

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 284
HOUSE BILL 841

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE PRINCIPAL AND
INCOME ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 37-17 reads as rewritten:

"§ 37-17. Definitions.

(a) As used in this Article:

- (1) 'Income beneficiary' means the person to whom income is presently payable or for whom it is accumulated for distribution as income.
- (2) 'Inventory value' means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax.
- (2a) 'Pecuniary bequest' means either (i) a bequest of a specific sum of money directed under a will, or (ii) a distribution or allocation, either outright or in trust, of a specific sum of money directed under a trust instrument to be made upon the death of the grantor of the trust, upon the death of any beneficiary of the trust, or upon the happening of any other contingency. A 'pecuniary bequest' includes sums determined under a mathematical formula contained in the will or governing trust instrument and sums which can be satisfied by a distribution in kind in lieu of a distribution of money.
- (3) 'Personal representative' shall include executor, any successor executor, administrator of intestate estates, administrator c.t.a., successor administrator, collector, or any fiduciary appointed to administer or conserve an estate.
- (4) 'Remainderman' means the person entitled to principal, including income which has been accumulated and added to principal.
- (5) 'Trustee' means an original trustee and any successor or added trustee and, where applicable, the personal representative of a decedent's estate.
- (6) 'Trust' includes, where applicable, a decedent's estate whether testate or intestate.
- (7) 'Tax' includes any interest or penalty thereon except where such interest or penalty is separately provided for in this Article.

- (8) 'Living trust' means a trust created during the lifetime of the grantor that can be amended or revoked in its entirety by the grantor, which is fully includable in the grantor's gross estate for federal estate tax purposes upon the grantor's death, and which is used for the disposition of all or part of the grantor's estate at the grantor's death to beneficiaries designated in the trust instrument or to further trusts created under the trust instrument.'

Sec. 2. G.S. 37-21 reads as rewritten:

"§ 37-21. Income earned and expenses incurred during administration of a decedent's estate, ~~estate or a living trust.~~

(a) Unless the will or trust instrument otherwise provides or the court otherwise directs:

(1) All expenses incurred in connection with the administration and settlement of a decedent's estate or in connection with the administration and settlement of a living trust following the grantor's death and prior to the distribution of the trust property to the beneficiaries or to further trusts entitled to succeed to the property after the grantor's death (other than expenses of management and operation of the estate or trust property), including debts, funeral and burial expenses, death taxes, penalties concerning death taxes, and family allowances, shall be charged against the principal of the ~~estate;~~ estate or the living trust; and

(2) Compensation of ~~attorneys~~ attorneys, trustees, and personal representatives and court costs, to the extent they are incurred in the administration and settlement of a decedent's ~~estate;~~ estate or of a decedent's living trust (following the death of the grantor of the trust and prior to distribution of the trust property to the beneficiaries or to further trusts entitled to succeed to the property after the grantor's death), shall be charged against the principal of the ~~estate;~~ estate or the living trust; and

(3) All expenses incurred in the management and operation of ~~the estate property~~ a decedent's estate or living trust shall be charged against principal or income of the estate or living trust in accordance with the rules applicable to a trustee under the succeeding provisions of this Article.

(b) Unless the will or trust instrument otherwise provides, or the court otherwise directs, income from the assets of a decedent's estate or living trust after the death of the decedent and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this Chapter and distributed as follows:

(1) To specific ~~legatees and legatees,~~ legatees, devisees, and distributees the income from the property ~~bequeathed or devised~~ bequeathed, devised, or directed to be distributed to them respectively, less taxes, ordinary repairs and other expenses of management and operation of the

property, and appropriate portions of interest expense accrued since the death of the decedent and taxes imposed on income (excluding taxes chargeable against principal) which accrue during the period of ~~administration;~~ administration of the decedent's estate or living trust;

(1a) To all legatees or distributees of pecuniary bequests, other than pecuniary bequests:

a. To or for the benefit of the decedent's surviving spouse that are or can be qualified for the federal estate tax marital deduction;
or

b. To or for the benefit of charitable organizations that are qualified for the federal estate tax charitable deduction, including a charitable remainder trust,

as provided in G.S. 37-21.1;

(2) ~~To all other legatees and devisees~~ legatees, devisees, and distributees (except legatees of pecuniary bequests not in trust) and to all takers by intestacy, the balance of the income, less the balance of taxes, ordinary repairs and other expenses of management and operation of all property from which the estate or living trust is entitled to income, interest expense accrued since the death of the decedent and taxes imposed on income (excluding taxes chargeable against principal) which accrue during the period of ~~administration;~~ administration of the estate or living trust, in proportion to their respective interests in the undistributed assets of the estate or living trust computed at times of distribution on the basis of ~~inventory~~ federal estate tax value.

(c) Income received under subsection (b) by a trustee shall be treated as income of the trust."

Sec. 3. Chapter 37 of the General Statutes is amended by adding a new section to read:

"§ 37-21.1. Interest on pecuniary bequests.

Unless the will or trust instrument otherwise provides, or the court otherwise directs, interest on pecuniary bequests, other than pecuniary bequests:

(1) To or for the benefit of a decedent's surviving spouse which are or can be qualified for the federal estate tax marital deduction; or

(2) To or for the benefit of charitable organizations which are qualified for the federal estate tax charitable deduction, including a charitable remainder trust,

shall be computed as provided in G.S. 24-1 and shall begin to accrue on the date that is one year following either the date of death of the person whose death gives rise to the payment of the pecuniary bequest, or the happening of any other contingency which gives rise to the payment of the pecuniary bequest."

Sec. 4. G.S. 37-30 reads as rewritten:

"§ 37-30. Taxes.

(a) ~~Regularly~~ Except as provided in subsection (d) of this section, regularly recurring taxes assessed against any portion of the principal and any tax levied on

receipts defined as income under this Article or the trust instrument shall be charged against income.

(b) Any tax levied upon profits, gains or receipts allocated to principal shall be charged against principal notwithstanding denomination of the tax as an income tax by the taxing authority.

(c) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust shall be charged against principal even though the income beneficiary also has rights in the principal.

(d) One-half of ad valorem taxes and intangibles taxes shall be charged against income, and one-half of such taxes shall be charged against principal."

Sec. 5. G.S. 37-31(b) reads as rewritten:

"(b) Unless the court otherwise directs, compensation of the trustee other than regular compensation shall be charged against ~~income if the matter primarily concerns the income interest, shall be charged against principal if the matter primarily concerns principal and shall be charged one half against each if the primary concern cannot readily be determined; provided that compensation principal, including compensation relating to environmental remediation; provided that if the matter relates only to the income interest, the compensation shall be charged to income.~~ Compensation computed on principal as an acceptance, distribution or termination fee shall be charged against principal."

Sec. 6. G.S. 37-33 reads as rewritten:

"§ 37-33. Management of principal and application of income.

~~All One-half of all expenses reasonably incurred for current management of principal and application of income shall be charged against income; income, and one-half of such expenses shall be charged against principal; except that the direct costs of investing and reinvesting principal shall be charged against principal."~~
One-half of all expenses reasonably incurred for current management of principal and application of income shall be charged against principal; except that the direct costs of investing and reinvesting principal shall be charged against principal."

Sec. 7. G.S. 37-35 reads as rewritten:

"§ 37-35. Premiums on insurance.

Premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee shall be charged against ~~income. income, except that premiums for surety bonds shall be charged one-half against income and one-half against principal."~~
premiums for surety bonds shall be charged one-half against income and one-half against principal."

Sec. 8. This act becomes effective January 1, 1994, and applies to trusts in existence on that date or established on or after that date and to tax years of decedents' estates beginning on or after that date, except that Sections 4 through 7 of this act apply only to trusts established on or after January 1, 1994.

In the General Assembly read three times and ratified this the 5th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives