RÉSUMÉ DIGEST

ACT 17 (HB 123) **2020 Regular Session** **Gregory Miller**

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

New law makes changes in terminology.

Existing 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, prior law provided that trust receipts and expenditures shall be allocated entirely to principal.

New law 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.

Existing 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, prior law employed the "prudent man" standard that provided that trust receipts and expenses were in accordance with what is reasonable and equitable.

New law makes semantic changes, and removes the "prudent man" standard as inapplicable.

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

New law makes semantic changes.

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

New law makes semantic changes.

Existing 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.

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

Existing 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.

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

Prior law (R.S. 9:2148) provided that succession receipts and expenses were in accordance with the laws regulating donations mortis causa.

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

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

New law expands the applicability of existing 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, new law more generally classifies all non-monetary property as principal.

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

New law conforms 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.

Prior law (R.S. 9:2151) provided for the allocation of proceeds and losses in the operation of a business of which the trustee is a proprietor or partner, and provided for the "prudent man" standard.

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

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

New 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.

Prior law (R.S. 9:2152) provided 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.

New law provides that royalty payments shall be allocated in accordance with what is reasonable and equitable. New 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. New law also abolishes the open mines doctrine in trust.

New 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 prior law or new law.

Existing law (R.S. 9:2153) provides that receipts from timber shall be allocated in accordance with what is reasonable and equitable. Prior law provided for the "prudent man" standard.

New law eliminates the "prudent man" standard as inapplicable. New law 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.

Prior law (R.S. 9:2154) provided 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.

New law provides that receipts from other property subject to depletion shall be allocated in accordance with what is reasonable and equitable. New 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.

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

New law makes semantic changes and eliminates charges concerning depreciable property and taxes now included in new law (R.S. 9:2156.1 and 2156.2). New law provides 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.

New law (R.S. 9:2156.1) provides 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.

New 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. New 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.

Prior law (R.S. 9:2157) defined the term "inventory value".

New law repeals the prior law.

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

New law repeals prior law.

New 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.

Effective Jan. 1, 2021.

(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)