

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 841
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Short Title: Principal and Income Amend.

(Public)

Sponsors: Representatives Baddour; and Richardson.

Referred to: Judiciary III.

April 12, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS AMENDMENTS TO THE PRINCIPAL AND
3 INCOME ACT.

4 The General Assembly of North Carolina enacts:

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

6 **"§ 37-17. Definitions.**

7 (a) As used in this Article:

8 (1) 'Income beneficiary' means the person to whom income is presently
9 payable or for whom it is accumulated for distribution as income.

10 (2) 'Inventory value' means the cost of property purchased by the trustee
11 and the market value of other property at the time it became subject
12 to the trust, but in the case of a testamentary trust the trustee may use
13 any value finally determined for the purposes of an estate or
14 inheritance tax.

15 (2a) 'Pecuniary bequest' means either (i) a bequest of a specific sum of
16 money directed under a will, or (ii) a distribution or allocation, either
17 outright or in trust, of a specific sum of money directed under a trust
18 instrument to be made upon the death of the grantor of the trust,
19 upon the death of any beneficiary of the trust, or upon the happening
20 of any other contingency. A 'pecuniary bequest' includes sums
21 determined under a mathematical formula contained in the will or
22 governing trust instrument and sums which can be satisfied by a
23 distribution in kind in lieu of a distribution of money.

- 1 (3) 'Personal representative' shall include executor, any successor
2 executor, administrator of intestate estates, administrator c.t.a.,
3 successor administrator, collector, or any fiduciary appointed to
4 administer or conserve an estate.
- 5 (4) 'Remainderman' means the person entitled to principal, including
6 income which has been accumulated and added to principal.
- 7 (5) 'Trustee' means an original trustee and any successor or added
8 trustee and, where applicable, the personal representative of a
9 decedent's estate.
- 10 (6) 'Trust' includes, where applicable, a decedent's estate whether testate
11 or intestate.
- 12 (7) 'Tax' includes any interest or penalty thereon except where such
13 interest or penalty is separately provided for in this Article.
- 14 (8) 'Living trust' means a trust created during the lifetime of the grantor
15 that can be amended or revoked in its entirety by the grantor, which
16 is fully includable in the grantor's gross estate for federal estate tax
17 purposes upon the grantor's death, and which is used for the
18 disposition of all or part of the grantor's estate at the grantor's death
19 to beneficiaries designated in the trust instrument or to further trusts
20 created under the trust instrument.'

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

22 **"§ 37-21. Income earned and expenses incurred during administration of a
23 decedent's ~~estate.~~ estate or a living trust.**

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

- 26 (1) All expenses incurred in connection with the administration and
27 settlement of a decedent's estate or in connection with the
28 administration and settlement of a living trust following the grantor's
29 death and prior to the distribution of the trust property to the
30 beneficiaries or to further trusts entitled to succeed to the property
31 after the grantor's death (other than expenses of management and
32 operation of the estate or trust property), including debts, funeral
33 and burial expenses, death taxes, penalties concerning death taxes,
34 and family allowances, shall be charged against the principal of the
35 ~~estate.~~ estate or the living trust; and
- 36 (2) Compensation of ~~attorneys~~ attorneys, trustees, and personal
37 representatives and court costs, to the extent they are incurred in the
38 administration and settlement of a decedent's estate, ~~estate~~ or of a
39 decedent's living trust (following the death of the grantor of the trust
40 and prior to distribution of the trust property to the beneficiaries or
41 to further trusts entitled to succeed to the property after the grantor's
42 death), shall be charged against the principal of the ~~estate.~~ estate or
43 the living trust; and

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

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

11 (1) To specific ~~legatees and~~ legatees, devisees, and distributees the
12 income from the property ~~bequeathed or devised~~ bequeathed, devised,
13 or directed to be distributed to them respectively, less taxes, ordinary
14 repairs and other expenses of management and operation of the
15 property, and appropriate portions of interest expense accrued since
16 the death of the decedent and taxes imposed on income (excluding
17 taxes chargeable against principal) which accrue during the period of
18 ~~administration;~~ administration of the decedent's estate or living trust;

19 (1a) To all legatees or distributees of pecuniary bequests, other than
20 pecuniary bequests:

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

23 or

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

27 as provided in G.S. 37-21.1;

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

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

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

44 "**§ 37-21.1. Interest on pecuniary bequests.**

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

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

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

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

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

13 **"§ 37-30. Taxes.**

14 (a) ~~Regularly~~ Except as provided in subsection (d) of this section, regularly
15 recurring taxes assessed against any portion of the principal and any tax levied on
16 receipts defined as income under this Article or the trust instrument shall be charged
17 against income.

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

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

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

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

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

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

38 **"§ 37-33. Management of principal and application of income.**

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

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

44 **"§ 37-35. Premiums on insurance.**

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

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