

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 406
HOUSE BILL 1009

AN ACT TO AMEND THE CHARITABLE REMAINDER TRUSTS
ADMINISTRATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36A-59.3(2)a. is amended by adding the following at the end:

"provided, however, that in the case of an individual, such amount to be paid to such individual may be subject to a qualified contingency according to the terms of the governing instrument;"

Sec. 2. G.S. 36A-59.3(3)a. is amended by adding the following at the end:

"provided, however, that in the case of an individual, such amount to be paid to such individual may be made subject to a qualified contingency according to the terms of the governing instrument;"

Sec. 3. G.S. 36A-59.3 is amended by adding a new definition to read:

"(5) 'Qualified contingency' means any provision of the governing instrument which provides that, upon the happening of a contingency, the payments made to an individual noncharitable beneficiary of a charitable remainder trust will terminate not later than such payments would otherwise terminate under the governing instrument."

Sec. 4. G.S. 36A-59.4 is amended by adding a new subsection (c) and redesignating the remaining subsections accordingly. The new subsection (c) shall read:

"(c) Selection of Alternative Charitable Beneficiary if Remaindermen do not Qualify under Section 170(b)(1)(A) of the Code at Time of Distribution. Notwithstanding the foregoing provisions of G.S. 36A-59.4(b), if the designated charity is, at the time of the creation of the trust, an organization described in both Section 170(b)(1)(A) and Section 170(c) of the Code, and if the designated charity is not an organization described in both Section 170(b)(1)(A) and Section 170(c) of the Code when any principal or income of the trust is to be distributed to it, the trustee shall distribute the principal or income to one or more organizations then described in both Section 170(b)(1)(A) and Section 170(c) of the Code selected in accordance with the terms of the governing instrument; provided, however, that in the event the governing instrument does not provide a method of selecting alternative charitable beneficiaries that are then described in both Section 170(b)(1)(A) and Section 170(c) of the Code, the Trustee shall, in his sole discretion, select one or more alternative charitable beneficiaries that are described in both Section 170(b)(1)(A) and Section 170(c) of the Code and shall distribute the principal or income to the organization or organizations so selected in such shares as the Trustee, in his sole discretion, shall determine."

Sec. 5. G.S. 36A-59.4 is further amended by adding a new subsection at the end to read:

"(h) Payment of Taxes by Noncharitable Beneficiary. In the case of any inter vivos charitable remainder trust which is liable to pay, from trust property, any federal estate, State inheritance or other similar death taxes by reason of the death of the grantor of such trust, the interest of any noncharitable beneficiary of such trust shall terminate upon the death of the grantor unless such noncharitable beneficiary shall furnish to the trust sufficient funds for payment of all such taxes attributable to the interest of such noncharitable beneficiary in the trust property, and such termination shall be deemed as the occurrence of a qualified contingency."

Sec. 6. G.S. 36A-59.5(d) is amended by deleting the last sentence and substituting the following sentences:

"Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

- (1) Any annuity amount actually paid, plus interest on such amounts computed at ten percent (10%) a year, compounded annually; and
- (2) The annuity amounts payable, determined under the method described in Section 1.664-1(a)(5) of the federal income tax regulations, plus interest on such amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the annuity amounts, if the governing instrument was executed or last amended prior to August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of the annuity amounts shall be computed using an interest rate at six percent (6%) a year, compounded annually."

Sec. 7. G.S. 36A-59.6(f) is amended by deleting the last sentence and substituting the following sentences:

"Within a reasonable time after the end of the taxable year in which the complete funding of the trust occurs, the trustee must pay to the beneficiary, in the case of an underpayment, or must receive from the beneficiary, in the case of an overpayment, the difference between:

- (1) Any unitrust amounts actually paid, plus interest on such amounts computed at ten percent (10%) a year, compounded annually; and
- (2) The unitrust amounts payable, determined under the method described in Section 1.664-1(a)(5) of the federal income tax regulations, plus interest on such amounts computed at ten percent (10%) a year, compounded annually.

Notwithstanding the foregoing sentence, in computing any underpayment or overpayment of the unitrust amounts, if the governing instrument was executed or last amended prior to August 9, 1984, and if the governing instrument does not specify that a ten percent (10%) rate of interest shall be used, the underpayment or overpayment of

the unitrust amounts shall be computed using an interest rate of six percent (6%) a year, compounded annually."

Sec. 8. This act is effective upon ratification and applies to all charitable remainder annuity trusts and all charitable remainder unitrusts that would not qualify for the deduction pursuant to Section 2055 or Section 2522 of the Code in the absence of Article 4A that are in existence on that date or are established after that date. For trusts in existence on that date, this act relates back to the date of creation of the trust.

In the General Assembly read three times and ratified, this the 17th day of June, 1985.