STATE OF NEW YORK

9765

IN ASSEMBLY

February 6, 2018

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:

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

(A) Where the rules in article 11-A apply to a trust and the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, the prudent investor standard also authorizes the trustee to adjust between principal and income to the extent the trustee considers advisable to enable the trustee to make appropriate present and future distributions in accordance with clause (b)(3)(A) if the trustee determines, in light of its investment decisions, the consideration factors incorporated in clause (b)(5)(B), and the accounting income expected to be produced by applying the rules in article 11-A, that such an adjustment would be fair and reasonable to all of the beneficiaries. **In adjusting from income to principal under the power conferred by this clause, the trustee may allocate to principal any form of receipt which would otherwise be characterized as income and may specify the particular receipt or receipts being allocated to principal. In adjusting from principal to income the trustee (i) may allocate to income any asset which would otherwise be characterized as principal, regardless of whether it constitutes original trust principal, accumulated income, or realized or unrealized appreciation, (ii) may specify the particular asset or assets being allocated to income, and (iii) may specify that what is being allocated to income is part or all of the realized gain from the sale, exchange or other disposition of particular principal assets.**

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

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

(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this part; **provided, however, that a trustee may vary this allocation as provided in clause 11-2.3(b)(5)(A), and provided further, that a trustee who has an unlimited discretionary power to distribute principal, as defined in subparagraph 10-6.6(s)(9), may allocate to income part or all of the realized gain from the sale, exchange or other disposition of specified principal assets.**

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