§ 2309. Commissions of trustees, of donees of powers during minority and of donees of powers in trust under wills of persons dying, or lifetime trusts established, after August 31, 1956

1. On the settlement of the account of any trustee or donee of a power in trust under the will of a person dying after August 31, 1956, or under a lifetime trust established after August 31, 1956, the court must allow to him or her his or her reasonable and necessary expenses actually paid by him or her and if he or she be an attorney of this state and shall have rendered legal services in connection with his or her official duties, such compensation for his or her legal services as shall appear to the court to be just and reasonable and in addition thereto it must allow to the trustee or donee of a power in trust for his or her services as trustee or donee of a power in trust a commission from principal or from the property subject to the power in trust, for paying out all sums of money constituting principal or property subject to the power in trust at the rate of 1 per cent.

2. In addition to the commission allowed by subdivision 1 hereof a trustee or donee of a power in trust shall be entitled to annual commissions at the following rates:

(a) $10.50 per $1,000 or major fraction thereof on the first $400,000 of principal or property subject to the power in trust.

(b) $4.50 per $1,000 or major fraction thereof on the next $600,000 of principal or property subject to the power in trust.

(c) $3.00 per $1,000 or major fraction thereof on all additional principal or property subject to the power in trust.

Such annual commissions shall be computed either on the value of the principal of the trust or of the property subject to the power in trust at the end of the period for which the commissions are payable or, at the option of the trustee or donee of the power in trust, on the value of the principal of the trust or of the property subject to the power in trust at the beginning of such period, provided that the option elected by the trustee or donee of the power in trust for the first period for which such commissions are payable shall be used during the continuance of the trust or of the power in trust and shall be binding on any

successor or substitute trustee or trustees, donee or donees. In the case of a trust which prior to January 1, 1994 computed annual commissions on the basis of a 12 month period (other than a calendar year), the trustee's prior election of such 12 month period shall be binding unless, prior to January 1, 1995, the trustee makes a new election to compute annual commissions on the basis of a calendar year either on the value of the principal of the trust at the end of, or at the option of the trustee at the beginning of, the calendar year for which the commissions were payable, which new election shall be used during the remaining continuance of the trust and shall be binding on any successor or substitute trustee or trustees. The computation shall be made on the basis of a 12-month period but the amount so computed payable to a trustee shall be proportionately reduced or increased for any payments made in partial distribution of the trust or the receipt of any additional property into the trust within such period and shall be proportionately reduced in any period for which such commissions are payable to the trustee if the period is less than 12 months. For the purpose of computing the annual commissions the value of any principal asset when received by the trust or donee of a power in trust shall be the presumptive value of the asset at the beginning and end of the period for which such commissions are payable. In computing the value of the principal of the trust or of the property subject to the power in trust the trustee or donee of the power in trust may use the presumptive value in respect of any principal asset or may use the actual value of the asset. On the settlement of the account of the trustee or donee of a power in trust any person interested may dispute the amount of any commission claimed or retained. The burden of proving that the actual value of any principal asset or asset subject to the power in trust differs from its presumptive value is upon the trustee or donee of a power in trust or other person claiming the difference.

3. Unless the will or lifetime trust instrument otherwise explicitly provides, the annual commissions allowed by this section shall be payable one-third from the income of the trust and two-thirds from the principal of the trust. However, in the case of a trust whose definition of income is governed by section 11-2.4 of the estates, powers and trusts law or a charitable remainder annuity trust or a charitable

remainder unitrust, as defined in section six hundred sixty-four of the Internal Revenue Code of nineteen hundred eighty-six, as amended, such annual commissions shall be payable from the corpus of any such trust after allowance for the annuity or unitrust amounts and shall not be payable out of such annuity or unitrust amounts.

4. The commissions allowed by subdivision 2 may be retained by a trustee provided he or she furnishes annually as of a date no more than 30 days prior to the end of the trust year selected by the trustee, to each beneficiary currently receiving income, and to any other beneficiary interested in the income and to any person interested in the principal of the trust who shall make a demand therefor and by a donee of a power in trust if he or she furnishes annually as of a date no more than 30 days prior to the end of the calendar year to the beneficiary of the power in trust, a statement showing the principal assets on hand on that date, and at least annually or more frequently if the trustee or donee of the power in trust so elects, a statement showing all his or her receipts of income and principal or property subject to the power in trust during the period with respect to which the statement is rendered including the amount of any commissions retained and the basis upon which the commissions were computed. A trustee or donee of a power in trust shall not be deemed to have waived any commissions by reason of his or her failure to retain them at the time when he or she becomes entitled thereto; provided however that in the case of a trust commissions payable from income for any given trust year shall be allowed and retained only from income derived from the trust during that year and shall not be supplied from income on hand in respect of any other trust year and in the case of property subject to a power in trust commissions payable from income for any given calendar year shall be allowed and retained only from income derived from the property during that year and shall not be supplied from income on hand in respect of any other calendar year. If a beneficiary receiving income does not desire to be furnished with any such statements his or her advice to the trustee or to the donee of the power in trust to that effect in writing shall thereafter excuse the trustee or donee of the power in trust from furnishing such statement to the beneficiary unless and until the beneficiary requests such annual statements from the trustee or donee of

the power in trust.

5. (a) During the continuance of a trust created solely for public, religious, charitable, scientific, literary, educational or fraternal uses and during the period of continuance of such a trust established after the termination of a life use or uses the trustee shall be entitled to and may retain annual commissions according to the terms specified in subdivision 2 of this section, but only to the extent of 80 percent of the rates stated therein. Notwithstanding any other provision of law, with respect to any portion of such trust which exceeds a principal value of twenty million dollars, the trustee may only take annual commissions to the extent of 50 percent of the rate specified in paragraph (c) of subdivision 2 of this section.

(b) In the case of a trust described in paragraph (a) of this subdivision, a trustee shall not be entitled to any commission from principal as specified in subdivision 1 of this section for paying out principal.

(c) In the case of such a trust which continues after the termination of the measuring life use or uses the trustee for the period of the measuring life use or uses shall be entitled to commissions from income and principal at the rates and according to the terms specified in subdivision 2 and except in respect of principal paid out to a charity or for charitable uses shall be entitled to a commission for distributing all sums of principal at the rate specified in subdivision 1.

6. (a) Subject to section 2313 regarding multiple commissions of executors, trustees, or donees of a power in trust created under wills of persons dying, or lifetime trusts established, after August 31, 1993, if the gross value of the principal of the trust or of the property subject to the power in trust accounted for amounts to $400,000 or more and there is more than 1 trustee or donee each trustee or donee is entitled to the full compensation for paying out principal allowed herein to a sole trustee or donee unless there are more than 3, in which case the compensation to which 3 would be entitled must be apportioned among the trustees or donees of the power in trust according to the services rendered by them respectively unless they shall have agreed in

writing among themselves to a different apportionment which, however, shall not provide for more than one full commission for any one of them. If the gross value of the principal of the trust or of the property subject to the power in trust accounted for is:

(i) less than $100,000 and there is more than 1 trustee or donee of the power in trust, the full compensation for paying out principal allowed herein to a sole trustee or donee of the power in trust must be apportioned among them according to the services rendered by them respectively, or

(ii) $100,000 or more but less than $400,000, each trustee or donee of the power in trust is entitled to the full compensation for paying out principal allowed herein to a sole trustee or donee of the power in trust unless there are more than 2 trustees or donees of the power in trust in which case the full compensation for paying out principal allowed herein to 2 trustees or donees of a power of trust must be apportioned among them according to the services rendered by them respectively, unless the trustees or donees of the power in trust shall have agreed in writing between or among themselves to a different apportionment which, however, shall not provide for more than one full commission for any one of them.

(b) Subject to section 2313 regarding multiple commissions of executors, trustees, or donees of a power in trust created under wills of persons dying, or lifetime trusts established, after August 31, 1993, if the value of the principal of the trust or of the property subject to the power in trust for the purpose of computing the annual commissions allowed by subdivision 2 amounts to $400,000 or more and there is more than one trustee or donee of a power in trust each trustee or donee of a power in trust is entitled to the full annual commission allowed herein to a sole trustee or donee of a power in trust unless there are more than 3, in which case the annual commissions to which 3 would be entitled must be apportioned among the trustees or donees of the power in trust according to the services rendered by them respectively unless the trustees or donees of the power in trust shall have agreed in writing among themselves to a different apportionment which, however, shall not provide for more than one full annual commission for any one of them. If the value of the principal of the trust or of the property subject to the power in trust for the purpose of computing the annual

commission allowed by subdivision 2 amounts to:

(i) less than $100,000 and there is more than 1 trustee or donee of the power in trust, the annual commission allowed herein to a sole trustee or donee of a power in trust must be apportioned among the trustees or donees of the power in trust according to the services rendered by them respectively, or

(ii) $100,000 or more but less than $400,000, each trustee or donee of the power in trust is entitled to the full annual commission allowed herein to a sole trustee or donee of a power in trust unless there are more than 2 trustees or donees of the power in trust in which case the full annual commissions allowed herein to 2 trustees or donees of a power in trust must be apportioned among them according to the services rendered by them respectively, unless the trustees or donees of the power in trust shall have agreed in writing between or among themselves to a different apportionment which, however, shall not provide for more than one full annual commission for any one of them. However, if from a trust or from property subject to a power in trust having a value of $400,000 or more, or if from a trust or from property subject to a power in trust having a value of $100,000, or more but less than $400,000, as the case may be, at the beginning of a trust year or of the calendar year any payments in partial distribution of the trust or of the property subject to the power in trust shall be made during the trust or calendar year so as to reduce the trust or the property subject to the power in trust to a value of less than $400,000 or $100,000, as the case may be, at the end of the trust or calendar year, then the annual commissions allowed herein shall, on a proportionate basis, be those allowed to trustees of a trust or to donees of a power in trust over property having a value of $400,000 or more, or of a trust or to donees of a power in trust over property having a value of $100,000 or more but less than $400,000, as the case may be, for the period from the beginning of the trust or calendar year to the date of the distribution and shall, on a proportionate basis, be those allowed to trustees of a trust or to donees of a power in trust over property having a value of either $100,000 or more but less than $400,000 or less than $100,000, as the case may be, for the remainder of the trust or calendar year and the part of such commissions payable from principal and computed from the beginning of the trust or calendar year to the date of distribution

shall be charged ratably to the property remaining in the trust or still subject to the power in trust after such distribution and to the property distributed from the trust or to the beneficiary of the power in trust on the basis of their respective values. Further, if during a trust or calendar year additional property shall be received into a trust which had a value of less than $100,000 or by a donee of a power in trust the property subject to which had a value of less than $100,000, or into a trust which had a value of $100,000 or more but less than $400,000 or by a donee of a power in trust the property subject to which had a value of $100,000 or more but less than $400,000, as the case may be, at the beginning of the trust year or calendar year, so that because of the additional property the trust or the property subject to the power in trust has a value of $100,000 or more but less than $400,000, or of $400,000 or more, as the case may be, at the end of the trust or calendar year, then the annual commissions allowed herein to the trustee or to the donee of the power in trust shall, on a proportionate basis, be those allowed to trustees of a trust or to donees of a power in trust over property having a value of less than $100,000, or to trustees of a trust or to donees of a power in trust over property having a value of $100,000 or more but less than $400,000, as the case may be, for the period from the beginning of the trust or calendar year to the date of the receipt of the additional property and shall, on a proportionate basis, be those allowed to trustees of a trust or to donees of a power in trust over property having a value of $100,000 or more but less than $400,000, or to trustees of a trust or to donees of a power in trust over property having $400,000 or more, as the case may be, for the remainder of the trust or calendar year.

(c) Notwithstanding any provision of paragraphs (a) and (b) of this subdivision to the contrary, if during the continuance of a trust not measured at any time directly or indirectly by a life or lives or during the continuance of a trust after the termination of the measuring life or lives, the annual income of the trust amounts to $4,000 or more and there is more than 1 trustee, each trustee is entitled to the full commissions allowed under subdivision 5 to a sole trustee unless there are more than 2, in which case the commissions to which 2 trustees would be entitled must be apportioned among the trustees according to the services rendered by them respectively unless they shall have agreed in

writing among themselves to a different apportionment which, however, shall not provide for more than one full commission to any one of them. If the annual income of the trust amounts to less than $4,000 and there is more than 1 trustee the commissions to which a sole trustee would be entitled under subdivision 5 must be apportioned among the trustees according to the services rendered by them respectively unless they shall have agreed in writing among themselves to a different apportionment.

7. Where a trustee or donee of a power in trust is for any reason entitled or required to collect the rents of and manage real property the net amount of rents collected and not the gross amount shall be used in making computation of commissions allowed by subdivision 5 and in addition to the commissions herein provided he or she shall be allowed and may retain for such services 6 percent of the gross rents collected, but there shall be only one such additional commission regardless of the number of trustees or donees of the power in trust. If there are 2 or more trustees or donees of the power in trust the additional commission herein provided for must be apportioned among them according to the services rendered by them respectively unless they shall have agreed in writing among themselves to a different apportionment.

8. If a trustee or donee of a power in trust is either authorized or required by the terms of the will to accumulate income for any purpose permitted by law he or she shall be entitled to commissions from the income so accumulated, including income derived from the investment of such accumulated income, at the rate of 2 percent of the first $2,500 of such income distributed during the administration of the trust and 1 percent of all such income distributed in excess of $2,500 and he or she may retain such commissions at the time or times such income is distributed.

9. The value of any property to be determined in such manner as directed by the court and the increment thereof received, distributed or delivered, shall be considered as money in making computation of commissions. Whenever any portion of the dividends, interests or rents payable to a trustee or to a donee of a power in trust is required by

any law of the United States or other governmental unit to be withheld by the person paying it for income tax purposes, the amount so withheld shall be deemed to have been collected.

10. Where the will provides a specific compensation for a trustee or for a donee of a power in trust he or she is not entitled to any other allowances for his or her services.

11. For the purposes of this section, the term "trustee" shall mean any trustee who is not a corporate trustee and the term "donee of a power in trust" shall mean any such donee including a donee of a power during minority who is not a corporate fiduciary provided, however, that as used in subdivision 6 of this section, the term trustee shall include a corporate trustee and further provided that the term "property subject to the power in trust" shall include property subject to a power during minority.