

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1014 Session of 2001

INTRODUCED BY GREENLEAF, LEMMOND, COSTA, M. WHITE AND HOLL, JUNE 21, 2001

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 15, 2001

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 situs of inter vivos trust, for rules of succession, for
4 power of decedent, for equitable apportionment of Federal
5 estate tax, for definitions and for termination of
6 custodianship; providing for delay in transfer of custodial
7 property after minor attains age 21 AND FOR INDIVIDUALS
8 PRESUMED DEAD FROM THE SEPTEMBER 11, 2001, TERRORIST ATTACK;
9 further providing for effect of disclaimer; providing for
10 power of trustee to resign; extensively revising provisions
11 on principal and income; and making conforming amendments.

<—

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 724 of Title 20 of the Pennsylvania
15 Consolidated Statutes is amended to read:

16 § 724. Situs of inter vivos trust.

17 (a) When provided for in trust instrument.--If the trust
18 instrument expressly provides for the situs of the inter vivos
19 trust, its situs shall be at the place within or without the
20 Commonwealth which is in accord with such provision.

21 (b) Not provided for in trust instrument.--If the trust
22 instrument does not expressly provide for the situs of the inter

1 vivos trust, its situs shall be:

2 (1) Resident settlor.--In the case of an inter vivos  
3 trust whose settlor is domiciled in the Commonwealth:

4 (i) in the settlor's lifetime, either in the county  
5 of his principal residence or in the county in which any  
6 of the trustees resides or [is located] has a place of  
7 business; and

8 (ii) after the settlor's death, either in the county  
9 in which letters have been granted to his personal  
10 representative, or in a county in which letters could  
11 have been granted, or in a county which is the principal  
12 place of the trust's administration in which any trustee  
13 resides [or is located] or has a place of business.

14 (2) Nonresident settlor.--In the case of an inter vivos  
15 trust whose settlor:

16 (i) is not domiciled in the Commonwealth at the time  
17 when during his lifetime the first application is made to  
18 a court concerning the trust; or

19 (ii) was not domiciled in the Commonwealth at his  
20 death if the first application to a court concerning the  
21 trust was made thereafter,

22 in a county which is the principal place of the trust's  
23 administration or in which any trustee resides [or is  
24 located,] or has a place of business and if there is no such  
25 trustee, then in a county where property of the trust is  
26 located.

27 Section 2. Section 2104 of Title 20 is amended by adding a  
28 paragraph to read:

29 § 2104. Rules of succession.

30 The provisions of this chapter shall be applied to both real

1 and personal estate in accordance with the following rules:

2 \* \* \*

3 (11) Intestacy following valid prior estate.--In the  
4 event of an intestacy occurring at the termination of a valid  
5 prior estate, the identity and shares of the intestate heirs  
6 then entitled to take shall be ascertained as though the  
7 death of the testator, settlor or grantor had occurred at the  
8 time of the termination of the prior estate.

9 Section 3. Section 3701 of Title 20 is amended to read:

10 § 3701. Power of decedent.

11 A testator, settlor, donor or possessor of any appropriate  
12 power of appointment may direct how the Federal estate tax or  
13 the Federal generation-skipping transfer tax due because of his  
14 death, including interest and penalties, shall be apportioned or  
15 may grant a discretionary power to another so to direct, but:

16 (1) any direction regarding apportionment of the Federal  
17 generation-skipping transfer tax must expressly refer to that  
18 tax[.]; and

19 (2) [Any] any direction waiving the right of recovery of  
20 Federal estate tax, provided for under section 2207A of the  
21 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
22 2207A), on [the] property includable in the [taxable] gross  
23 estate by reason of section 2044 of the Internal Revenue Code  
24 of 1986, must expressly refer to that right.

25 Any such direction shall take precedence over the provisions of  
26 this chapter insofar as the direction provides for the payment  
27 of the tax or any part thereof from property the disposition of  
28 which can be controlled by the instrument containing the  
29 direction or delegating the power to another.

30 Section 4. Section 3702(f) and (h) of Title 20 are amended

1 and the section is amended by adding a subsection to read:

2 § 3702. Equitable apportionment of Federal estate tax.

3 \* \* \*

4 (f) Additional Federal estate tax.--

5 (1) Any increase in Federal estate tax caused by the  
6 inclusion under section 2044 of the Internal Revenue Code of  
7 1986 (Public Law 99-514, 26 U.S.C. § 2044) of a qualified  
8 terminable interest trust in the estate of a decedent shall  
9 be apportioned against that trust.

10 (2) Any increase in Federal estate tax caused by a  
11 taxable event occurring in a qualified domestic trust under  
12 section 2056A of the Internal Revenue Code of 1986 (Public  
13 Law 99-514, 26 U.S.C. § 2056A) shall be apportioned against  
14 that trust notwithstanding the provisions of subsection (b)  
15 or (c).

16 (3) Any additional Federal estate tax due because a  
17 qualified heir disposes of qualified real property or ceases  
18 to use it for the qualified use shall be apportioned against  
19 the qualified heir notwithstanding the provisions of  
20 subsection (b).

21 \* \* \*

22 (h) Interest and penalties.--Interest and penalties shall be  
23 apportioned in the same manner as the principal amount of the  
24 Federal estate tax [unless the court finds it inequitable to do  
25 so by reason of special circumstances in which case the court  
26 may direct a different apportionment of interest and penalties.]  
27 subject to a fiduciary's power to adjust under Chapter 81  
28 (relating to principal and income).

29 \* \* \*

30 (j) Gift tax.--Gift tax paid by the decedent and imposed on

1 a gift by the decedent or his spouse within three years of the  
2 date of his death and included in his gross estate shall be  
3 treated in the same manner as though the amount of such gift tax  
4 had been a preresiduary testamentary gift by the decedent to the  
5 donee of the gift.

6 Section 5. Section 5164 of Title 20 is amended to read:  
7 § 5164. Distributions for support and education.

8 All income received by a guardian of the estate of a minor,  
9 including, subject to the requirements of Federal law relating  
10 thereto, all funds received from the Department of Veterans'  
11 Affairs, Social Security Administration and other periodic  
12 retirement or disability payments under private or government  
13 plans, in the exercise of a reasonable discretion, may be  
14 expended in the care, maintenance and education of the minor  
15 without the necessity of court approval. The court, for cause  
16 shown and with only such notice as it considers appropriate in  
17 the circumstances, may authorize or direct the payment or  
18 application of any or all of the income or principal of the  
19 estate of a minor for the care, maintenance or education of the  
20 minor, his spouse or children, or for the reasonable funeral  
21 expenses of the minor's spouse, child or indigent parent. In  
22 proper cases, the court may order payment of amounts directly to  
23 the ward for his maintenance or for incidental expenses and may  
24 ratify payments made for these purposes. For purposes of this  
25 section, the term "income" means income as determined in  
26 accordance with the rules set forth in Chapter 81 (relating to  
27 principal and income), other than the power to adjust and the  
28 power to convert to a unitrust.

29 Section 6. The definition of "minor" in section 5301(b) of  
30 Title 20 is amended to read:

1 § 5301. Short title of chapter and definitions.

2 \* \* \*

3 (b) Definitions.--The following words and phrases when used  
4 in this chapter shall have the meanings given to them in this  
5 subsection unless the context clearly indicates otherwise:

6 \* \* \*

7 "Minor." An individual who has not attained 21 years of  
8 age[.], except that when used with reference to the beneficiary  
9 for whose benefit custodial property is held or is to be held,  
10 an individual who has not attained the age at which the  
11 custodian is required under sections 5320 (relating to  
12 termination of custodianship) and 5321 (relating to delay in  
13 transfer of custodial property after minor attains age 21) to  
14 transfer the custodial property to the beneficiary.

15 \* \* \*

16 Section 7. Section 5320 of Title 20 is amended to read:

17 § 5320. Termination of custodianship.

18 The custodian shall transfer in an appropriate manner the  
19 custodial property to the minor or the minor's estate upon the  
20 earlier of:

21 (1) the minor's attainment of 21 years of age with  
22 respect to custodial property transferred by gift under  
23 section 5304 (relating to transfer by gift or exercise of  
24 power of appointment) [or 5305 (relating to transfer  
25 authorized by will or trust)];

26 [(2) the minor's attainment of majority under the laws  
27 of this Commonwealth other than this chapter with respect to  
28 custodial property transferred under section 5306 (relating  
29 to other transfer by fiduciary) or 5307 (relating to transfer  
30 by obligor); or

1           (3) the minor's death.]

2           (2) the minor's attainment of 21 years of age with  
3 respect to a custodian nominated under section 5303 (relating  
4 to nomination of custodian) or with respect to custodial  
5 property transferred by exercise of power of appointment  
6 under section 5304 or by will or trust under section 5305  
7 (relating to transfer authorized by will or trust), unless  
8 the time of transfer of the custodial property to the minor  
9 is delayed under section 5321 (relating to delay in transfer  
10 of custodial property after minor attains age 21) to a time  
11 after the minor attains 21 years of age;

12           (3) the time specified in the transfer pursuant to  
13 section 5309 (relating to manner of creating custodial  
14 property and effecting transfer) if the time of transfer of  
15 the custodial property to the minor is delayed under section  
16 5321 to a time after the time the minor attains 21 years of  
17 age;

18           (4) the minor's attainment of majority under the laws of  
19 this Commonwealth other than this chapter with respect to  
20 custodial property transferred under section 5306 (relating  
21 to other transfer by fiduciary) or 5307 (relating to transfer  
22 by obligor); or

23           (5) the minor's death.

24       Section 8. Title 20 is amended by adding a section to read:

25 § 5321. Delay in transfer of custodial property after  
26 minor attains age 21.

27       (a) General rule.--Subject to the requirements and  
28 limitations of this section, the time for transfer to the minor  
29 of custodial property transferred under or pursuant to section  
30 5303 (relating to nomination of custodian), 5304 (relating to

1 transfer by gift or exercise of power of appointment) or 5305  
2 (relating to transfer authorized by will or trust) may be  
3 delayed until a specified time after the time the minor attains  
4 21 years of age, which time shall be specified in the transfer  
5 pursuant to section 5309 (relating to manner of creating  
6 custodial property and effecting transfer).

7 (b) How to specify a delayed time for transfer.--To specify  
8 a delayed time for transfer to the minor of the custodial  
9 property, the words "as custodian for (name of minor) until age  
10 (age for delivery of property to minor) under the Pennsylvania  
11 Uniform Transfers to Minors Act" shall be substituted in  
12 substance for the words "as custodian for (name of minor) under  
13 the Pennsylvania Uniform Transfers to Minors Act" in making the  
14 transfer pursuant to section 5309.

15 (c) Transfer authorized by will or trust; nomination of  
16 custodian.--The time for transfer to the minor of custodial  
17 property transferred under or pursuant to section 5303 or 5305  
18 may be delayed under this section only if the governing will or  
19 trust or nomination provides in substance that the custodianship  
20 is to continue until the time the minor attains a specified age,  
21 which time may not be later than the time the minor attains 25  
22 years of age, and in that case the governing will or trust or  
23 nomination shall determine the time to be specified in the  
24 transfer pursuant to section 5309.

25 (d) Transfer by exercise of power appointment.--The time for  
26 transfer to the minor of custodial property transferred by the  
27 irrevocable exercise of a power of appointment under section  
28 5304 may be delayed under this section only if the transfer  
29 pursuant to section 5309 provides in substance that the  
30 custodianship is to continue until the time the minor attains a

1 specified age, which time may not be later than the time the  
2 minor attains 25 years of age.

3 (e) When section not applicable.--This section shall not  
4 apply to the time for transfer to the minor of custodial  
5 property transferred by irrevocable gift under section 5304.

6 (f) When transfer does not specify age.--If the transfer  
7 pursuant to section 5309 does not specify any age, the time for  
8 the transfer of the custodial property to the minor under  
9 section 5320 (relating to termination of custodianship) is the  
10 time when the minor attains 21 years of age.

11 (g) When transfer provides for a longer duration of  
12 custodianship than permitted by this section.--If the transfer  
13 pursuant to section 5309 provides in substance that the duration  
14 of the custodianship is for a time longer than the maximum time  
15 permitted by this section for the duration of a custodianship  
16 created by that type of transfer, the custodianship shall be  
17 deemed to continue only until the time the minor attains the  
18 maximum age permitted by this section for the duration of a  
19 custodianship created by that type of transfer.

20 Section 9. Section 5536(a) of Title 20 is amended to read:

21 § 5536. Distributions of income and principal during  
22 incapacity.

23 (a) In general.--All income received by a guardian of the  
24 estate of an incapacitated person, including (subject to the  
25 requirements of Federal law relating thereto) all funds received  
26 from the Veterans' Administration, Social Security  
27 Administration and other periodic retirement or disability  
28 payments under private or governmental plans, in the exercise of  
29 a reasonable discretion, may be expended in the care and  
30 maintenance of the incapacitated person, without the necessity

1 of court approval. The court, for cause shown and with only such  
2 notice as it considers appropriate in the circumstances, may  
3 authorize or direct the payment or application of any or all of  
4 the income or principal of the estate of an incapacitated person  
5 for the care, maintenance or education of the incapacitated  
6 person, his spouse, children or those for whom he was making  
7 such provision before his incapacity, or for the reasonable  
8 funeral expenses of the incapacitated person's spouse, child or  
9 indigent parent. In proper cases, the court may order payment of  
10 amounts directly to the incapacitated person for his maintenance  
11 or for incidental expenses and may ratify payments made for  
12 these purposes. For purposes of this subsection, the term  
13 "income" means income as determined in accordance with the rules  
14 set forth in Chapter 81 (relating to principal and income),  
15 other than the power to adjust and the power to convert to a  
16 unitrust.

17 \* \* \*

18 SECTION 9.1. SECTION 5601 OF TITLE 20 IS AMENDED BY ADDING <—  
19 SUBSECTIONS TO READ:

20 § 5601. GENERAL PROVISIONS.

21 \* \* \*

22 (E.1) LIMITATION ON APPLICABILITY IN COMMERCIAL  
23 TRANSACTION.--

24 (1) SUBSECTIONS (C), (D) AND (E) DO NOT APPLY TO A POWER  
25 OR A POWER OF ATTORNEY CONTAINED IN AN INSTRUMENT USED IN A  
26 COMMERCIAL TRANSACTION WHICH SIMPLY AUTHORIZES AN AGENCY  
27 RELATIONSHIP. THIS PARAGRAPH INCLUDES THE FOLLOWING:

28 (I) A POWER GIVEN TO OR FOR THE BENEFIT OF A  
29 CREDITOR IN CONNECTION WITH A LOAN OR OTHER CREDIT  
30 TRANSACTION.

1           (II) A POWER EXCLUSIVELY GRANTED TO FACILITATE  
2           TRANSFER OF STOCK, BONDS AND OTHER ASSETS.

3           (III) A POWER CONTAINED IN THE GOVERNING DOCUMENT  
4           FOR A CORPORATION, PARTNERSHIP OR LIMITED LIABILITY  
5           COMPANY OR OTHER LEGAL ENTITY BY WHICH A DIRECTOR,  
6           PARTNER OR MEMBER AUTHORIZES OTHERS TO DO OTHER THINGS ON  
7           BEHALF OF THE ENTITY.

8           (IV) A WARRANT OF ATTORNEY CONFERRING AUTHORITY TO  
9           CONFESS JUDGMENT.

10          (2) POWERS AND POWERS OF ATTORNEY EXEMPTED BY THIS  
11          SUBSECTION NEED NOT BE DATED.

12          (E.2) LIMITATION ON APPLICABILITY IN HEALTH CARE POWER OF  
13          ATTORNEY.--SUBSECTIONS (C) AND (D) DO NOT APPLY TO A POWER OF  
14          ATTORNEY WHICH EXCLUSIVELY PROVIDES FOR HEALTH CARE DECISION  
15          MAKING.

16          \* \* \*

17          SECTION 9.2. TITLE 20 IS AMENDED BY ADDING A SECTION TO  
18 READ:

19          § 5706. PERSONS PRESUMED DEAD FROM SEPTEMBER 11, 2001,  
20          TERRORIST ATTACK.

21          THE REQUIREMENTS OF SECTIONS 5703 (RELATING TO DISTRIBUTION  
22          OF PROPERTY OF ABSENTEE) AND 5704 (RELATING TO NOTICE TO  
23          ABSENTEE) SHALL NOT APPLY WITH RESPECT TO A PERSON WHO IS  
24          PRESUMED DEAD AS A RESULT OF THE TERRORIST ATTACKS ON SEPTEMBER  
25          11, 2001. THESE TERRORIST ATTACKS CONSTITUTE SPECIFIC PERILS  
26          WITHIN THE MEANING OF SECTION 5701(C) (RELATING TO PROOF OF  
27          DEATH) WHICH WOULD JUSTIFY A COURT TO IMMEDIATELY DETERMINE THAT  
28          THE PRESUMED DECEDENT DIED ON SEPTEMBER 11, 2001.

29          Section 10. Section 6205(a) of Title 20 is amended and the  
30 section is amended by adding a subsection to read:

1 § 6205. Effect of disclaimer.

2 (a) In general.--A disclaimer relates back for all purposes  
3 to the date of the death of the decedent or the effective date  
4 of the inter vivos transfer or third-party beneficiary contract  
5 as the case may be. The disclaimer shall [be binding upon the  
6 disclaimant and all persons claiming through or under him.] not  
7 in any way diminish the interest of any person other than the  
8 disclaimant in such person's own right under the instrument  
9 creating the disclaimed interest or under the intestate laws nor  
10 diminish any interest to which such person becomes entitled  
11 under subsection (b) by reason of the disclaimer.

12 \* \* \*

13 (d) Rights of creditors of disclaimant.--Nothing in this  
14 section shall determine the effect of a disclaimer upon the  
15 rights of creditors of the disclaimant.

16 Section 11. Title 20 is amended by adding sections to read:  
17 § 7104. Power of trustee to resign.

18 (a) Court approval.--Any trustee may resign with court  
19 approval.

20 (b) Without court approval if authorized by governing  
21 instrument.--Any trustee may resign without court approval if  
22 authorized to resign by the governing instrument.

23 (c) When individual trustee may resign without court  
24 approval and without authorization in governing instrument.--  
25 Unless expressly provided to the contrary in the governing  
26 instrument, an individual trustee may resign without court  
27 approval and without authorization in the governing instrument  
28 if:

29 (1) consented to in writing by all co-trustees, if there  
30 are one or more co-trustees; and



1 Subchapter

2 A. Preliminary Provisions; Power to Adjust; Power to Convert  
3 to Unitrust

4 B. Decedent's Estate or Terminating Income Interest

5 C. Apportionment at Beginning and End of Income Interest

6 D. Allocation of Receipts During Administration of Trust

7 E. Allocation of Disbursements During Administration of  
8 Trust

9 F. (Reserved)

10 G. (Reserved)

11 H. Miscellaneous Provisions

12 SUBCHAPTER A

13 PRELIMINARY PROVISIONS; POWER TO ADJUST;

14 POWER TO CONVERT TO UNITRUST

15 Sec.

16 8101. Scope.

17 8102. Definitions.

18 8103. Fiduciary duties; general principles.

19 8104. Trustee's power to adjust.

20 8105. Power to convert to unitrust.

21 8106. Judicial control of discretionary powers.

22 8107. (Reserved).

23 8108. (Reserved).

24 8109. (Reserved).

25 8110. (Reserved).

26 8111. (Reserved).

27 8112. (Reserved).

28 8113. Charitable trusts.

29 § 8101. Scope.

30 This chapter shall be known and may be cited as the

1 Pennsylvania Uniform Principal and Income Act.

2 § 8102. Definitions.

3 The following words and phrases when used in this chapter  
4 shall have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Accounting period." A calendar year, unless another 12-  
7 month period is selected by a fiduciary. The term includes a  
8 portion of a calendar year or other 12-month period which begins  
9 when an income interest begins or ends when an income interest  
10 ends.

11 "Beneficiary." Includes:

12 (1) in the case of a decedent's estate, any heir,  
13 legatee and devisee; and

14 (2) in the case of a trust, an income beneficiary and a  
15 remainder beneficiary.

16 "Fiduciary." A personal representative or a trustee.

17 "Income." Money or property which a fiduciary receives as  
18 current return from a principal asset. The term includes a  
19 portion of receipts from a sale, exchange or liquidation of a  
20 principal asset, to the extent provided in Subchapter D  
21 (relating to allocation of receipts during administration of  
22 trust).

23 "Income beneficiary." A person to whom or which net income  
24 of a trust is or may be payable.

25 "Income interest." The right of an income beneficiary to  
26 receive all or part of net income, whether the governing  
27 instrument requires it to be distributed or authorizes it to be  
28 distributed in the trustee's discretion.

29 "Mandatory income interest." The right of an income  
30 beneficiary to receive net income which the governing instrument

1 requires the fiduciary to distribute.

2 "Net income." The:

3 (1) total receipts allocated to income during an  
4 accounting period; minus

5 (2) disbursements made from income during the period;  
6 plus or minus

7 (3) transfers under this chapter to or from income  
8 during the period.

9 "Person." Any individual; corporation; business trust;  
10 estate; trust; partnership; limited liability company;  
11 association; joint venture; government; governmental  
12 subdivision, agency or instrumentality; public corporation; or  
13 other legal or commercial entity.

14 "Principal." Property held in trust for distribution to a  
15 remainder beneficiary when the trust terminates.

16 "Remainder beneficiary." A person entitled to receive  
17 principal when an income interest ends.

18 "Sui juris beneficiary." Includes:

19 (1) a court-appointed guardian of an incapacitated  
20 beneficiary;

21 (2) an agent for an incompetent beneficiary; and

22 (3) a court-appointed guardian of a minor beneficiary's  
23 estate or, if none, the parents of the minor beneficiary.

24 "Trust." Includes a legal life estate arrangement.

25 "Trustee." Includes an original, additional or successor  
26 trustee, whether or not appointed or confirmed by a court.

27 § 8103. Fiduciary duties; general principles.

28 (a) Allocation.--In allocating receipts and disbursements to  
29 or between principal and income and with respect to any matter  
30 within the scope of this chapter, the following shall apply:

1           (1) A fiduciary shall administer a trust or estate in  
2 accordance with the governing instrument, even if there is a  
3 different provision in this chapter.

4           (2) A fiduciary may administer a trust or estate by the  
5 exercise of a discretionary power of administration regarding  
6 a matter within the scope of this chapter given to the  
7 fiduciary by the governing instrument, even if the exercise  
8 of the power produces a result different from a result  
9 required or permitted by this chapter. No inference that the  
10 fiduciary has improperly exercised the discretionary power  
11 shall arise from the fact that the fiduciary has made an  
12 allocation contrary to a provision of this chapter.

13           (3) A fiduciary shall administer a trust or estate in  
14 accordance with this chapter if the governing instrument does  
15 not contain a different provision or does not give the  
16 fiduciary a discretionary power of administration regarding a  
17 matter within the scope of this chapter.

18           (4) A fiduciary shall add a receipt or charge a  
19 disbursement to principal to the extent that the governing  
20 instrument and this chapter do not provide a rule for  
21 allocating the receipt or disbursement to or between  
22 principal and income.

23           (b) Discretionary power.--In exercising a discretionary  
24 power of administration regarding a matter within the scope of  
25 this chapter, whether granted by the governing instrument or  
26 this chapter, including sections 8104 (relating to trustee's  
27 power to adjust) and 8105 (relating to power to convert to  
28 unitrust), a fiduciary shall administer a trust or estate  
29 impartially based on what is fair and reasonable to all of the  
30 beneficiaries, except to the extent that the governing

1 instrument clearly manifests an intention that the fiduciary  
2 shall or may favor one or more of the beneficiaries. A  
3 determination in accordance with this chapter is presumed to be  
4 fair and reasonable to all of the beneficiaries.

5 § 8104. Trustee's power to adjust.

6 (a) Adjustment.--Subject to subsections (c) and (f), a  
7 trustee may adjust between principal and income by allocating an  
8 amount of income to principal or an amount of principal to  
9 income to the extent the trustee considers appropriate if:

10 (1) the governing instrument describes what may or must  
11 be distributed to a beneficiary by referring to the trust's  
12 income; and

13 (2) the trustee determines, after applying the rules in  
14 section 8103(a) (relating to fiduciary duties; general  
15 principles), that the trustee is unable to comply with  
16 section 8103(b).

17 (b) Considerations.--In deciding whether and to what extent  
18 to exercise the power conferred by subsection (a), a trustee may  
19 consider, among other things, all of the following:

20 (1) The size of the trust.

21 (2) The nature and estimated duration of the trust.

22 (3) The liquidity and distribution requirements of the  
23 trust.

24 (4) The needs for regular distributions and preservation  
25 and appreciation of capital.

26 (5) The expected tax consequences of an adjustment.

27 (6) The net amount allocated to income under the other  
28 sections of this chapter and the increase or decrease in the  
29 value of the principal assets, which the trustee may estimate  
30 as to assets for which market values are not readily

1 available.

2 (7) The assets held in the trust; the extent to which  
3 they consist of financial assets, interests in closely held  
4 enterprises, tangible and intangible personal property or  
5 real property; the extent to which an asset is used by a  
6 beneficiary; and whether an asset was purchased by the  
7 trustee or received from the settlor or testator.

8 (8) To the extent reasonably known to the trustee, the  
9 needs of the beneficiaries for present and future  
10 distributions authorized or required by the governing  
11 instrument.

12 (9) Whether and to what extent the governing instrument  
13 gives the trustee the power to invade principal or accumulate  
14 income or prohibits the trustee from invading principal or  
15 accumulating income, and the extent to which the trustee has  
16 exercised a power from time to time to invade principal or  
17 accumulate income.

18 (10) The intent of the settlor or testator.

19 (11) The actual and anticipated effect of economic  
20 conditions on principal and income and effects of inflation  
21 and deflation.

22 (c) Prohibited adjustments.--A trustee may not make an  
23 adjustment under this section if any of the following apply:

24 (1) The adjustment would diminish the income interest in  
25 a trust which requires all of the income to be paid at least  
26 annually to a spouse and for which a Federal estate tax or  
27 gift tax marital deduction would be allowed, in whole or in  
28 part, if the trustee did not have the power to make the  
29 adjustment.

30 (2) The adjustment would reduce the actuarial value of

1 the income interest in a trust to which a person transfers  
2 property with the intent to qualify for a Federal gift tax  
3 exclusion.

4 (3) The adjustment would change the amount payable to a  
5 beneficiary as a fixed annuity or a fixed fraction of the  
6 value of the trust assets.

7 (4) The adjustment is from any amount which is  
8 permanently set aside for charitable purposes under the  
9 governing instrument and for which a Federal estate or gift  
10 tax deduction has been taken unless both income and principal  
11 are so set aside.

12 (5) If:

13 (i) possessing or exercising the power to make an  
14 adjustment would cause an individual to be treated as the  
15 owner of all or part of the trust for Federal income tax  
16 purposes; and

17 (ii) the individual would not be treated as the  
18 owner if the trustee did not possess the power to make an  
19 adjustment.

20 (6) If:

21 (i) possessing or exercising the power to make an  
22 adjustment would cause all or part of the trust assets to  
23 be subject to Federal estate or gift tax with respect to  
24 an individual; and

25 (ii) the assets would not be subject to Federal  
26 estate or gift tax with respect to the individual if the  
27 trustee did not possess the power to make an adjustment.

28 (7) If the trustee is a beneficiary of the trust.

29 (8) If the trust has been converted under section 8105  
30 (relating to power to convert to unitrust).

1 (d) Permissible adjustment when otherwise prohibited.--If  
2 subsection (c)(5), (6) or (7) applies to a trustee and there is  
3 more than one trustee, a cotrustee to whom the provision does  
4 not apply may make the adjustment unless the exercise of the  
5 power by the remaining trustee or trustees is prohibited by the  
6 governing instrument.

7 (e) Release of the power to adjust.--

8 (1) If paragraph (2) applies, a trustee may release any  
9 of the following:

10 (i) The entire power conferred by subsection (a).

11 (ii) The power to adjust from income to principal.

12 (iii) The power to adjust from principal to income.

13 (2) A release under paragraph (1) is permissible if any  
14 of the following apply:

15 (i) The trustee is uncertain about whether  
16 possessing or exercising the power will cause a result  
17 described in subsection (c)(1) through (6).

18 (ii) The trustee determines that possessing or  
19 exercising the power will or may deprive the trust of a  
20 tax benefit or impose a tax burden not described in  
21 subsection (c).

22 (3) The release may be permanent or for a specified  
23 period, including a period measured by the life of an  
24 individual.

25 (f) Application.--A governing instrument which limits the  
26 power of a trustee to make an adjustment between principal and  
27 income does not affect the application of this section unless it  
28 is clear from the governing instrument that it is intended to  
29 deny the trustee the power of adjustment conferred by subsection  
30 (a).

1 § 8105. Power to convert to unitrust.

2 (a) Conversion.--Unless expressly prohibited by the  
3 governing instrument, a trustee may release the power under  
4 section 8104 (relating to trustee's power to adjust) and convert  
5 a trust into a unitrust as described in this section if all of  
6 the following apply:

7 (1) The trustee determines that the conversion will  
8 enable the trustee to better carry out the intent of the  
9 settlor or testator and the purposes of the trust.

10 (2) The trustee gives written notice of the trustee's  
11 intention to release the power to adjust and to convert the  
12 trust into a unitrust and of how the unitrust will operate,  
13 including what initial decisions the trustee will make under  
14 this section, to all the sui juris beneficiaries who:

15 (i) are currently eligible to receive income from  
16 the trust; and

17 (ii) would receive, if no powers of appointment were  
18 exercised, a distribution of principal if the trust were  
19 to terminate immediately prior to the giving of notice.

20 (3) There is at least one sui juris beneficiary under  
21 paragraph (2)(i) and at least one sui juris beneficiary under  
22 paragraph (2)(ii).

23 (4) No sui juris beneficiary objects to the conversion  
24 to a unitrust in a writing delivered to the trustee within 60  
25 days of the mailing of the notice under paragraph (2).

26 (b) Judicially approved conversion.--

27 (1) The trustee may petition the court to approve the  
28 conversion to a unitrust if any of the following apply:

29 (i) A beneficiary timely objects to the conversion  
30 to a unitrust.

1           (ii) There are no sui juris beneficiaries under  
2 subsection (a)(2)(i).

3           (iii) There are no sui juris beneficiaries under  
4 subsection (a)(2)(ii).

5           (2) A beneficiary may request a trustee to convert to a  
6 unitrust. If the trustee does not convert, the beneficiary  
7 may petition the court to order the conversion.

8           (3) The court shall approve the conversion or direct the  
9 requested conversion if the court concludes that the  
10 conversion will enable the trustee to better carry out the  
11 intent of the settlor or testator and the purposes of the  
12 trust.

13          (c) Consideration.--In deciding whether to exercise the  
14 power conferred by subsection (a), a trustee may consider, among  
15 other things, all of the following:

16           (1) The size of the trust.

17           (2) The nature and estimated duration of the trust.

18           (3) The liquidity and distribution requirements of the  
19 trust.

20           (4) The needs for regular distributions and preservation  
21 and appreciation of capital.

22           (5) The expected tax consequences of the conversion.

23           (6) The assets held in the trust; the extent to which  
24 they consist of financial assets, interests in closely held  
25 enterprises, tangible and intangible personal property or  
26 real property; and the extent to which an asset is used by a  
27 beneficiary.

28           (7) To the extent reasonably known to the trustee, the  
29 needs of the beneficiaries for present and future  
30 distributions authorized or required by the governing

1 instrument.

2 (8) Whether and to what extent the governing instrument  
3 gives the trustee the power to invade principal or accumulate  
4 income or prohibits the trustee from invading principal or  
5 accumulating income and the extent to which the trustee has  
6 exercised a power from time to time to invade principal or  
7 accumulate income.

8 (9) The actual and anticipated effect of economic  
9 conditions on principal and income and effects of inflation  
10 and deflation.

11 (d) Post conversion.--After a trust is converted to a  
12 unitrust, all of the following apply:

13 (1) The trustee shall follow an investment policy  
14 seeking a total return for the investments held by the trust,  
15 whether the return is to be derived:

16 (i) from appreciation of capital;

17 (ii) from earnings and distributions from capital;

18 or

19 (iii) from both.

20 (2) The trustee shall make regular distributions in  
21 accordance with the governing instrument construed in  
22 accordance with the provisions of this section.

23 (3) The term "income" in the governing instrument shall  
24 mean an annual distribution (the unitrust distribution) equal  
25 to 4% (the payout percentage) of the net fair market value of  
26 the trust's assets, whether such assets would be considered  
27 income or principal under other provisions of this chapter,  
28 averaged over the lesser of:

29 (i) the three preceding years; or

30 (ii) the period during which the trust has been in

1 existence.

2 (e) Discretion of trustee.--The trustee may in the trustee's  
3 discretion from time to time determine all of the following:

4 (1) The effective date of a conversion to a unitrust.

5 (2) The provisions for prorating a unitrust distribution  
6 for a short year in which a beneficiary's right to payments  
7 commences or ceases.

8 (3) The frequency of unitrust distributions during the  
9 year.

10 (4) The effect of other payments from or contributions  
11 to the trust on the trust's valuation.

12 (5) Whether to value the trust's assets annually or more  
13 frequently.

14 (6) What valuation dates to use.

15 (7) How frequently to value nonliquid assets and whether  
16 to estimate their value.

17 (8) Whether to omit from the calculations trust property  
18 occupied or possessed by a beneficiary.

19 (9) Any other matters necessary for the proper  
20 functioning of the unitrust.

21 (f) Allocation.--

22 (1) Expenses which would be deducted from income if the  
23 trust were not a unitrust may not be deducted from the  
24 unitrust distribution.

25 (2) Unless otherwise provided by the governing  
26 instrument, the unitrust distribution shall be paid from net  
27 income, as such term would be determined if the trust were  
28 not a unitrust. To the extent net income is insufficient, the  
29 unitrust distribution shall be paid from net realized short-  
30 term capital gains. To the extent income and net realized

1 short-term capital gains are insufficient, the unitrust  
2 distribution shall be paid from net realized long-term  
3 capital gains. To the extent income and net realized short-  
4 term and long-term capital gains are insufficient, the  
5 unitrust distribution shall be paid from the principal of the  
6 trust.

7 (g) Court orders.--The trustee or, if the trustee declines  
8 to do so, a beneficiary may petition the court to:

9 (1) Select a payout percentage different than 4%.

10 (2) Provide for a distribution of net income, as would  
11 be determined if the trust were not a unitrust, in excess of  
12 the unitrust distribution if such distribution is necessary  
13 to preserve a tax benefit.

14 (3) Average the valuation of the trust's net assets over  
15 a period other than three years.

16 (4) Reconvert from a unitrust. Upon a reconversion, the  
17 power to adjust under section 8104 shall be revived.

18 (h) Application.--A conversion to a unitrust does not affect  
19 a provision in the governing instrument directing or authorizing  
20 the trustee to distribute principal or authorizing a beneficiary  
21 to withdraw a portion or all of the principal.

22 (i) Prohibited conversions.--A trustee may not convert a  
23 trust into a unitrust in any of the following circumstances:

24 (1) If payment of the unitrust distribution would change  
25 the amount payable to a beneficiary as a fixed annuity or a  
26 fixed fraction of the value of the trust assets.

27 (2) If the unitrust distribution would be made from any  
28 amount which is permanently set aside for charitable purposes  
29 under the governing instrument and for which a Federal estate  
30 or gift tax deduction has been taken, unless both income and

1 principal are so set aside.

2 (3) If:

3 (i) possessing or exercising the power to convert  
4 would cause an individual to be treated as the owner of  
5 all or part of the trust for Federal income tax purposes;  
6 and

7 (ii) the individual would not be treated as the  
8 owner if the trustee did not possess the power to  
9 convert.

10 (4) If:

11 (i) possessing or exercising the power to convert  
12 would cause all or part of the trust assets to be subject  
13 to Federal estate or gift tax with respect to an  
14 individual; and

15 (ii) the assets would not be subject to Federal  
16 estate or gift tax with respect to the individual if the  
17 trustee did not possess the power to convert.

18 (5) If the conversion would result in the disallowance  
19 of a Federal estate tax or gift tax marital deduction which  
20 would be allowed if the trustee did not have the power to  
21 convert.

22 (6) If the trustee is a beneficiary of the trust.

23 (j) Permissible conversion when otherwise prohibited.--

24 (1) If subsection (i)(3), (4) or (6) applies to a  
25 trustee and there is more than one trustee, a cotrustee to  
26 whom the provision does not apply may convert the trust,  
27 unless the exercise of the power by the remaining trustee or  
28 trustees is prohibited by the governing instrument.

29 (2) If subsection (i)(3), (4) or (6) applies to all the  
30 trustees, the trustees may petition the court to direct a

1 conversion.

2 (k) Release of the power to convert.--

3 (1) A trustee may release the power conferred by  
4 subsection (a) to convert to a unitrust if any of the  
5 following apply:

6 (i) The trustee is uncertain about whether  
7 possessing or exercising the power will cause a result  
8 described in subsection (i)(3), (4) or (5).

9 (ii) The trustee determines that possessing or  
10 exercising the power will or may deprive the trust of a  
11 tax benefit or impose a tax burden not described in  
12 subsection (i).

13 (2) The release may be permanent or for a specified  
14 period, including a period measured by the life of an  
15 individual.

16 § 8106. Judicial control of discretionary powers.

17 (a) Standard of review.--A court shall not change a  
18 fiduciary's decision to exercise or not to exercise a  
19 discretionary power conferred by this chapter unless it  
20 determines that the decision was an abuse of the fiduciary's  
21 discretion.

22 (b) Remedies.--If a court determines that a fiduciary has  
23 abused its discretion regarding a discretionary power conferred  
24 by this chapter, the remedy is to restore the income and  
25 remainder beneficiaries to the positions they would have  
26 occupied if the fiduciary had not abused its discretion,  
27 according to the following rules:

28 (1) To the extent that the abuse of discretion has  
29 resulted in no distribution to a beneficiary or a  
30 distribution which is too small, the court shall require the

1       fiduciary to distribute from the trust to the beneficiary an  
2       amount that the court determines will restore the  
3       beneficiary, in whole or in part, to the beneficiary's  
4       appropriate position.

5           (2) To the extent that the abuse of discretion has  
6       resulted in a distribution to a beneficiary which is too  
7       large, the court shall restore the beneficiaries, the trust  
8       or both, in whole or in part, to their appropriate positions  
9       by requiring the fiduciary to withhold an amount from one or  
10      more future distributions to the beneficiary who received the  
11      distribution that was too large or requiring that beneficiary  
12      or that beneficiary's estate to return some or all of the  
13      distribution to the trust, notwithstanding a spendthrift or  
14      similar provision.

15          (3) If the abuse of discretion concerns the power to  
16      convert a trust into a unitrust, the court shall require the  
17      trustee either to convert into a unitrust or to reconvert  
18      from a unitrust.

19          (4) To the extent that the court is unable, after  
20      applying paragraphs (1), (2) and (3), to restore the  
21      beneficiaries, the trust or both to the positions they would  
22      have occupied if the fiduciary had not abused its discretion,  
23      the court may require the fiduciary to pay an appropriate  
24      amount from its own funds to one or more of the beneficiaries  
25      or the trust or both.

26   § 8107. (Reserved).

27   § 8108. (Reserved).

28   § 8109. (Reserved).

29   § 8110. (Reserved).

30   § 8111. (Reserved).

1 § 8112. (Reserved).

2 § 8113. Charitable trusts.

3 (a) Election.--Notwithstanding the foregoing provisions of  
4 this chapter, the trustee of a trust held exclusively for  
5 charitable purposes may elect to be governed by this section  
6 unless the governing instrument expressly provides that the  
7 election provided by this section shall not be available.

8 (b) Eligibility for election.--To make an election under  
9 this section, the trustee shall adopt and follow an investment  
10 policy seeking a total return for the investments held by the  
11 trust, whether the return is to be derived from appreciation of  
12 capital or earnings and distributions with respect to capital or  
13 both. The policy constituting the election shall be in writing,  
14 shall be maintained as part of the permanent records of the  
15 trust and shall recite that it constitutes an election to be  
16 governed by this section.

17 (c) Effect of election.--If an election is made to be  
18 governed by this section, the term "income" shall mean a  
19 percentage of the value of the trust. The trustee shall in a  
20 writing maintained as part of the permanent records of the trust  
21 annually select the percentage and determine that it is  
22 consistent with the long-term preservation of the real value of  
23 the principal of the trust, but in no event shall the percentage  
24 be less than 2% nor more than 7% per year. The term "principal"  
25 shall mean all other assets held by the trustee with respect to  
26 the trust.

27 (d) Revocation of election.--The trustee may revoke an  
28 election to be governed by this section if the revocation is  
29 made as part of an alternative investment policy seeking the  
30 long-term preservation of the real value of the principal of the

1 trust. The revocation and alternative investment policy shall be  
2 in writing and maintained as part of the permanent records of  
3 the trust.

4 (e) Value determination.--For purposes of applying this  
5 section, the value of the trust shall be the fair market value  
6 of the cash and other assets held by the trustee with respect to  
7 the trust, whether such assets would be considered "income" or  
8 "principal" under the other provisions of this chapter,  
9 determined at least annually and averaged over a period of three  
10 or more preceding years. However, if the trust has been in  
11 existence less than three years, the average shall be determined  
12 over the period during which the trust has been in existence.

13 SUBCHAPTER B

14 DECEDENT'S ESTATE OR

15 TERMINATING INCOME INTEREST

16 Sec.

17 8121. Determination and distribution of net income.

18 8122. Distribution to residuary and remainder beneficiaries.

19 § 8121. Determination and distribution of net income.

20 After a decedent dies in the case of an estate, or after an  
21 income interest in a trust ends, the following rules apply:

22 (1) A fiduciary of an estate or of a terminating income  
23 interest shall determine the amount of net income and net  
24 principal receipts received from property specifically given  
25 to a beneficiary under paragraph (5) and the provisions  
26 applicable to trustees in Subchapters C (relating to  
27 apportionment at beginning and end of income interest), D  
28 (relating to allocation of receipts during administration of  
29 trust) and E (relating to allocation of disbursements during  
30 administration of trust). The fiduciary shall distribute the

1 net income and net principal receipts to the beneficiary who  
2 is to receive the specific property.

3 (2) A fiduciary shall distribute to a beneficiary who  
4 receives a pecuniary amount outright and shall allocate to a  
5 pecuniary amount in trust the interest, other income or other  
6 amount provided by the governing instrument or section 3543  
7 (relating to interest or income on distributive shares) or  
8 7187 (relating to interest or income on distributive shares)  
9 from net income determined under paragraph (3) or from  
10 principal to the extent that net income is insufficient.

11 (3) A fiduciary shall determine the remaining net income  
12 of a decedent's estate or a terminating income interest under  
13 the provisions applicable to trustees in Subchapters C, D and  
14 E and by:

15 (i) including in net income all income from property  
16 used to discharge liabilities; and

17 (ii) paying from principal debts, funeral expenses,  
18 costs of disposition of remains, the family exemption,  
19 fees of personal representatives and their attorneys and  
20 accountants, and death taxes and related interest and  
21 penalties which are apportioned to the estate or  
22 terminating income interest by the governing instrument  
23 or applicable law.

24 (4) A fiduciary shall distribute the net income  
25 remaining after distributions required by paragraph (2) in  
26 the manner described in section 8122 (relating to  
27 distribution to residuary and remainder beneficiaries) to all  
28 other beneficiaries.

29 (5) A fiduciary may not reduce principal or income  
30 receipts from property described in paragraph (1) because of

1 a payment described in section 8151 (relating to minerals,  
2 water and other natural resources) or 8152 (relating to  
3 timber) to the extent that the governing instrument or  
4 applicable law requires the fiduciary to make the payment  
5 from assets other than the property or to the extent that the  
6 fiduciary recovers or expects to recover the payment from a  
7 third party. The net income and principal receipts from the  
8 property are determined by:

9 (i) including all of the amounts the fiduciary  
10 receives or pays with respect to the property, whether  
11 those amounts accrued or became due before, on or after  
12 the date of a decedent's death or an income interest's  
13 terminating event; and

14 (ii) making a reasonable provision for amounts that  
15 the fiduciary believes the estate or terminating income  
16 interest may become obligated to pay after the property  
17 is distributed.

18 § 8122. Distribution to residuary and remainder beneficiaries.

19 (a) Distribution of net income.--Each beneficiary described  
20 in section 8121(4) (relating to determination and distribution  
21 of net income) is entitled to receive a portion of the net  
22 income equal to the beneficiary's fractional interest in  
23 undistributed principal assets, using values as of the  
24 distribution date. If a fiduciary makes more than one  
25 distribution of assets to beneficiaries to whom this section  
26 applies, each beneficiary, including one who does not receive  
27 part of the distribution, is entitled, as of each distribution  
28 date, to the net income the fiduciary has received after the  
29 date of death or terminating event or earlier distribution date  
30 but has not distributed as of the current distribution date.

1 (b) Allocation of net income.--In determining a  
2 beneficiary's share of net income, the following rules apply:

3 (1) The beneficiary is entitled to receive a portion of  
4 the net income equal to the beneficiary's fractional interest  
5 in the undistributed principal assets immediately before the  
6 distribution date, including assets that later may be sold or  
7 applied to meet principal obligations.

8 (2) The beneficiary's fractional interest in the  
9 undistributed principal assets must be calculated without  
10 regard to property specifically given to a beneficiary and  
11 property required to pay pecuniary amounts.

12 (3) The beneficiary's fractional interest in the  
13 undistributed principal assets must be calculated on the  
14 basis of the aggregate value of those assets as of the  
15 distribution date without reducing the value by any unpaid  
16 principal obligation.

17 (c) Collected but undistributed net income.--If a fiduciary  
18 does not distribute all of the collected but undistributed net  
19 income to each person as of a distribution date, the fiduciary  
20 shall maintain appropriate records showing the interest of each  
21 beneficiary in that net income.

22 (d) Application.--To the extent that the fiduciary considers  
23 it appropriate, if this section applies to the income from an  
24 asset, the fiduciary may apply the rules in this section to net  
25 gain or loss from the disposition of a principal asset realized  
26 after the date of death or terminating event or earlier  
27 distribution date.

28 (e) Distribution date.--For purposes of this section, the  
29 distribution date may be the date as of which the fiduciary  
30 calculates the value of the assets if that date is reasonably

1 near the date on which assets are actually distributed.

2

SUBCHAPTER C

3

APPORTIONMENT AT BEGINNING

4

AND END OF INCOME INTEREST

5 Sec.

6 8131. When right to income begins and ends.

7 8132. Apportionment of receipts and disbursements when

8 decedent dies or income interest begins.

9 8133. Apportionment when income interest ends.

10 § 8131. When right to income begins and ends.

11 (a) Accrual of income interest.--An income beneficiary is  
12 entitled to net income from the date on which the income  
13 interest begins. An income interest begins:

14 (1) on the date specified in the governing instrument;

15 or

16 (2) if no date is specified, on the date an asset  
17 becomes subject to a trust or successive income interest.

18 (b) Asset subject to a trust.--An asset becomes subject to a  
19 trust:

20 (1) on the date it is transferred to the trust in the  
21 case of an asset which is transferred to a trust during the  
22 transferor's life;

23 (2) on the date of a testator's death in the case of an  
24 asset which becomes subject to a trust by reason of a will,  
25 even if there is an intervening period of administration of  
26 the testator's estate; or

27 (3) on the date of an individual's death in the case of  
28 an asset which is transferred to a fiduciary by a third party  
29 because of the individual's death.

30 (c) Asset subject to a successive income interest.--An asset

1 becomes subject to a successive income interest on the day after  
2 the preceding income interest ends, as determined under  
3 subsection (d), even if there is an intervening period of  
4 administration to wind up the preceding income interest.

5 (d) End of income interest.--An income interest ends on:

6 (1) the day before an income beneficiary dies or another  
7 terminating event occurs; or

8 (2) the last day of a period during which there is no  
9 beneficiary to whom a trustee may distribute income.

10 § 8132. Apportionment of receipts and disbursements when  
11 decedent dies or income interest begins.

12 (a) Allocation to principal.--Unless section 8121(1)  
13 (relating to determination and distribution of net income)

14 applies, a trustee shall allocate an income receipt or  
15 disbursement to principal if its due date occurs before:

16 (1) a decedent dies in the case of an estate; or

17 (2) an income interest begins in the case of a trust or  
18 successive income interest.

19 (b) Allocation to income.--A trustee shall allocate an  
20 income receipt or disbursement to income if its due date occurs  
21 on or after the date on which a decedent dies or an income  
22 interest begins and it is a periodic due date. An income receipt  
23 or disbursement must be treated as accruing from day to day if  
24 its due date is not periodic or it has no due date. The portion  
25 of the receipt or disbursement accruing before the date on which  
26 a decedent dies or an income interest begins must be allocated  
27 to principal and the balance must be allocated to income.

28 (c) Due dates.--An item of income or an obligation is due on  
29 the date the payor is required to make a payment. If a payment  
30 date is not stated, there is no due date for the purposes of

1 this chapter. Distributions to shareholders or other owners from  
2 an entity to which section 8141 (relating to character of  
3 receipts) applies are deemed to be due on the date fixed by the  
4 entity for determining who is entitled to receive the  
5 distribution or, if no date is fixed, on the declaration date  
6 for the distribution. A due date is periodic for receipts or  
7 disbursements that must be paid at regular intervals under a  
8 lease or an obligation to pay interest or if an entity  
9 customarily makes distributions at regular intervals.

10 § 8133. Apportionment when income interest ends.

11 (a) End of mandatory income interest.--When a mandatory  
12 income interest ends, the trustee shall pay to a mandatory  
13 income beneficiary who survives that date, or the estate of a  
14 deceased mandatory income beneficiary whose death causes the  
15 interest to end, the beneficiary's share of the undistributed  
16 income which is not disposed of under the governing instrument  
17 unless the beneficiary has an unqualified power to revoke more  
18 than 5% of the trust immediately before the income interest  
19 ends. In the latter case, the undistributed income from the  
20 portion of the trust that may be revoked shall be added to  
21 principal.

22 (b) Proration of final payment.--When a trustee's obligation  
23 to pay a fixed annuity or a fixed fraction of the value of the  
24 trust's assets ends, the trustee shall prorate the final payment  
25 if and to the extent required by applicable law to accomplish a  
26 purpose of the trust or its settlor or testator relating to  
27 income, gift, estate or other tax requirements.

28 (c) Definition.--As used in this section, the term  
29 "undistributed income" means net income received before the date  
30 on which an income interest ends. The term does not include an

1 item of income or expense which is due or accrued or net income  
2 which has been added or is required to be added to principal  
3 under the governing instrument.

4 SUBCHAPTER D

5 ALLOCATION OF RECEIPTS DURING

6 ADMINISTRATION OF TRUST

7 Sec.

8 8141. Character of receipts.

9 8142. Distribution from trust or estate.

10 8143. Business and other activities conducted by trustee.

11 8144. Principal receipts.

12 8145. Rental property.

13 8146. Obligation to pay money.

14 8147. Insurance policies and similar contracts.

15 8148. Insubstantial allocations not required.

16 8149. Retirement benefits, individual retirement accounts,  
17 deferred compensation, annuities and similar payments.

18 8150. Liquidating asset.

19 8151. Minerals, water and other natural resources.

20 8152. Timber.

21 8153. Property not productive of income.

22 8154. Derivatives and options.

23 8155. Asset-backed securities.

24 § 8141. Character of receipts.

25 (a) Allocation to income.--Except as otherwise provided in  
26 this section, a trustee shall allocate to income money received  
27 from an entity including reinvested cash dividends.

28 (b) Allocation to principal.--A trustee shall allocate the  
29 following receipts from an entity to principal:

30 (1) Property other than money excluding reinvested cash

1 dividends.

2 (2) Money received in one distribution or a series of  
3 related distributions in exchange for part or all of a  
4 trust's interest in the entity.

5 (3) Money received in total or partial liquidation of  
6 the entity.

7 (4) Money received from an entity that is a regulated  
8 investment company or a real estate investment trust if the  
9 money distributed is a short-term or long-term capital gain  
10 dividend for Federal income tax purposes.

11 (c) When received in partial liquidation.--Money is received  
12 in partial liquidation:

13 (1) to the extent that the entity, at or near the time  
14 of a distribution, indicates that it is a distribution in  
15 partial liquidation; or

16 (2) if the total amount of money and property received  
17 in a distribution or series of related distributions is  
18 greater than 20% of the entity's gross assets, as shown by  
19 the entity's year-end financial statements immediately  
20 preceding the initial receipt.

21 (d) When not received in partial liquidation.--Money is not  
22 received in partial liquidation nor may it be taken into account  
23 under subsection (c)(2) to the extent that it does not exceed  
24 the amount of income tax that a trustee or beneficiary must pay  
25 on taxable income of the entity that distributes the money.

26 (e) Reliance upon a statement.--A trustee may rely upon a  
27 statement made by an entity about the source or character of a  
28 distribution if the statement is made at or near the time of  
29 distribution by the entity's board of directors or other person  
30 or group of persons authorized to exercise powers to pay money

1 or transfer property comparable to those of a corporation's  
2 board of directors.

3 (f) Definition.--As used in this section, the term "entity"  
4 means a corporation, partnership, limited liability company,  
5 regulated investment company, real estate investment trust,  
6 common trust fund or any other organization, in which a trustee  
7 has an interest other than:

8 (1) a trust or estate to which section 8142 (relating to  
9 distribution from trust or estate) applies;

10 (2) a business or activity to which section 8143  
11 (relating to business and other activities conducted by  
12 trustee) applies;

13 (3) a payment to which section 8149 (relating to  
14 retirement benefits, individual retirement accounts, deferred  
15 compensation, annuities and similar payments) applies; or

16 (4) an asset-backed security to which section 8155  
17 (relating to asset-backed securities) applies.

18 § 8142. Distribution from trust or estate.

19 A trustee shall allocate to income an amount received as a  
20 distribution of income from a trust or an estate in which the  
21 trust has an interest other than a purchased interest and shall  
22 allocate to principal an amount received as a distribution of  
23 principal from such a trust or estate. If a trustee purchases an  
24 interest in a trust that is an investment entity, or a decedent  
25 or donor transfers an interest in such a trust to a trustee,  
26 section 8141 (relating to character of receipts) or 8155  
27 (relating to asset-backed securities) applies to a receipt from  
28 the trust.

29 § 8143. Business and other activities conducted by trustee.

30 (a) Separate accounting for business or activity.--If a

1 trustee that conducts a business or other activity determines  
2 that it is in the best interest of all the beneficiaries to  
3 account separately for the business or activity instead of  
4 accounting for it as part of the trust's general accounting  
5 records, the trustee may maintain separate accounting records  
6 for its transactions, whether or not its assets are segregated  
7 from other trust assets.

8 (b) Net receipts.--

9 (1) A trustee that accounts separately for a business or  
10 other activity may determine the extent to which:

11 (i) its net cash receipts must be retained for  
12 working capital, the acquisition or replacement of fixed  
13 assets and other reasonably foreseeable needs of the  
14 business or activity; and

15 (ii) the remaining net cash receipts are accounted  
16 for as principal or income in the trust's general  
17 accounting records.

18 (2) If a trustee sells assets of the business or other  
19 activity, other than in the ordinary course of the business  
20 or activity, the trustee shall account for the net amount  
21 received as principal in the trust's general accounting  
22 records to the extent the trustee determines that the amount  
23 received is no longer required in the conduct of the  
24 business.

25 (c) Permissible activities for separate accounting.--

26 Activities for which a trustee may maintain separate accounting  
27 records include:

28 (1) Retail, manufacturing, service and other traditional  
29 business activities.

30 (2) Farming.

- 1 (3) Raising and selling livestock and other animals.
- 2 (4) Management of rental properties.
- 3 (5) Extraction of minerals and other natural resources.
- 4 (6) Timber operations.
- 5 (7) Activities to which section 8154 (relating to
- 6 derivatives and options) applies.

7 § 8144. Principal receipts.

8 A trustee shall allocate to principal any of the following:

- 9 (1) To the extent not allocated to income under this
- 10 chapter, assets received from:
  - 11 (i) a transferor during the transferor's lifetime;
  - 12 (ii) a decedent's estate;
  - 13 (iii) a trust with a terminating income interest; or
  - 14 (iv) a payor under a contract naming the trust or
  - 15 its trustee as beneficiary.
- 16 (2) Money or other property received from a principal
- 17 asset's sale, exchange, liquidation or change in form. This
- 18 paragraph includes realized profit subject to this
- 19 subchapter.
- 20 (3) Amounts recovered from third parties to reimburse
- 21 the trust because of disbursements described in section
- 22 8162(a)(8) (relating to mandatory disbursements from
- 23 principal) or for other reasons to the extent not based on
- 24 the loss of income.
- 25 (4) Proceeds of property taken by eminent domain. A
- 26 separate award made for the loss of income with respect to an
- 27 accounting period during which a current income beneficiary
- 28 had a mandatory income interest is income.
- 29 (5) Net income received in an accounting period during
- 30 which there is no beneficiary to whom a trustee may or must

1 distribute income.

2 (6) Other receipts as provided in sections 8148  
3 (relating to insubstantial allocations not required) through  
4 8155 (relating to asset-backed securities).

5 § 8145. Rental property.

6 (a) Rent.--To the extent that a trustee accounts for  
7 receipts from rental property pursuant to this section, the  
8 trustee shall allocate to income an amount received as rent of  
9 real or personal property. This subsection includes an amount  
10 received for cancellation or renewal of a lease.

11 (b) Deposit.--An amount received as a refundable deposit,  
12 including a security deposit or a deposit which is to be applied  
13 as rent for future periods:

14 (1) shall be added to principal;

15 (2) shall be held subject to the terms of the lease; and

16 (3) is not available for distribution to a beneficiary  
17 until the trustee's contractual obligations have been  
18 satisfied with respect to that amount.

19 § 8146. Obligation to pay money.

20 (a) Interest allocated to income.--An amount received as  
21 interest, whether determined at a fixed, variable or floating  
22 rate, on an obligation to pay money to the trustee, including an  
23 amount received as consideration for prepaying principal, shall  
24 be allocated to income without any provision for amortization of  
25 premium.

26 (b) Allocation of obligations.--A trustee shall allocate to  
27 principal an amount received from the sale, redemption or other  
28 disposition of an obligation to pay money to the trustee more  
29 than one year after it is purchased or acquired by the trustee,  
30 including an obligation the purchase price or value of which

1 when it is acquired is less than its value at maturity. If the  
2 obligation matures within one year after it is purchased or  
3 acquired by the trustee, an amount received in excess of its  
4 purchase price or its value when acquired by the trust shall be  
5 allocated to income.

6 (c) Application.--This section does not apply to an  
7 obligation to which any of the following apply:

8 (1) Section 8149 (relating to retirement benefits,  
9 individual retirement accounts, deferred compensation,  
10 annuities and similar payments).

11 (2) Section 8150 (relating to liquidating asset).

12 (3) Section 8151 (relating to minerals, water and other  
13 natural resources).

14 (4) Section 8152 (relating to timber).

15 (5) Section 8154 (relating to derivatives and options).

16 (6) Section 8155 (relating to asset-backed securities).

17 § 8147. Insurance policies and similar contracts.

18 (a) General rule.--

19 (1) Except as otherwise provided in subsection (b) or  
20 (c), a trustee shall allocate to principal the proceeds of a  
21 life insurance policy or other contract in which the trust or  
22 its trustee is named as beneficiary. This paragraph includes  
23 a contract which insures the trust or its trustee against  
24 loss for damage to, destruction of or loss of title to a  
25 trust asset.

26 (2) If the premiums on the policy or contract are paid  
27 from income, the trustee shall allocate to income dividends  
28 on the policy or contract.

29 (3) If the premiums on the policy or contract are paid  
30 from principal, the trustee shall allocate to principal

1 dividends on the policy or contract.

2 (b) Allocation of proceeds to income.--Except as provided in  
3 subsection (c), a trustee shall allocate to income proceeds of a  
4 contract which insures the trustee against any of the following:

5 (1) Loss of occupancy or other use by an income  
6 beneficiary.

7 (2) Loss of income.

8 (3) Subject to section 8143 (relating to business and  
9 other activities conducted by trustee), loss of profits from  
10 a business.

11 (c) Application.--This section does not apply to a contract  
12 to which section 8149 (relating to retirement benefits,  
13 individual retirement accounts, deferred compensation, annuities  
14 and similar payments) applies.

15 § 8148. Insubstantial allocations not required.

16 If a trustee determines that an allocation between principal  
17 and income required by section 8149 (relating to retirement  
18 benefits, individual retirement accounts, deferred compensation,  
19 annuities and similar payments), 8150 (relating to liquidating  
20 asset), 8151 (relating to minerals, water and other natural  
21 resources), 8152 (relating to timber) or 8155 (relating to  
22 asset-backed securities) is insubstantial, the trustee may  
23 allocate the entire amount to principal unless one of the  
24 circumstances described in section 8104(c) (relating to  
25 trustee's power to adjust) applies to the allocation. This power  
26 may be exercised by a cotrustee in the circumstances described  
27 in section 8104(d) and may be released for the reasons and in  
28 the manner described in section 8104(e). An allocation is  
29 presumed to be insubstantial if:

30 (1) the amount of the allocation would increase or

1 decrease net income in an accounting period, as determined  
2 before the allocation, by less than 5%; or

3 (2) the value of the asset producing the receipt for  
4 which the allocation would be made is less than 5% of the  
5 total value of the trust's assets at the beginning of the  
6 accounting period.

7 § 8149. Retirement benefits, individual retirement accounts,  
8 deferred compensation, annuities and similar  
9 payments.

10 (a) General rule.--

11 (1) The trustee shall allocate to income the greater of:

12 (i) the portion of a payment characterized by the  
13 payor as interest or a dividend or a remittance in lieu  
14 of interest or a dividend; or

15 (ii) the portion of the payment characterized as  
16 imputed interest for Federal income tax purposes.

17 (2) The balance of any such payment shall be allocated  
18 to principal.

19 (b) Allocation under contract calling for equal  
20 installments.--

21 (1) If no part of a payment under a contract calling for  
22 equal installments over a fixed period of time is allocable  
23 to income under the provisions of subsection (a), the  
24 difference between the trust's acquisition value of the  
25 contract and the total expected return shall be deemed to be  
26 interest.

27 (2) The trustee shall allocate to income the portion of  
28 each payment equivalent to interest on the then unpaid  
29 principal balance at the rate specified in the contract or a  
30 rate necessary to thus amortize the difference between the

1 expected return and the acquisition value, where that rate is  
2 readily ascertainable by the trustee.

3 (c) Allocation when internal net income of fund is readily  
4 ascertained.--

5 (1) If no portion of a payment from a separate fund held  
6 exclusively for the benefit of the trust is allocable to  
7 income under subsections (a) and (b) but the internal net  
8 income of the fund determined as if the fund were a separate  
9 trust subject to Subchapters B (relating to decedent's estate  
10 or terminating income interest) through E (relating to  
11 allocation of disbursements during administration of trust)  
12 is readily ascertainable by the trustee, the portion of the  
13 payment equal to the then undistributed net income of the  
14 fund realized since the trust acquired its interest in the  
15 fund shall be deemed to be a distribution of such income and  
16 shall be allocated to the trust income account.

17 (2) The balance of any such payment shall be allocated  
18 to principal.

19 (d) When not otherwise allocable to income.--

20 (1) The trustee shall allocate to income 10% of the part  
21 of the payment which is required to be made during the  
22 accounting period and the balance to principal if:

23 (i) no part of the payment is allocable to income  
24 under subsection (a), (b) or (c); and

25 (ii) all or part of the payment is required to be  
26 made.

27 (2) The trustee shall allocate the entire payment to  
28 principal if:

29 (i) no part of a payment is required to be made; or

30 (ii) the payment received is the entire amount to

1           which the trustee is entitled.

2           (3) For purposes of this subsection, a payment is not  
3           required to be made to the extent that it is made because the  
4           trustee exercises a right of withdrawal.

5           (e) Allocation to obtain marital deduction.--If, to obtain a  
6           Federal estate or gift tax marital deduction for a trust, the  
7           trustee must allocate more of a payment to income than provided  
8           for by this section, the trustee shall allocate to income the  
9           additional amount necessary to obtain the marital deduction.

10          (f) Application.--This section does not apply to payments to  
11          which section 8150 (relating to liquidating asset) applies.

12          (g) Definition.--As used in this section, the term "payment"  
13          means a payment that a trustee may receive over a fixed period  
14          of time or during the life of one or more individuals because of  
15          services rendered or property transferred to the payor in  
16          exchange for future payments. The term includes all of the  
17          following:

18                 (1) A payment made in money or property from:

19                         (i) the payor's general assets; or

20                         (ii) a separate fund created by the payor or  
21                         another.

22                 (2) A payment on or from:

23                         (i) an installment contract or note;

24                         (ii) a private or commercial annuity;

25                         (iii) a deferred compensation agreement;

26                         (iv) an employee death benefit;

27                         (v) an individual retirement account; or

28                         (vi) a pension, profit-sharing, stock or other  
29                         bonus, or stock-ownership plan.

30   § 8150. Liquidating asset.

1 (a) Allocation.--A trustee shall allocate to income 10% of  
2 the receipts from a liquidating asset and the balance to  
3 principal.

4 (b) Definition.--As used in this section, the term  
5 "liquidating asset" means an asset the value of which will  
6 diminish or terminate because the asset is expected to produce  
7 receipts for a period of limited duration. The term includes a  
8 leasehold, patent, copyright, royalty right and right to receive  
9 payments during a period of more than one year under an  
10 arrangement which does not provide for the payment of interest  
11 on the unpaid balance. The term does not include any of the  
12 following:

13 (1) A payment subject to section 8149 (relating to  
14 retirement benefits, individual retirement accounts, deferred  
15 compensation, annuities and similar payments).

16 (2) Resources subject to section 8151 (relating to  
17 minerals, water and other natural resources).

18 (3) Timber subject to section 8152 (relating to timber).

19 (4) An activity subject to section 8154 (relating to  
20 derivatives and options).

21 (5) An asset subject to section 8155 (relating to asset-  
22 backed securities).

23 (6) An asset for which the trustee establishes a reserve  
24 for depreciation under section 8163 (relating to  
25 discretionary allocation of disbursements).

26 § 8151. Minerals, water and other natural resources.

27 (a) Allocation for receipts from minerals and other natural  
28 resources.--To the extent that a trustee accounts for receipts  
29 from an interest in minerals or other natural resources under  
30 this section, the trustee shall allocate them as follows:

1 (1) If received as nominal delay rental or nominal  
2 annual rent on a lease, a receipt shall be allocated to  
3 income.

4 (2) If received from a production payment, a receipt  
5 shall be allocated to income if and to the extent that the  
6 agreement creating the production payment provides a factor  
7 for interest or its equivalent. The balance shall be  
8 allocated to principal.

9 (3) If an amount received as a royalty, shut-in-well  
10 payment, take-or-pay payment, bonus or delay rental is more  
11 than nominal:

12 (i) sixty-six and two-thirds percent shall be  
13 allocated to principal; and

14 (ii) the balance shall be allocated to income.

15 (4) If an amount is received from a working interest or  
16 any other interest not provided for in paragraph (1), (2) or  
17 (3):

18 (i) sixty-six and two-thirds percent of the net  
19 amount received shall be allocated to principal; and

20 (ii) the balance shall be allocated to income.

21 (b) Allocation for receipts from water.--

22 (1) An amount received on account of an interest in  
23 renewable water shall be allocated to income.

24 (2) An amount received on account of an interest in  
25 nonrenewable water shall be allocated as follows:

26 (i) Sixty-six and two-thirds percent of the amount  
27 shall be allocated to principal.

28 (ii) The balance shall be allocated to income.

29 (c) Application.--This chapter applies whether or not a  
30 decedent or donor was extracting minerals, water or other

1 natural resources before the interest became subject to the  
2 trust.

3 § 8152. Timber.

4 (a) Allocation of net receipts.--To the extent that a  
5 trustee accounts for receipts from the sale of timber and  
6 related products under this section, the trustee shall allocate  
7 the net receipts:

8 (1) To income to the extent that the amount of timber  
9 removed from the land does not exceed the rate of growth of  
10 the timber during the accounting periods in which a  
11 beneficiary has a mandatory income interest.

12 (2) To principal to the extent that:

13 (i) the amount of timber removed from the land  
14 exceeds the rate of growth of the timber; or

15 (ii) the net receipts are from the sale of standing  
16 timber.

17 (3) To or between income and principal, by determining  
18 the amount of timber removed from the land under the lease or  
19 contract and applying the rules in paragraphs (1) and (2) if  
20 the net receipts are from:

21 (i) the lease of timberland; or

22 (ii) a contract to cut timber from land owned by a  
23 trust.

24 (4) To principal to the extent that advance payments,  
25 bonuses and other payments are not allocated under paragraph  
26 (1), (2) or (3).

27 (b) Determining net receipts.--In determining net receipts  
28 to be allocated under subsection (a), a trustee shall deduct and  
29 transfer to principal a reasonable amount for depletion.

30 (c) Application.--This chapter applies whether or not a

1 decedent or transferor was harvesting timber from the property  
2 before it became subject to the trust.

3 § 8153. Property not productive of income.

4 (a) General rule.--If a Federal estate or gift tax marital  
5 deduction is allowed for all or part of a trust whose income is  
6 required to be paid to the settlor's or testator's spouse and  
7 whose assets consist substantially of property that does not  
8 provide the spouse with sufficient income from or use of the  
9 trust assets, and if the amounts that the trustee transfers from  
10 principal to income under section 8104 (relating to trustee's  
11 power to adjust) and that the trustee distributes to the spouse  
12 from principal pursuant to the governing instrument are  
13 insufficient to provide the spouse with the beneficial enjoyment  
14 required to obtain the marital deduction, the spouse may require  
15 the trustee to make property productive of income, convert  
16 property within a reasonable time, or exercise the power  
17 conferred by section 8104(a). The trustee may decide which  
18 action or combination of actions to take.

19 (b) Other cases.--In cases not governed by subsection (a),  
20 proceeds from the sale or other disposition of an asset are  
21 principal without regard to the amount of income the asset  
22 produces during any accounting period.

23 § 8154. Derivatives and options.

24 (a) Derivatives.--To the extent that a trustee does not  
25 account under section 8143 (relating to business and other  
26 activities conducted by trustee) for transactions in  
27 derivatives, the trustee shall allocate to principal receipts  
28 from and disbursements made in connection with those  
29 transactions.

30 (b) Options.--If a trustee grants an option to buy property

1 from the trust, whether or not the trust owns the property when  
2 the option is granted, grants an option that permits another  
3 person to sell property to the trust, or acquires an option to  
4 buy property for the trust or an option to sell an asset owned  
5 by the trust, and the trustee or other owner of the asset is  
6 required to deliver the asset if the option is exercised, an  
7 amount received for granting the option must be allocated to  
8 principal. An amount paid to acquire the option must be paid  
9 from principal. A gain or loss realized upon the exercise of an  
10 option, including an option granted to a settlor or testator of  
11 the trust for services rendered, must be allocated to principal.

12 (c) Definition.--As used in this section, "derivative" means  
13 a contract or financial instrument or a combination of contracts  
14 and financial instruments which gives a trust the right or  
15 obligation to participate in some or all changes in the price of  
16 a tangible or intangible asset or group of assets, or changes in  
17 a rate, an index of prices or rates, or other market indicator  
18 for an asset or a group of assets.

19 § 8155. Asset-backed securities.

20 (a) General rule.--If a trust receives a payment from  
21 interest or other current return and from other proceeds of the  
22 collateral financial assets:

23 (1) The trustee shall allocate to income the portion of  
24 the payment which the payor identifies as being from interest  
25 or other current return.

26 (2) The trustee shall allocate the balance of the  
27 payment to principal.

28 (b) Allocation where liquidating trust's interest in  
29 security.--

30 (1) If a trust receives one or more payments in exchange

1 for the trust's entire interest in an asset-backed security  
2 in one accounting period, the trustee shall allocate the  
3 payments to principal.

4 (2) If a payment is one of a series of payments which  
5 will result in the liquidation of the trust's interest in the  
6 security over more than one accounting period, the trustee  
7 shall allocate:

8 (i) ten percent of the payment to income; and

9 (ii) the balance to principal.

10 (c) Definition.--As used in this section, the term "asset-  
11 backed security" means an asset the value of which is based upon  
12 the right it gives the owner to receive distributions from the  
13 proceeds of financial assets which provide collateral for the  
14 security. The term includes an asset which gives the owner the  
15 right to receive from the collateral financial assets only the  
16 interest or other current return or only the proceeds other than  
17 interest or current return. The term does not include an asset  
18 to which section 8141 (relating to character of receipts) or  
19 8149 (relating to retirement benefits, individual retirement  
20 accounts, deferred compensation, annuities and similar payments)  
21 applies.

22 SUBCHAPTER E

23 ALLOCATION OF DISBURSEMENTS DURING

24 ADMINISTRATION OF TRUST

25 Sec.

26 8161. Mandatory disbursements from income.

27 8162. Mandatory disbursements from principal.

28 8163. Discretionary allocation of disbursements.

29 8164. Transfers from income to principal for depreciation.

30 8165. Transfers from income to reimburse principal.

1 8166. Income taxes.

2 8167. Adjustments between principal and income because of  
3 taxes.

4 § 8161. Mandatory disbursements from income.

5 A trustee shall make the following disbursements from income:

6 (1) Interest, except interest on death taxes.

7 (2) Ordinary repairs.

8 (3) Real estate and other regularly recurring taxes  
9 assessed against principal.

10 (4) Recurring premiums on fire or other insurance  
11 covering the loss of a principal asset or the loss of income  
12 from, or use of, the asset.

13 § 8162. Mandatory disbursements from principal.

14 (a) Mandatory disbursements.--A trustee shall make the  
15 following disbursements from principal:

16 (1) Extraordinary expenses incurred in connection with  
17 the administration, management or preservation of trust  
18 property and the distribution of income.

19 (2) Extraordinary repairs.

20 (3) Compensation for legal services to the trustee.

21 (4) Expenses in connection with accountings and judicial  
22 or other proceedings. This paragraph includes proceedings to  
23 construe, modify or reform the trust or to protect the trust  
24 or its property.

25 (5) Payments on the principal of a trust debt.

26 (6) Premiums paid on a policy of insurance not described  
27 in section 8161(4) (relating to mandatory disbursements from  
28 income) of which the trust is the owner and beneficiary.

29 (7) Estate, inheritance and other transfer taxes,  
30 including interest and penalties, apportioned to the trust.

1 (8) Disbursements related to environmental matters. This  
2 paragraph includes:

3 (i) Reclamation.

4 (ii) Assessing environmental conditions.

5 (iii) Remedying and removing environmental  
6 contamination.

7 (iv) Monitoring remedial activities and the release  
8 of substances.

9 (v) Preventing future releases of substances.

10 (vi) Collecting amounts from persons liable or  
11 potentially liable for the costs of those activities.

12 (vii) Penalties imposed under environmental statutes  
13 or regulations and other payments made to comply with  
14 those statutes or regulations.

15 (viii) Statutory or common law claims by third  
16 parties.

17 (ix) Defending claims based on environmental  
18 matters.

19 (b) Mandatory reimbursement.--If a principal asset is  
20 encumbered with an obligation which requires income from that  
21 asset to be paid directly to the creditor, the trustee shall  
22 transfer from principal to income an amount equal to the income  
23 paid to the creditor in reduction of the principal balance of  
24 the obligation.

25 § 8163. Discretionary allocation of disbursements.

26 Subject to sections 8161 (relating to mandatory disbursements  
27 from income) and 8162 (relating to mandatory disbursements from  
28 principal), a trustee may, in the trustee's discretion, allocate  
29 to income or principal or partly to each ordinary expenses  
30 incurred in connection with the administration, management, or

1 preservation of trust property and the distribution of income,  
2 including, but not limited to, the compensation of the trustee  
3 and of any person providing investment advisory, custodian or  
4 income tax return preparation services to the trustee.

5 § 8164. Transfers from income to principal for depreciation.

6 (a) Transfers.--A trustee may transfer to principal a  
7 reasonable amount of the net cash receipts from a principal  
8 asset that is subject to depreciation. However, a trustee may  
9 not transfer any amount for depreciation:

10 (1) of that portion of real property used or available  
11 for use by a beneficiary as a residence or of tangible  
12 personal property held or made available for the personal use  
13 or enjoyment of a beneficiary;

14 (2) during the administration of a decedent's estate; or

15 (3) under this section if the trustee is accounting  
16 under section 8143 (relating to business and other activities  
17 conducted by trustee) for the business or activity in which  
18 the asset is used.

19 (b) Separate fund unnecessary for amount transferred.--An  
20 amount transferred to principal need not be held as a separate  
21 fund.

22 (c) Definition.--As used in this section, the term  
23 "depreciation" means a reduction in value due to wear, tear,  
24 decay, corrosion or gradual obsolescence of a fixed asset having  
25 a useful life of more than one year.

26 § 8165. Transfers from income to reimburse principal.

27 (a) Permissible reimbursements.--A trustee may transfer an  
28 appropriate amount from income to principal in one or more  
29 accounting periods to reimburse principal or to provide a  
30 reserve for future disbursements, if the trustee makes or

1 expects to make a disbursement from principal which is allocable  
2 to income under section 8161 (relating to mandatory  
3 disbursements from income) or 8163 (relating to discretionary  
4 allocation of disbursements) and which:

5 (1) is paid from principal because it is unusually  
6 large; or

7 (2) is made to prepare property for rental, including  
8 tenant allowances, leasehold improvements and broker's  
9 commissions.

10 (b) Continued transfers.--If the asset whose ownership gives  
11 rise to the disbursements becomes subject to a successive income  
12 interest after an income interest ends, a trustee may continue  
13 to transfer amounts from income to principal as provided in  
14 subsection (a).

15 (c) Application.--This section shall not apply to the extent  
16 the trustee has been or expects to be reimbursed by a third  
17 party.

18 § 8166. Income taxes.

19 (a) Receipts allocated to income.--A tax required to be paid  
20 by a trustee based on receipts allocated to income shall be paid  
21 from income.

22 (b) Receipts allocated to principal.--A tax required to be  
23 paid by a trustee based on receipts allocated to principal shall  
24 be paid from principal, even if the tax is called an income tax  
25 by the taxing authority.

26 (c) Tax on entity's taxable income.--A tax required to be  
27 paid by a trustee on the trust's share of an entity's taxable  
28 income shall be paid proportionately:

29 (1) from income to the extent that receipts from the  
30 entity are allocated to income; and

1 (2) from principal to the extent that:  
2 (i) receipts from the entity are allocated to  
3 principal; and  
4 (ii) the trust's share of the entity's taxable  
5 income exceeds the total receipts described in paragraph  
6 (1) and subparagraph (i).

7 (d) Reductions in receipts allocated to principal or  
8 income.--For purposes of this section, receipts allocated to  
9 principal or income shall be reduced by the amount distributed  
10 to a beneficiary from principal or income for which the trust  
11 receives a deduction in calculating the tax.

12 § 8167. Adjustments between principal and income because of  
13 taxes.

14 A trustee may make adjustments between principal and income  
15 to offset the shifting of economic interests or tax benefits  
16 between income beneficiaries and remainder beneficiaries which  
17 arise from any of the following:

18 (1) An election or decision which the trustee makes  
19 regarding tax matters.

20 (2) An income tax or any other tax which is imposed upon  
21 the trustee or a beneficiary as a result of a transaction  
22 involving the trust or distribution from the trust.

23 (3) The ownership by a trust of an interest in an entity  
24 the taxable income of which, whether or not distributed, is  
25 includable in the taxable income of the trust or a  
26 beneficiary.

27 SUBCHAPTERS F AND G

28 RESERVED

29 SUBCHAPTER H

30 MISCELLANEOUS PROVISIONS

1 Sec.

2 8191. Uniformity of application and construction.

3 § 8191. Uniformity of application and construction.

4 In applying and construing this chapter, consideration shall  
5 be given to the need to promote uniformity of the law with  
6 respect to its subject matter among states which enact it.

7 Section 14. (a) Except as otherwise expressly provided in  
8 the governing instrument, in the addition of 20 Pa.C.S. Ch. 81  
9 or in subsection (b), this act shall apply to all of the  
10 following:

11 (1) A trust existing on or after the effective date of  
12 this act.

13 (2) The estate of a decedent who dies on or after the  
14 effective date of this act.

15 (b) This act shall apply as follows:

16 (1) The amendment of 20 Pa.C.S. § 724 shall apply to  
17 trusts created before, on or after the effective date of this  
18 act.

19 (2) The amendment of 20 Pa.C.S. § 2104 shall apply to  
20 intestacies occurring on or after the effective date of this  
21 act, even if the trust became irrevocable before the  
22 effective date of this act.

23 (3) The amendment of 20 Pa.C.S. § 6205 shall apply to  
24 disclaimers made on or after the effective date of this act  
25 and shall apply to disclaimers made before the effective date  
26 of this act to the extent the distribution thereunder is made  
27 after the effective date of this act or, if made prior to the  
28 effective date, such distribution was consistent with this  
29 act.

30 (4) The addition of 20 Pa.C.S. §§ 7104 and 7105 shall

1 apply to trusts created before, on or after the effective  
2 date of this act.

3 ~~Section 15. This act shall take effect in 60 days.~~ <—

4 SECTION 15. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

5 (1) THE ADDITION OF 20 PA.C.S. § 5601(E.1) AND (E.2)  
6 SHALL TAKE EFFECT APRIL 12, 2000.

7 (2) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT  
8 IMMEDIATELY:

9 (I) THE ADDITION OF 20 PA.C.S. § 5706.

10 (II) THIS SECTION.

11 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
12 DAYS.