

Subchapter IV.

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§ 61-401. Character of receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, statutory trust or any other organization in which a trustee has an interest other than a trust or estate to which § 61-402 of this title applies, a business or activity to which § 61-403 of this title applies, or an asset-backed security to which § 61-415 of this title applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) Subject to subsection (f) of this section, a trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money; provided that if a trustee receives an option to receive a distribution in the form of money or in the form of property and elects to receive the distribution in the form of property, such distribution shall be deemed to be a distribution of money;

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

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) Subject to subsection (f) of this section, to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

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

(e) Money is not received in partial liquidation, nor may it be taken into account under paragraph (d)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made by the

entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors or by a person authorized by such board of directors or comparable person or group of persons to make such a statement.

77 Del. Laws, c. 99, § 1.; 78 Del. Laws, c. 117, § 15.;

§ 61-402. Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, § 61-401 or § 61-415 of this title applies to a receipt from the trust.

77 Del. Laws, c. 99, § 1.;

§ 61-403. Business and other activities conducted by an estate.

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

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

- (4) Management of rental properties;
- (5) Extraction of minerals and other natural resources;
- (6) Timber operations; and
- (7) Activities to which § 61-414 of this title applies.

77 Del. Laws, c. 99, § 1.;

§ 61-404. Principal receipts.

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in § 61-502(a)(7) of this title or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in subchapter III of this chapter.

77 Del. Laws, c. 99, § 1.;

§ 61-405. Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

77 Del. Laws, c. 99, § 1.;

§ 61-406. Obligation to pay money.

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

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which § 61-409, § 61-410, § 61-411, § 61-412, § 61-414 or § 61-415 of this title applies.

77 Del. Laws, c. 99, § 1.;

§ 61-407. Insurance policies and similar contracts.

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to § 61-403 of this title, loss of profits from a business.

(c) This section does not apply to a contract to which § 61-409 of this title applies.

77 Del. Laws, c. 99, § 1.;

§ 61-408. Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by § 61-409, § 61-410, § 61-411, § 61-412 or § 61-415 of this title is insubstantial, the trustee may allocate the entire amount to

principal unless 1 of the circumstances described in § 61-104(c) of this title applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in § 61-104(d) of this title and may be released for the reasons and in the manner described in § 61-104(e) of this title. An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

77 Del. Laws, c. 99, § 1.;

§ 61-409. Deferred compensation, annuities, and similar payments.

(a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f) and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 5 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee

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exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (c) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under § 2056(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(7)], as amended, has been made, or

(2) A trust that qualifies for the marital deduction under § 2056(b)(5) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(5)], as amended,

(e) Subsections (d), (f) and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under § 2056(b)(7)(C) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(7)(C)], as amended

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent that the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under § 7520 of the Internal Revenue Code of 1986 [26 U.S.C. § 7520], as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which § 61-410 of this title applies.

77 Del. Laws, c. 99, § 1.;

§ 61-410. Liquidating asset.

(a) In this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to § 61-409 of this title, resources subject to § 61-411 of this title, timber subject to § 61-412 of this title, an activity subject to § 61-414 of this title, an asset subject to § 61-415 of this title, or any asset for which the trustee establishes a reserve for depreciation under § 61-503 of this title.

(b) A trustee shall allocate to income 5 percent of the receipts from a liquidating asset and the balance to principal.

77 Del. Laws, c. 99, § 1.;

§ 61-411. Minerals, water and other natural resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

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

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

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 95 percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (a)(1), (2), or (3) of this section, 95 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 95 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on August 1, 2009, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before August 1, 2009. If the trust acquires an interest in minerals, water, or other natural resources after August 1, 2009, the trustee shall allocate receipts from the interest as provided in the provisions of this chapter.

77 Del. Laws, c. 99, § 1.;

§ 61-412. Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

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

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (a)(1) and (2) of this section; or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (a)(1), (2), or (3) of this section.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on August 1, 2009, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before August 1, 2009. If the trust acquires an interest in timberland after August 1, 2009, the trustee shall allocate net receipts from the sale of timber and related products as provided in the provisions of this chapter.

77 Del. Laws, c. 99, § 1.;

§ 61-413. Property not productive of income.

Upon request of the income beneficiary, if the trustee determines that the assets of a trust consist substantially of property that does not provide the income beneficiary with a reasonable income from or use of the trust assets, and that the amounts that the trustee transfers from principal to income under § 61-104 of this title and distributes to the income beneficiary from principal pursuant to the terms of the trust are insufficient to provide the income beneficiary with the beneficial enjoyment of the income interest, the trustee shall make such property productive of income, convert such property within a reasonable time, or exercise the power conferred by § 61-104(a) of this title, as such action or combination of actions are deemed appropriate in the trustee's discretion. *77 Del. Laws, c. 99, § 1.; 78 Del. Laws, c. 117, § 16.;*

§ 61-414. Derivatives and options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under § 61-403 of this title for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

77 Del. Laws, c. 99, § 1.;

§ 61-415. Asset-backed securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security.

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The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which § 61-401 or § 61-409 of this title applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives 1 or more payments in exchange for the trust's entire interest in an asset-backed security in 1 accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 5 percent of the payment to income and the balance to principal.

77 Del. Laws, c. 99, § 1.;