

1977 Senate Bill 454

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## CHAPTER 408, Laws of 1977

AN ACT to repeal and recreate 701.20 of the statutes, relating to principal and income for trusts and estates.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 701.20 of the statutes is repealed and recreated to read:

**701.20 Principal and income.** (1) SCOPE OF SECTION. Unless otherwise stated, this section governs the ascertainment of income and principal and the apportionment of receipts and expenses in trusts and decedents' estates, to the extent not inconsistent with the provisions of a creating instrument. A person making an outright gift or establishing a trust may make provision in the creating instrument for the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the personal representative or trustee to do so and the provision where not otherwise contrary to law controls notwithstanding this section.

(2) DUTY OF TRUSTEE AS TO RECEIPTS AND EXPENDITURE. (a) A trust shall be administered with due regard to the respective interests of beneficiaries of income and principal. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

1. In accordance with the terms of the creating instrument, notwithstanding contrary provisions of this section;

2. In the absence of any contrary terms of the creating instrument, in accordance with the provisions of this section; or

3. If neither of the rules of administration under subd. 1 or 2 is applicable, in accordance with what is reasonable and equitable in view of the respective interests of the beneficiaries.

(b) If the creating instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has or has not improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to this section.

(3) INCOME; PRINCIPAL; CHARGES. As used in this section:

(a) "Income" is the return in money or other property derived from the use of principal, including, but not limited to, return received as:

1. Rent of real or personal property, including sums received for cancellation or renewal of a lease.

2. Interest, including sums received as consideration for the privilege of prepayment of principal, except as provided in sub. (7).

3. Income earned during administration of a decedent's estate as provided in sub. (5).

4. Corporation distributions as provided in sub. (6).

5. Accrued increment on bonds or other obligations issued at discount as provided in sub. (7).

6. Receipts from business and farming operations as provided in sub. (8).

7. Receipts from disposition of natural resources as provided in subs. (9) and (10).

8. Receipts from other principal subject to depletion as provided in sub. (11).

9. Proceeds of insurance relating to loss of income.

(b) "Principal" is property other than income, including, but not limited to:

1. Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal.

2. Proceeds of property taken on eminent domain proceedings.

3. Proceeds of insurance upon property forming part of the principal.

4. Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in sub. (6).

5. Receipts from the disposition of bonds or other obligations as provided in sub. (7).

6. Receipts from disposition of natural resources as provided in subs. (9) and (10).

7. Receipts from other principal subject to depletion as provided in sub. (11).

8. Allowances for depreciation established under subs. (8) and (12) (a) 2.

9. Income added to and held as principal as provided in s. 701.21 (4).

(c) After determining income and principal, the trustee shall charge to income or principal expenses and other charges as provided in sub. (12).

(4) WHEN RIGHT TO INCOME ARISES; APPORTIONMENT OF INCOME. (a) Except as provided in par. (b), income earned or accrued in whole or in part before the date when an asset becomes subject to the trust shall be income when received.

(b) In the administration of a decedent's estate or of an asset becoming subject to a trust by reason of a will or by reason of the death of a decedent, income which is earned or accrued to the date of death of the decedent but not yet payable, including, but not limited to, income in respect of a decedent, or which is due but not yet paid, shall be added to principal when received.

(c) On termination of an income interest, the following amounts shall be classified as income and treated as if received prior to the termination.

1. Income collected but undistributed on the date of termination and not subject to s. 701.21 (4).

2. Income due but not paid to the trustee on the date of termination.

3. Income accrued.

(d) In determining accrued income, the following rules apply:

1. Corporate distributions to stockholders including distributions from a regulated investment company or by a trust qualified and electing to be taxed under federal law as a real estate investment trust shall be treated as accrued on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

2. Income in the form of periodic payments (other than corporate distributions to stockholders), including interest, rent and annuities, shall be treated as accruing from day to day.

3. Obligations for the payment of money which are sold by the issuer at a discount from their maturity value in lieu of interest payments shall be treated as accruing from day to day.

(5) INCOME EARNED DURING ADMINISTRATION OF A DECEDENT'S ESTATE. (a) Unless the will otherwise provides and subject to par. (b), debts, funeral expenses, estate taxes, property taxes prorated to the date of death, family allowances unless charged against income by the court, and administration expenses 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 decedent and before distribution, including income from property used to discharge liabilities, legacies and devises, shall be determined in accordance with the rules applicable to a trustee under this section and distributed as follows:

1. To legatees and devisees of specific property other than money, the income from the property bequeathed or devised to them less the following recurrent and other ordinary expenses attributable to the specific property: property taxes (excluding taxes prorated to the date of death), interest (excluding interest accrued to the date of death), income taxes (excluding taxes on income in respect of a decedent, capital gains and any other income taxes chargeable against principal) which accrue during the period of administration, ordinary repairs, and other expenses of management and operation of the property.

2. To all other legatees and devisees, except as provided in par. (d), the balance of the income, less the balance of the recurrent and other ordinary expenses attributable to all other property from which the estate is entitled to income, the distribution to be in proportion to their respective interests in the property at the time of distribution and based upon the value of the property at the date of death.

(c) Income received by a trustee under par. (b) shall be treated as income of the trust.

(d) A legatee, including a trustee, of a specific amount of money not determined by a pecuniary formula shall not be paid any part of the income of the estate but shall receive interest on any unpaid portion of the legacy for the period commencing one year after decedent's death at the legal rate set forth in s. 138.04.

(e) Unless the creating instrument otherwise provides, if a trust may be included in a decedent's gross estate for federal estate tax purposes, and if the trust is divided or distributed in whole or in part as a result of the decedent's death, this subsection shall apply during the period after the death of the decedent and before the division or distribution is complete. For this purpose, the assets of the trust shall be valued as of the decedent's death.

(6) CORPORATE DISTRIBUTIONS. (a) Except as provided in pars. (b), (c) and (d), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in pars. (c) and (d), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(b) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(c) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

1. A call of shares;
2. A merger, consolidation, reorganization, or other plan by which assets of a corporation are acquired by another corporation;
3. A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation;
4. Any distribution of assets pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets; or
5. Any distribution of securities other than shares of the distributing corporation on which no gain or loss is recognized for federal income tax purposes.

(d) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(e) Corporate distributions other than cash which are deemed income under this subsection may be distributed in kind, or the trustee may instead distribute its cash equivalent on the date of distribution by the corporation.

(7) PREMIUM AND DISCOUNT. (a) Except as provided in par. (b), no provision may be made for amortization of premiums or for accumulation for discounts on bonds or other obligations for the payment of money. The proceeds of sale, redemption or other disposition of the bonds or obligations are principal.

(b) In the case of a bond or other stated obligation for the payment of money bearing no stated interest but payable or redeemable at maturity or at a future time at an amount in excess of the amount in consideration of which it was issued, the increment in value while held by the personal representative or trustee is income when realized.

(8) BUSINESS AND FARMING OPERATIONS. If a trustee uses any part of the principal in the operation of a business, including an agricultural or farming operation, as a sole proprietor or partner, the net profits and losses of the business shall be computed in accordance with generally accepted accounting principles for a comparable business.

(a) Net profits from a business are income.

(b) Net losses from a business do not reduce other trust income for the fiscal or calendar year during which they occur but shall be carried into subsequent fiscal or calendar years and reduce the net profits of the business for those years.

(9) DISPOSITION OF NATURAL RESOURCES. (a) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals, oil, gas, stone, gravel, sand or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

1. If received as rent on a lease or extension payments on a lease, the receipts are income.

2. If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

3. If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subds. 1 and 2 shall be apportioned on a yearly basis in accordance with this subdivision whether or not any natural resource was being taken from the land at the time the trust was established. There shall be added to principal as an allowance for depletion such portion of the gross receipts as shall be allowed as a deduction in computing taxable income for federal income tax purposes. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(b) If a trustee, on January 1, 1979, held an item of depletable property of a type specified in this subsection the trustee may continue to allocate receipts from the property in the manner used before January 1, 1979.

(c) This subsection does not apply to timber, water, soil, sod, dirt, peat, turf, mosses or interests in a partnership owning natural resources.

(10) TIMBER, WATER, SOIL, SOD, DIRT, PEAT, TURF, MOSSES OR AN INTEREST IN A PARTNERSHIP OWNING NATURAL RESOURCES. If any part of the principal consists of an interest in timber, water, soil, sod, dirt, peat, turf, mosses or a partnership owning natural resources, the receipts shall be allocated in accordance with sub. (2) (a) 3.

(11) OTHER PROPERTY SUBJECT TO DEPLETION. Except as provided in subs. (9) and (10), if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights and any rights to receive periodic payments under a contract or plan for deferred compensation or for the benefit of one or more of the employes of an employer, receipts shall be allocated in accordance with sub. (2) (a) 3.

(12) CHARGES AGAINST INCOME AND PRINCIPAL. (a) The following charges shall be made against income:

1. The trustee's regular compensation, whether based on a percentage of principal or income.

2. Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including fees and expenses of attorneys, accountants, appraisers, investment counselors, custodians and agents, regularly recurring taxes assessed against any portion of the principal, all premiums on insurance other than life insurance, interest, maintenance, and ordinary repairs.

3. Any tax levied upon receipts defined as income under this section or the trust instrument and payable by the trustee.

(b) No allowance may be made for depreciation of any property held by the trustee unless the court directs otherwise.

(c) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(d) The following charges shall be made against principal:

1. Special compensation of trustees, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee.

2. Charges not provided for in par. (a), including fees and expenses of attorneys, accountants, appraisers, investment counselors, custodians and agents, the cost of investing and reinvesting principal, the payments on principal of an indebtedness including a mortgage amortized by periodic payments of principal, expenses for preparation of property for rental or sale, and attorney fees and other expenses in judicial proceedings unless the court directs otherwise.

3. Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments.

4. Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority.

5. If an estate, inheritance or generation skipping transfer tax is levied in respect of a trust, any amount apportioned to the trust, or any beneficial interest in the trust.

(e) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under sub. (4).

(13) APPLICATION. Except as specifically provided in the trust or creating instrument or in this section, this section applies to any receipt or expense received or incurred after January 1, 1979, by any trust or decedent's estate whether established before or after that date and whether the asset involved was acquired by the trustee before or after that date.

**SECTION 2. Effective date.** This act takes effect on January 1, 1979.

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