

STATE OF NEW YORK

7803

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to trust accounting income and principal

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Clause (A) of subparagraph 5 of paragraph (b) of section
2 11-2.3 of the estates, powers and trusts law, as amended by chapter 408
3 of the laws of 2008, is amended to read as follows:

4 (A) Where the rules in article 11-A apply to a trust and the terms of
5 the trust describe the amount that may or must be distributed to a bene-
6 ficiary by referring to the trust's income, the prudent investor stand-
7 ard also authorizes the trustee to adjust between principal and income
8 to the extent the trustee considers advisable to enable the trustee to
9 make appropriate present and future distributions in accordance with
10 clause (b)(3)(A) if the trustee determines, in light of its investment
11 decisions, the consideration factors incorporated in clause (b)(5)(B),
12 and the accounting income expected to be produced by applying the rules
13 in article 11-A, that such an adjustment would be fair and reasonable to
14 all of the beneficiaries. In adjusting from income to principal under
15 the power conferred by this clause, the trustee may allocate to princi-
16 pal any form of receipt which would otherwise be characterized as income
17 and may specify the particular receipt or receipts being allocated to
18 principal. In adjusting from principal to income the trustee (i) may
19 allocate to income any asset which would otherwise be characterized as
20 principal, regardless of whether it constitutes original trust princi-
21 pal, accumulated income, or realized or unrealized appreciation, (ii)
22 may specify the particular asset or assets being allocated to income,
23 and (iii) may specify that what is being allocated to income is part or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 all of the realized gain from the sale, exchange or other disposition of
2 particular principal assets.

3 § 2. Paragraph 2 of section 11-A-4.4 of the estates, powers and trusts
4 law, as added by chapter 243 of the laws of 2001, is amended to read as
5 follows:

6 (2) money or other property received from the sale, exchange, liqui-
7 dation, or change in form of a principal asset, including realized
8 profit, subject to this part; provided, however, that a trustee may, in
9 a reasonable and impartial exercise of discretion, allocate to income
10 gains from the sale or exchange of a capital asset (as defined in
11 section 1221 of the Internal Revenue Code of 1986, as amended) to the
12 extent that principal is re-characterized as income by the exercise of
13 the power to adjust under subparagraph 11-2.3(b)(5), and provided
14 further, however, that a trustee who has an unlimited discretionary
15 power to distribute principal may, in a reasonable and impartial exer-
16 cise of discretion, allocate to income any or all gains from the sale or
17 exchange of a capital asset (as defined in section 1221 of the Internal
18 Revenue Code of 1986, as amended);

19 § 3. This act shall take effect immediately and shall apply to all
20 trusts, whenever established.