

KANSAS

58-9-302

Chapter 58.--PERSONAL AND REAL PROPERTY

Part 3.--APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-302. Apportionment of receipts and disbursements when decedent dies or income interest

begins. (a) A trustee shall allocate an income receipt or disbursement other than one to which subsection (1) of K.S.A. 58-9-201, and amendments thereto, applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this act. Distributions to shareholders or other owners from an entity to which K.S.A. 58-9-401, and amendments thereto, applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

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58-9-303. Apportionment when income interest ends. (a) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

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Part 4.--ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-401. Character of receipts. (a) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which K.S.A. 58-9-402, and amendments thereto, applies, a business or activity to which K.S.A. 58-9-403, and amendments thereto, applies, or an asset-backed security to which K.S.A. 58-9-415, and amendments thereto, applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

History: L. 2000, ch. 61, § 10; July 1.

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-402. Distribution from trust or estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, K.S.A. 58-9-401 or 58-9-415, and amendments thereto, applies to a receipt from the trust.

History: L. 2000, ch. 61, § 11; July 1.

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-403. Business and other activities conducted by trustee. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may

maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

- (1) Retail, manufacturing, service, and other traditional business activities;
- (2) farming;
- (3) raising and selling livestock and other animals;
- (4) management of rental properties;
- (5) extraction of minerals and other natural resources;
- (6) timber operations; and
- (7) activities to which K.S.A. 58-9-414, and amendments thereto, applies.

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58-9-404. Principal receipts. A trustee shall allocate to principal:

(1) To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(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;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in subsection (a)(7) of K.S.A. 58-9-502 and amendments thereto or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts as provided in K.S.A. 58-9-408 through 58-9-415 and amendments thereto.

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58-9-405. Rental property. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

History: L. 2000, ch. 61, § 14; July 1.

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-406. Obligation to pay money. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which K.S.A. 58-9-409, 58-9-410, 58-9-411, 58-9-412, 58-9-414 or 58-9-415 and amendments thereto applies.

History: L. 2000, ch. 61, § 15; July 1.

58-9-407

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-407. Insurance policies and similar contracts. (a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to K.S.A. 58-9-403 and amendments thereto, loss of profits from a business.

(c) This section does not apply to a contract to which K.S.A. 58-9-409 and amendments thereto applies.

History: L. 2000, ch. 61, § 16; July 1.

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-408. Insubstantial allocations not required. If a trustee determines that an allocation between principal and income required by K.S.A. 58-9-409, 58-9-410, 58-9-411, 58-9-412 or 58-9-415 and amendments thereto is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection (c) of K.S.A. 58-9-104 and amendments thereto applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection (d) of K.S.A. 58-9-104 and amendments thereto and may be released for the reasons and in the manner described in subsection (e) of K.S.A. 58-9-104 and amendments thereto. An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-409. Deferred compensation, annuities and similar payments. (a) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which K.S.A. 58-9-410 and amendments thereto applies.

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58-9-410. Liquidating asset. (a) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.

The term does not include a payment subject to K.S.A. 58-9-409 and amendments thereto, resources subject to K.S.A. 58-9-411 and amendments thereto, timber subject to K.S.A. 58-9-412 and amendments thereto, an activity subject to K.S.A. 58-9-414 and amendments thereto, an asset subject to K.S.A. 58-9-415 and amendments thereto, or any asset for which the trustee establishes a reserve for depreciation under K.S.A. 58-9-503 and amendments thereto.

(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

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Article 9.--UNIFORM PRINCIPAL AND INCOME ACT (1997)

58-9-411. Minerals, water and other natural resources. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 15 percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in subsection (1), (2), or (3), 15 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This act applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.