DIGEST

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HB 123 Engrossed 2020 Regular Session Gregory Miller

Abstract: Provides for the allocation of receipts and expenses to income and principal in trusts.

Present law (R.S. 9:2141) provides the general rule for the allocation of receipts and expenditures in the administration of trusts.

Proposed law retains present law but makes changes in terminology.

Present law (R.S. 9:2142) provides that trust receipts and expenditures shall be allocated to income or principal in accordance with the provisions of the trust instrument or in accordance with the provisions of the Trust Code. In the absence of such provisions, present law provides that trust receipts and expenditures shall be allocated entirely to principal.

Proposed law retains present law but provides that in the absence of allocation provisions in the trust instrument or in the Trust Code, trust receipts and expenses shall be allocated in accordance with what is reasonable and equitable.

Present law (R.S. 9:2143) provides for the allocation of receipts and expenditures to the beneficiaries of usufruct and naked ownership. In the absence of provisions concerning allocation in the trust instrument or in the Trust Code, present law employs the "prudent man" standard in providing that trust receipts and expenses shall be allocated in accordance with what is reasonable and equitable.

Proposed law retains present law but makes semantic changes and removes the "prudent man" standard as inapplicable.

Present law (R.S. 9:2144) provides for the distinction between income and principal.

Proposed law retains present law but makes semantic changes.

Present law (R.S. 9:2145) provides when the right to income arises.

Proposed law retains present law but makes semantic changes.

Present law (R.S. 9:2146) provides for the apportionment of receipts when the right to income arises, including receipts in the form of periodic payments such as corporate distributions to stockholders.

Proposed law expands the applicability of present law to also include receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms.

Present law (R.S. 9:2147) provides for the apportionment of receipts when the right to income ceases, including income in the form of periodic payments such as corporate distributions to stockholders.

Proposed law expands the applicability of present law to also include receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms.

Present law (R.S. 9:2148) provides that succession receipts and expenses shall be allocated in accordance with the laws regulating donations mortis causa.

Proposed law changes present law by no longer deferring to the Civil Code with respect to the allocation of succession receipts and expenses and instead applying the general rule that the allocation shall be made in accordance with what is reasonable and equitable.

Present law (R.S. 9:2149) provides for the allocation of corporate distributions and categorizes the specific types of property that are classified as principal.

Proposed law expands the applicability of present law to also include receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms. As a result, proposed law more generally classifies all non-monetary property as principal.

Present law (R.S. 9:2150) provides for the allocation of bonds or other obligations to pay money.

Proposed law changes present law to conform with uniform law by providing that the entire increase in value of discount obligations is attributable to principal when the trustee receives the proceeds from the disposition, unless the obligation, when acquired, has a maturity of less than one year.

Present law (R.S. 9:2151) provides for the allocation of proceeds and losses in the operation of a business of which the trustee is a proprietor or partner.

Proposed law changes present law by clarifying that this provision applies only to the trustee's operation of a sole proprietorship, which would not be considered a juridical person under proposed law (R.S. 9:2149). Proposed law also eliminates the "prudent man" standard as inapplicable.

Proposed law (R.S. 9:2151.1) provides for the allocation of proceeds from insurance contracts.

Proposed law (R.S. 9:2151.2) provides for the allocation of payments made from annuities, individual retirement accounts, and deferred compensation, pension, employee-benefit, or other similar plans.

Present law (R.S. 9:2152) provides for the allocation of proceeds of mineral interests and allocates the royalty payments associated with oil and gas leases in the amount of 27.5% to principal and 72.5% to income.

Proposed law changes present law by providing that royalty payments shall be allocated in accordance with what is reasonable and equitable. Proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable. Proposed law also abolishes the open mines doctrine in trust.

Proposed law provides that the new depletion allowances are made prospectively applicable but clarifies that for oil and gas interests included in an existing trust, the trustee has discretion in deciding whether to apply the method of depletion under present law or proposed law.

Present law (R.S. 9:2153) provides that receipts from timber shall be allocated in accordance with what is reasonable and equitable.

Proposed law retains present law but eliminates the "prudent man" standard as inapplicable. Proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable.

Present law (R.S. 9:2154) provides that receipts from other property subject to depletion not in excess of five percent of its inventory value are income, and the balance is principal.

Proposed law changes present law to provide that receipts from other property subject to depletion shall be allocated in accordance with what is reasonable and equitable. Proposed law further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable.

Present law (R.S. 9:2156) provides for charges to be made against income and principal, including charges concerning depreciable property and taxes. Present law also provides that all other expenses not chargeable to income shall be charged to principal.

Proposed law retains present law but makes semantic changes and eliminates charges concerning depreciable property and taxes now included in proposed law (R.S. 9:2156.1 and 2156.2). Proposed law also eliminates the rule in present law that all other expenses not chargeable to income shall be charged to principal, since the default rule is now that receipts and expenses shall be allocated in accordance with what is reasonable and equitable, rather than entirely to principal.

Proposed law (R.S. 9:2156.1) changes present law by providing the trustee with discretion to make transfers from income to principal for property that is subject to depreciation, rather than allowing such charges against income to occur in accordance with generally accepted accounting principles.

Proposed law (R.S. 9:2156.2) provides for the payment of taxes from income based on receipts allocated to income and for the payment of taxes from principal based on receipts allocated to principal. Proposed law further provides for the payment of taxes on the trust's share of a juridical person's taxable income from income, principal, or both proportionately and requires the trustee to adjust income or principal receipts in the event that the trust receives a deduction for payments made to a beneficiary.

Present law (R.S. 9:2157) defines the term "inventory value".

Proposed law repeals the present law definition of "inventory value", a term that is no longer used.

Present law (R.S. 9:2155) provides the income beneficiary with a right to receive a portion of the proceeds from the sale of underproductive property as "delayed income" and applies on an asset-by-asset basis.

Proposed law repeals present law.

Proposed law (R.S. 9:2164) provides the income beneficiary with the right to compel the trustee to take action to make property productive of income, convert the property within a reasonable time, transfer funds from principal to income, or take some combination of those actions.

(Amends R.S. 9:2141-2144, 2145(1), 2146, 2147-2154, and 2156(A), (C), and (E); Adds R.S. 9:2151.1, 2151.2, 2156.1, 2156.2, and 2164; Repeals R.S. 9:2155 and 2157)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make technical changes.