

ACT No. 17

2020 Regular Session

HOUSE BILL NO. 123

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

Provides relative to the allocation of receipts and expense to income and principal

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AN ACT

To amend and reenact R.S. 9:2141 through 2144, 2145(1), 2146, 2147 through 2154, and 2156(A), (C), and (E), to enact R.S. 9:2151.1, 2151.2, 2156.1, 2156.2, and Subpart F of Part V of Chapter 1 of Code Title II of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2164, and to repeal R.S. 9:2155 and 2157, relative to the administration of trusts; to provide with respect to allocation to income and principal; to provide for the apportionment and allocation of various types of receipts and expenses; to provide for the obligation to pay money; to provide for charges against income and principal; to provide for transfers from income to principal for depreciation; to provide with respect to the payment of income taxes; to provide for underproductive property; to provide for an effective date and applicability; to provide for redesignation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2141 through 2144, 2145(1), 2146, 2147 through 2154, and 2156(A), (C), and (E) are hereby amended and reenacted, and R.S. 9:2151.1, 2151.2, 2156.1, 2156.2, and Subpart F of Part V of Chapter 1 of Code Title II of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2164, are hereby enacted to read as follows:

§2141. General rule

A trust shall be administered with due regard to the respective interests of the beneficiaries in the allocation of receipts and ~~expenditures~~ expenses.

1 beneficiary to receive income from the property arises, shall be treated as accruing
 2 from day to day;

3 (3) Receipts in the form of ~~corporate distributions to stockholders~~ on account
 4 of an interest in a juridical person that are allocated to income under R.S. 9:2149
 5 shall be treated as accruing on the date fixed for the determination of ~~stockholders~~
 6 ~~of record~~ those entitled to distribution, or, if no date is fixed, on the date of
 7 declaration of the distribution by the ~~corporation;~~ juridical person.

8 (4) All other receipts shall be treated as accruing at the time of payment.

9 B. Receipts treated as accruing after the right of the first income beneficiary
 10 to receive income from the property arises, are income if they otherwise are income
 11 under the provisions of this ~~Sub-part~~ Subpart. Receipts treated as accruing at an
 12 earlier time are principal.

13 Revision Comments - 2020

14 This revision is consistent with prior law but expands the law to address
 15 receipts from juridical persons other than corporations. According to general
 16 principles of civil law, "[a] juridical person is an entity to which the law attributes
 17 personality, such as a corporation or a partnership." Civil Code Article 24.

18 §2147. Apportionment of receipts when right to income ceases

19 Upon the termination of an income interest, the income beneficiary whose
 20 interest is terminated, ~~(or his heirs, legatees, or assignees),~~ is entitled to receive any
 21 required distributions of or from the following:

22 (1) Income paid to the trustee but undistributed on the date of termination;

23 (2) Income due but not paid to the trustee on the date of termination;

24 (3) Income in the form of periodic payments subject to daily accrual, other
 25 than ~~corporate distributions to stockholders~~ periodic payments on account of an
 26 interest in a juridical person, not due on the date of termination, ~~accrued from day~~
 27 ~~to day;~~ but accrued prior to the date of termination.

28 (4) ~~Corporate distributions to stockholders~~ Distributions on account of an
 29 interest in a juridical person that are allocated to income under R.S. 9:2149 and that
 30 are paid as income after the termination of the interest if the date for determination
 31 of ~~stockholders of record~~ those entitled to distribution is a date before the termination

1 of the interest, or, in the event no date is fixed, if the date of declaration of the
 2 distribution by the ~~corporation~~ juridical person is a date before termination of the
 3 interest.

4 Revision Comments - 2020

5 This revision is consistent with prior law but expands the law to address
 6 receipts from juridical persons other than corporations. See Civil Code Article 24.
 7 §2148. Succession receipts and expenses

8 Succession receipts ~~shall be credited~~ and ~~succession expenditures~~ expenses
 9 shall be ~~charged~~ allocated to a legacy in trust in accordance with ~~the laws regulating~~
 10 ~~donations mortis causa~~ what is reasonable and equitable in view of the interests of
 11 those entitled to income as well as of those entitled to principal.

12 Revision Comments - 2020

13 (a) This revision changes the law by no longer deferring to the Civil Code
 14 regarding the allocation of receipts and expenses for a legacy in trust.

15 (b) In many cases, information from a succession representative may be
 16 helpful to a trustee in making an appropriate allocation between income and principal
 17 beneficiaries. In other cases, however, it may be very difficult for a trustee to
 18 reconstruct the nature of the expense allocated to the legacy during the succession
 19 administration, thus making it impossible for the trustee to reliably allocate the
 20 expense within the trust between the income and principal beneficiaries. This
 21 provision attempts to provide the trustee with flexibility in allocating receipts and
 22 expenses and at the same time achieve consistency with the rules on successions and
 23 other provisions of the Louisiana Trust Code. See, e.g., Civil Code Article 1426 and
 24 R.S. 9:2151, 2152(A)(4), 2153(A), and 2154(A).

25 (c) The Comments that accompanied the 1964 enactment of this provision,
 26 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.
 27 338.

28 §2149. ~~Corporate distributions~~ Receipts from interests in juridical persons

29 ~~A. Corporate distributions of shares of the distributing corporation, including~~
 30 ~~distributions in the form of a stock split or stock dividend, are principal. A right to~~
 31 ~~subscribe to shares or other securities issued by the distributing corporation accruing~~
 32 ~~to stockholders on account of their stock ownership and the proceeds of any sale of~~
 33 ~~the right are principal.~~

34 ~~B. Except to the extent that the corporation indicates that some part of a~~
 35 ~~corporate distribution is a settlement of preferred or guaranteed dividends accrued~~

1 since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a
2 corporate distribution is principal if the distribution is pursuant to:

3 (1) ~~A call of shares;~~

4 (2) ~~A merger, consolidation, reorganization, or other plan by which assets~~
5 ~~of the corporation are acquired by another corporation; or~~

6 (3) ~~A total or partial liquidation of the corporation, including any distribution~~
7 ~~that the corporation indicates is a distribution in total or partial liquidation, or any~~
8 ~~distribution of assets, other than cash, pursuant to a court decree or final~~
9 ~~administrative order by a government agency ordering distribution of the particular~~
10 ~~assets.~~

11 ~~C. Distributions made from ordinary income by a regulated investment~~
12 ~~company or by a trust qualifying and electing to be taxed under federal law as a real~~
13 ~~estate investment trust are income. All other distributions made by the company or~~
14 ~~trust, including distributions from capital gains, depreciation, or depletion, whether~~
15 ~~in the form of cash or an option to take new stock or cash or an option to purchase~~
16 ~~additional shares, are principal.~~

17 ~~D. All other corporate distributions are income, including cash dividends,~~
18 ~~distributions of, or rights to subscribe to, shares, securities, or obligations of~~
19 ~~corporations other than the distributing corporation, and the proceeds of the rights~~
20 ~~or of the property distributions, except as Sub-sections A, B, or C above provide~~
21 ~~otherwise.~~

22 ~~E. If the distributing corporation gives a stockholder an option to receive a~~
23 ~~distribution either in cash or in its own shares, the distribution chosen is income,~~
24 ~~except as provided in Sub-sections B and C of this section.~~

25 ~~F. A trustee may rely upon any statement of the distributing corporation as~~
26 ~~to any fact relevant under any provision of this Sub-part concerning the source or~~
27 ~~character of dividends or distributions of corporate assets.~~

28 A. Except as otherwise provided in this Section, a trustee shall allocate to
29 income money received on account of an interest in a juridical person.

1 various types of property that would be classified as principal. The 1997 UPIA and
 2 this revision classify all non-monetary property as principal and thus include all of
 3 the prior categories of property that were classified as principal.

4 (b) A cash distribution may be large (for example, more than 10% but not
 5 more than 20% of a juridical person's assets) and have characteristics that suggest it
 6 should be treated as principal rather than income. For example, a juridical person
 7 may have received cash from a source other than the conduct of its normal business
 8 operations because it sold an investment asset; or it sold a business asset other than
 9 one held for sale to customers in the normal course of business and did not replace
 10 it; or it borrowed a large sum of money and secured the repayment of the loan with
 11 a substantial asset; or a principal source of its cash was from assets such as mineral
 12 interests, 90% of which would have been allocated to principal if the trust had owned
 13 the assets directly. In such a case the trustee, after considering the total return from
 14 the portfolio as a whole and the income component of that return, may decide to
 15 exercise the power under R.S. 9:2158 to make an adjustment between income and
 16 principal.

17 (c) Subsection E of this Section provides the trustee with discretion to make
 18 an allocation regarding a receipt in accordance with the other provisions of this
 19 Section or in accordance with the source of the receipt, provided a more specific rule
 20 governs the source of the receipt in this Part. For instance, if the source of the
 21 receipt is due to the trustee's interest in a limited liability company deriving funds
 22 from minerals, then the trustee may allocate the receipt in accordance with the
 23 provisions of this Section or in accordance with the provisions of R.S. 9:2152. In
 24 making the allocation, Subsection E also provides the trustee with the authority to
 25 rely upon a statement of the relevant juridical person as to the source of the receipt
 26 without requiring the trustee to otherwise ascertain its source.

27 (d) The Comments that accompanied the 1964 enactment of this provision,
 28 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.
 29 338.

30 §2150. Bonds Obligation to pay money

31 ~~A. Bonds or other obligations for the payment of money are principal at their~~
 32 ~~inventory value, except as provided in Sub-section B below. No provision shall be~~
 33 ~~made for amortization of bond premiums or for accumulation for discount. The~~
 34 ~~proceeds of sale, redemption, or other disposition of the bonds or obligations are~~
 35 ~~principal.~~

36 ~~B. The increment in value of a bond or other obligation for the payment of~~
 37 ~~money payable at a future time in accordance with a fixed schedule of appreciation~~
 38 ~~in excess of the price at which it was issued is income. The increment in value is~~
 39 ~~distributable at the time provided in R.S. 9:1841 through 9:1847, R.S. 9:1891~~
 40 ~~through 9:1906, and R.S. 9:1961 through 9:1965, from the first principal cash~~
 41 ~~available to the beneficiary who was the income beneficiary at the time of increment.~~

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Revision Comments - 2020

(a) This revision modifies existing law to make clear that this provision applies only to a trustee's operation of a sole proprietorship. The operation of other business forms is treated in R.S. 9:2149.

(b) A sole proprietorship is not a separate juridical person in Louisiana, but merely a method of doing business in which an individual personally owns the assets and retains the liabilities of a business. See, e.g., *Robinson v. Heard*, 809 So. 2d 943, 946 (La. 2002) ("A sole proprietorship is not a legal entity. It is merely a designation assigned to a manner of doing business by an individual. While the individual involved in the sole proprietorship may consider the business to be separate and distinct from his/her person, there exists no legal distinction between the individual and the business.").

(c) The Comments that accompanied the 1964 enactment of this provision, which are superseded by the 2020 Revision Comments, appear in Acts 1964, No. 338.

§2151.1. Insurance contracts

A. A trustee shall allocate to principal the proceeds of a life insurance policy in which the trustee is named as beneficiary.

B. A trustee shall allocate to principal the proceeds of a contract that insures the trustee against loss for damage to, destruction of, or loss of an interest in a trust asset.

C. 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.

D. 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 loss of profits from a business.

Revision Comments - 2020

This revision is based upon Section 407 of the UPIA (1997). The term "proceeds," as used in this Section, refers to the insurable benefit under the contract and does not include other payments associated with the benefit, such as interest.

§2151.2. Deferred compensation, annuities, and similar payments

A. Payments made in money or other property to a trustee over a period of years or during the life of an individual from an annuity, an individual retirement account, an employee-benefit plan, a pension plan, a profit-sharing plan, a deferred

1 (d) Paragraph (A)(2) of this Section differentiates between payments that are
 2 required to be made and all other payments. To the extent that a payment is required
 3 to be made (either under federal income tax rules, or, in the case of a plan that is not
 4 subject to those rules, under the terms of the plan), 10% of the amount received is
 5 allocated to income and the balance to principal. The right to receive payments
 6 under this Paragraph is a type of liquidating asset and therefore is treated similarly
 7 to property subject to depletion under R.S. 9:2154. All other payments are allocated
 8 to principal because they represent a change in the form of the principal asset. To
 9 that extent, this rule follows the general policy of R.S. 9:2144, which provides that
 10 property received in replacement of property shall be allocated to principal.

11 (e) Under Revenue Ruling 2006-26, the Internal Revenue Service declared
 12 that the 10% allocation provided in Section 409 of the UPIA did not qualify for the
 13 IRS's safe harbors, as 10% of a required minimum distribution is not a reasonable
 14 apportionment of the total return of the trust between income and principal. Under
 15 the ruling, the trustee is required to make available to the beneficiary the income of
 16 an IRA or defined contribution plan in order to qualify. To comply with the ruling,
 17 Section 409 of the UPIA was amended in 2008 to provide separate rules for
 18 determining the income of a marital trust that is the beneficiary of an IRA or similar
 19 arrangement. This revision simplifies the provisions of the UPIA while, at the same
 20 time, allowing the preservation of the marital deduction.

21 §2152. Proceeds of mineral interests

22 ~~A. If any part of the principal consists of a right to receive royalties or~~
 23 ~~overriding royalties, production from working interests or production payments,~~
 24 ~~proceeds from net profits interests or payments for the right to extract minerals from~~
 25 ~~immovable property, or other interests in oil, gas, and other minerals, the allocation~~
 26 ~~of the proceeds of such interests shall be made as follows:~~

27 (1) ~~If received as a delay rental on a lease, extension of payments on a lease,~~
 28 ~~shut-in royalty, or bonus for the execution of a lease, the proceeds shall be allocated~~
 29 ~~to income;~~

30 (2) ~~If received from a production payment, then to the extent of any stated~~
 31 ~~factor for interest or its equivalent, the proceeds shall be allocated to income; the~~
 32 ~~balance of such proceeds shall be apportioned between principal and income by~~
 33 ~~allocating to principal the fraction thereof that the unrecovered cost of the production~~
 34 ~~payment bears to the remaining balance due upon the production payment (excluding~~
 35 ~~any factor for interest or its equivalent) and by allocating the remainder of such~~
 36 ~~proceeds to income;~~

37 (3) ~~If received from a royalty, overriding royalty, limited royalty, or working~~
 38 ~~interest, net profits interest, or from any other interest in oil, gas, or other minerals,~~
 39 ~~not specifically covered in this section, such proceeds shall be allocated to principal~~

1 ~~until such time as the cost for such interest (including both tangible and intangible~~
 2 ~~drilling cost) has been fully recovered; thereafter, such proceeds shall be apportioned~~
 3 ~~between principal and income so that twenty-seven and one-half percent of the gross~~
 4 ~~proceeds (but not to exceed fifty percent of the net proceeds remaining after payment~~
 5 ~~of all expenses, direct and indirect, computed without allowances for depletion) shall~~
 6 ~~be allocated to a reserve for depletion to be added to principal and the balance of the~~
 7 ~~gross proceeds, after payment therefrom of all expenses, direct and indirect, shall be~~
 8 ~~allocated to income.~~

9 ~~B. This section is not applicable to timber, water, soil, sod, dirt, turf, mosses,~~
 10 ~~shells, gravel, or other natural resources.~~

11 A. To the extent that a trustee accounts for receipts from an interest in
 12 mineral rights or other interest in oil, gas, or other minerals pursuant to this Section,
 13 the trustee shall allocate them as follows:

14 (1) If received as delay rental or annual rent on a mineral lease, a receipt
 15 shall be allocated to income.

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

20 (3) If received as a royalty, overriding royalty, shut-in payment, take-or-pay
 21 payment, or bonus, a receipt shall be allocated in accordance with what is reasonable
 22 and equitable in view of the interests of those entitled to income as well as of those
 23 entitled to principal.

24 (4) If an amount is received from a working interest or any other interest not
 25 provided for in this Subsection, a receipt shall be allocated in accordance with what
 26 is reasonable and equitable in view of the interests of those entitled to income as well
 27 as of those entitled to principal.

28 B. This Section applies whether or not a decedent or donor was extracting
 29 oil, gas, or other minerals before the interest became subject to the trust.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (e) The Comments that accompanied the 1964 enactment of this provision,
 2 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.
 3 338.

4 §2153. Timber

5 A. If part of the principal consists of land from which timber may be
 6 removed, the receipts from taking the timber from the land shall be allocated in
 7 accordance with what is reasonable and equitable in view of the interests of those
 8 entitled to income as well as of those entitled to principal, ~~and in view of the manner~~
 9 ~~in which men of ordinary prudence, discretion, and intelligence would act in the~~
 10 ~~management of their own affairs.~~

11 B. An allocation of a receipt under this Section is presumed to be reasonable
 12 and equitable if ninety percent is allocated to principal and ten percent to income.

13 Any other allocation shall not be presumed to be unreasonable or inequitable.

14 Revision Comments - 2020

15 (a) This revision updates the language but maintains the "reasonable and
 16 equitable" standard. Like R.S. 9:2152, Subsection B adopts a safe harbor providing
 17 that an allocation of ninety percent to principal and ten percent to income is
 18 presumed to be reasonable and equitable but at the same time being clear that other
 19 allocations are not necessarily unreasonable or inequitable. It also deletes the
 20 "prudent man" rule that existing under prior law because persons of "ordinary
 21 prudence, discretion, and intelligence" do not generally consider the interests of
 22 successor beneficiaries in managing their own affairs. See, e.g., UPIA (1997) §103,
 23 Comment.

24 (b) This Section is consistent with the principles of Louisiana property law
 25 that generally treat trees as capital assets rather than fruits. In some instances,
 26 however, trees in a tree farm or in a regularly exploited forest must be treated as
 27 fruits. See, e.g., Civil Code Article 551, Comment (b).

28 (c) The Comments that accompanied the 1964 enactment of this provision,
 29 which are superseded by the 2020 Revision Comments, appear in Acts 1964, No.
 30 338.

31 §2154. Other property subject to depletion

32 A. Except as provided in R.S. 9:2152 and ~~9:2153~~ 2153, if the principal
 33 consists of property subject to depletion, ~~receipts from the property not in excess of~~
 34 ~~five percent of its inventory value are income, and the balance is principal~~ the
 35 receipts shall be allocated in accordance with what is reasonable and equitable in
 36 view of the interests of those entitled to income as well as those entitled to principal.

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Revision Comments - 2020

This Section deviates from Sections 501, 502, and 504 of the UPIA (1997). Paragraph (A)(2) of the prior law regarding depreciable property has been deleted in favor of a new provision, R.S. 9:2156.1, which is based upon Section 503 of the UPIA. Paragraphs (A)(7) and (C)(9) of the prior law regarding allocation of taxes have been deleted in favor of a new provision, R.S. 9:2156.2. Paragraph (C)(12) of the prior law, which allocated to principal all expenses not otherwise allocated to income, has also been deleted in light of the revision now contained in R.S. 9:2142(3).

§2156.1. Transfers from income to principal for depreciation

A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation but may not transfer any amount for depreciation during the administration of a succession or for that portion of an immovable used or available for use by a beneficiary as a residence or of corporeal movables held or made available for the personal use or enjoyment of a beneficiary. An amount transferred to principal need not be held as a separate fund.

Revision Comments - 2020

(a) This Section is based upon Section 503 of the UPIA (1997). Under Section 503(a) of the UPIA and this Section, the term "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) Under this revision, a transfer to principal for depreciation is discretionary with the trustee. Prior law provided that a charge shall be made against income for "... a reasonable allowance for depreciation under generally accepted accounting principles..." That provision was resisted by many trustees who did not provide for depreciation for a number of reasons. One reason relied upon was that a charge for depreciation was not needed to protect the beneficiaries if the value of the land was increasing; another was that generally accepted accounting principles might not require depreciation to be taken if the property was not part of a business. This revision allows the trustee more flexibility and broader discretion in taking depreciation.

§2156.2. Income taxes

A. A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

B. A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is denominated an income tax by the taxing authority.

C. A tax required to be paid by a trustee on the trust's share of a juridical person's taxable income shall be paid as follows:

1 Section 5. The provisions of this Act shall become effective on January 1, 2021.
2 Except as specifically provided in this Act or in the provisions of the trust, the provisions of
3 this Act apply to trusts existing as of the effective date of this Act.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____