.

(D) To the extent that a trustee considers it appropriate, the trustee may apply the provisions of divisions (A) to (C) of this section to any net gain or loss, realized after the date of the decedent's death or an income interest termination or earlier distribution date, from the disposition of a principal asset to which such provisions apply.

Sec. 1340.51. (A) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(B) An asset becomes subject to a trust on any of the following dates:

(1) The date it is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life;

(2) The date of a testator's death, in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate;

(3) The date of an individual's death, in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(C) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under division (D) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(D) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Sec. 1340.52. (A) A trustee shall allocate to principal an income receipt or disbursement other than one to which division (A) of section 1340.46 of the Revised Code applies, if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(B) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and if it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(C) For the purposes of this section, an item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date. Distributions to shareholders or other owners from an entity to which section 1340.57 of the Revised Code applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Sec. 1340.53. (A) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. "Undistributed income" excludes an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(B) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary that survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five per cent of the trust immediately before the income interest ends. If the beneficiary has such power, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(C) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Sec. 1340.57. (A) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section 1340.58 of the Revised Code applies, a business or activity to which section 1340.59 of the Revised Code applies, or an asset-backed security to which section 1340.77 of the Revised Code applies.

(B) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(C) A trustee shall allocate all of the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity;

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(D) Money is received in partial liquidation in either of the following circumstances:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation;

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty per cent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(E) Money is not received in partial liquidation, nor shall it be taken into account under division (D)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(F) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Sec. 1340.58. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 1340.57 or 1340.77 of the Revised Code applies to a receipt from the trust.

Sec. 1340.59. (A) If a trust that conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(B) A trustee that accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(C) Activities for which a trustee may maintain separate accounting records under this section include all of the following:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) Management of rental properties;

(5) Extraction of minerals and other natural resources;

(6) Timber operations;

(7) Activities to which section 1340.76 of the Revised Code applies.

Sec. 1340.63. A trustee shall allocate to principal all of the following:

(A) To the extent not allocated to income under sections 1340.40 to 1340.91 of the Revised Code, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(B) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 1340.57 to 1340.77 of the Revised Code;

(C) Amounts recovered from third parties to reimburse the trust because of disbursements described in division (A)(7) of section 1340.82 of the Revised Code or for other reasons to the extent not based on the loss of income;

(D) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(E) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income;

(F) Other receipts as provided in sections 1340.70 to 1340.77 of the Revised Code.

Sec. 1340.64. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and shall not be available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Sec. 1340.65. (A) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(B) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after the date it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after the date it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(C) This section does not apply to an obligation to which section 1340.71, 1340.72, 1340.73, 1340.74, 1340.76, or 1340.77 of the Revised Code applies.

Sec. 1350.66. (A) Except as otherwise provided in division (B) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(B) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 1340.59 of the Revised Code, loss of profits from a business.

(C) This section does not apply to a contract to which section 1340.71 of the Revised Code applies.

Sec. 1340.70. If a trustee determines that an allocation between principal and income required by section 1340.71, 1340.72, 1340.73, 1340.74, or 1340.77 of the Revised Code is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in division (C) of section 1340.42 of the Revised Code applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in division (D) of that section and may be released for the reasons and in the manner described in division (E) of the section. An allocation is presumed to be insubstantial if either of the following applies:

(A) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten per cent.

(B) The value of the asset producing the receipt for which the allocation would be made is less than ten per cent of the total value of the trust's assets at the beginning of the accounting period.

Sec. 1340.71. (A) As used in this section, "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, including 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 or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it 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) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than is provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(E) This section does not apply to payments to which section 1340.72 of the Revised Code applies.

Sec. 1340.72. (A) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. "Liquidating asset" excludes a payment subject to section 1340.71 of the Revised Code, resources subject to section 1340.73 of the Revised Code, timber subject to section 1340.74 of the Revised Code, an activity subject to section 1340.76 of the Revised Code, an asset subject to section 1340.77 of the Revised Code, or any asset for which the trustee establishes a reserve for depreciation under section 1340.83 of the Revised Code.

(B) A trustee shall allocate to income ten per cent of the receipts from a liquidating asset and the balance to principal.

Sec. 1340.73. (A) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate the receipts in accordance with all of the following:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety per cent shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in division (A)(1), (2), or (3) of this section, ninety per cent of the net amount received shall be allocated to principal and the balance to income.

(B) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety per cent of the amount shall be allocated to principal and the balance to income.

(C) This section applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(D) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this section, the trustee may allocate receipts from the interest as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this section, the trustee shall allocate receipts from the interest as provided in this section.

Sec. 1340.74. (A) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts in accordance with all of the following:

(1) To income, to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal, to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal, if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying divisions (A)(1) and (2) of this section;

(4) To principal, to the extent that advance payments, bonuses, and other payments are not allocated pursuant to division (A)(1), (2), or (3) of this section.

(B) In determining net receipts to be allocated pursuant to division (A) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(C) This section applies whether or not a decedent or transferor was harvesting timber from the property before it become subject to the trust.

(D) If a trust owns an interest in timberland on the effective date of this section, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in timberland after the effective date of this section, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

Sec. 1340.75. (A) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 1340.42 of the Revised Code and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by division (A) of that section. The trustee may decide which action or combination of actions to take.

(B) In cases not governed by division (A) of this section, proceeds from the sale or other disposition of an asset shall be principal without regard to the amount of income the asset produces during any accounting period.

Sec. 1340.76. (A) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(B) To the extent that a trustee does not account under section 1340.59 of the Revised Code for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(C) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

Sec. 1340.77. (A) As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. "Asset-backed security" includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. "Asset-backed security" excludes an asset to which section 1340.57 or 1340.71 of the Revised Code applies.

(B) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(C) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten per cent of the payment to income and the balance to principal.

Sec. 1340.81. A trustee shall make all of the following disbursements from income to the extent that they are not disbursements to which division (B)(2) or (3) of section 1340.46 of the Revised Code applies:

(A) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(B) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(C) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest;

(D) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Sec. 1340.82. (A) A trustee shall make all of the following disbursements from principal:

(1) The remaining one-half of the disbursements described in

divisions (A) and (B) of section 1340.81 of the Revised Code;

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in division (D) of section 1340.81 of the Revised Code of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Sec. 1340.83. (A) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(B) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but shall not transfer any amount for depreciation under any of the following circumstances:

(1) Any amount for depreciation of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) Any amount for depreciation during the administration of a decedent's estate;

(3) Any amount for depreciation under this section if the trustee is accounting under section 1340.59 of the Revised Code for the business or activity in which the asset is used.

(C) An amount transferred to principal need not be held as a separate fund.

Sec. 1340.84. (A) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(B) Principal disbursements to which division (A) of this section applies include all of the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in

the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments;

(5) Disbursements described in division (A)(7) of section 1340.82 of the Revised Code.

(C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in division (A) of this section.

Sec. 1340.85. (A) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

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

(C) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows:

(1) From income, to the extent that receipts from the entity are allocated to income;

(2) From principal, as follows:

(a) To the extent that receipts from the entity are allocated to principal; and

(b) To the extent that the trust's share of the entity's taxable income exceeds the total receipts described in divisions (C)(1) and (2)(a) of this section.

(D) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Sec. 1340.86. (A) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(1) Elections and decisions, other than those described in division (B) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust;

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or beneficiary.

(B) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Sec. 1340.90. (A) Sections 1340.40 to 1340.91 of the Revised Code may be cited as the "uniform principal and income act (1997)."

(B) In applying and construing the "uniform principal and income act (1997)", consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the "uniform principal and income act (1997)".

Sec. 1340.91. Sections 1340.40 to 1340.90 of the Revised Code apply to every trust or decedent's estate existing on the effective date of this section except as otherwise expressly provided in the will or terms of the trust or in sections 1340.40 to 1340.90 of the Revised Code.

Sec. 2109.67. (A) Unless the will otherwise provides and subject to division (B) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties concerning taxes, allowances to a surviving spouse, minor children, or both, including, but not limited to, the allowance for support under section 2106.13 of the Revised Code, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

(B) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under Chapter 1340. of the Revised Code and distributed as follows:

(1) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less property taxes, ordinary repairs, interest, and other expenses of management and operation of the property, and an appropriate portion of taxes imposed on income, excluding taxes on capital gains, income in respect of a decedent, and other items allocable to principal, which accrue during the period of administration;

(2)(a) To all other legatees, except as provided in division (B)(2)(b) of this section, the balance of the income, less the balance of property taxes, ordinary repairs, interest, and other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income, excluding taxes on capital gains, income in respect of a decedent, and other items allocable to principal, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate, computed at times of distribution on the basis of inventory value;

(b) A legatee, other than the testator's surviving spouse, of a pecuniary legacy not in trust shall not be paid interest on the legacy, and the legacy shall not be entitled to receive any part of the income received by the estate during the period of administration as income on the legacy. A legacy to the testator's surviving spouse of a pecuniary amount shall carry with it a proportionate part of the income of the estate from the testator's death to the date of satisfaction, determined in accordance with division (B)(2)(a) of this section.

(C) If a will or trust instrument gives the fiduciary discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the fiduciary has made an allocation contrary to this section, section 2109.66, or sections ~~1340.01~~ 1340.40 to ~~1340.13~~ 1340.91 of the Revised Code.

(D) A fiduciary may credit a receipt or charge an expenditure to income or principal with respect to a decedent's estate, a trust under a will, or property passing to a trust under a will, that is eligible for a federal or Ohio estate tax marital deduction or estate tax charitable deduction only to the extent that the credit of the receipt or charge of the expenditure will not cause the reduction or loss of the deduction.

(E) As used in this section~~, "federal estate tax charitable deduction," "federal estate tax marital deduction," "Ohio estate tax charitable deduction," and "Ohio estate tax marital deduction" have the same meanings as in section 1340.02 of the Revised Code.~~:

(1) "Federal estate tax charitable deduction" means the estate tax charitable deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as amended.

(2) "Federal estate tax marital deduction" means the estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended.

(3) "Ohio estate tax charitable deduction" means the estate tax charitable deduction allowed by division (A) of section 5731.17 of the Revised Code.

(4) "Ohio estate tax marital deduction" means the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code.

Sec. 2109.68. In all cases not covered by section 2109.66 or

2109.67 of the Revised Code, allocation of receipts and expenditures by an executor, administrator, or testamentary trustee shall be as prescribed in sections ~~1340.01~~ 1340.40 to ~~1340.13~~ 1340.91 of the Revised Code.

Section 2. That existing sections 1340.35, 2109.67, and 2109.68 and sections 1340.01, 1340.02, 1340.03, 1340.031, 1340.04, 1340.05, 1340.06, 1340.07, 1340.08, 1340.09, 1340.10, 1340.11, 1340.12, and 1340.13 of the Revised Code are hereby repealed.