§ 2311. Ex parte application for advance payment of commissions

1. At any time during the administration of an estate and irrespective of the pendency of a particular proceeding a fiduciary may present to the court from which his letters issued a petition praying that he be permitted to receive a sum on account of the commissions to which he would be entitled if he were then filing his account and it were judicially settled, which must show that unless he is allowed such sum on account of commissions he or the estate will be deprived of substantial advantages under the income tax laws of the United States or the state of New York or that he will suffer inconvenience or hardship or that all persons whose rights or interests would be affected by the payment applied for are persons under no legal disability and have by acknowledged instrument consented thereto. No notice of the application shall be required by the court.

2. If the application be entertained the court may award a sum on account of commissions or make such other order or decree, if any, as justice shall require.

3. In all cases where a payment on account of commissions is directed by the court the payment on account shall not exceed the receiving commissions due the fiduciary, except that the court may award a greater sum where all persons whose rights or interests are affected by the payment are persons under no legal disability and by acknowledged instrument consent thereto.

4. The total expenses of the application shall be borne by the fiduciary, by the estate, or shall be apportioned between them in such ratio as the court may determine according to the benefit derived from the payments.

5. The order or decree authorizing the payment on account shall require the fiduciary to file a bond in the amount of the payment securing its return if and to the extent that the payment is disallowed, except that no such bond shall be required where the fiduciary has already filed a bond pursuant to law or is a corporate fiduciary or

where all persons whose rights or interests would be affected by the payment are persons under no legal disability and by acknowledged instrument consent to waive a bond or where the will specifically dispenses with such a bond.