CHAPTER 501B

TRUSTS

501B.59 DEFINITIONS.

[For text of subd 1, see M.S.2000]

Subd. 1a. **Accounting period.** "Accounting period" means a calendar year unless another 12-month period is selected by the trustee. Accounting period includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

[For text of subds 2 to 5, see M.S.2000]

History: *2001 c 15 s 2*

501B.60 DUTY OF TRUSTEE AS TO RECEIPTS AND EXPENDITURE.

[For text of subds 1 and 2, see M.S.2000]

Subd. 3. **Standards for exercise.** In exercising a power to adjust under section 501B.70 or a discretionary power of administration regarding a matter within the scope of sections 501B.59 to 501B.76, a fiduciary shall administer the trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 501B.59 to 501B.76 is presumed to be fair and reasonable to all of the beneficiaries.

History: *2001 c 15 s 3*

501B.61 INCOME; PRINCIPAL; CHARGES.

[For text of subd 1, see M.S.2000]

Subd. 2. **Principal defined.** "Principal" means the property set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderperson while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(1) consideration received by the trustee on the sale or other transfer of principal, on repayment of a loan, or as a refund, replacement, or change in the form of principal;

(2) proceeds of property taken on eminent domain proceedings;

(3) proceeds of insurance on property forming part of the principal, except proceeds of insurance on a separate interest of an income beneficiary;

(4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in section 501B.64;

(5) receipts from the disposition of corporate securities as provided in section 501B.65;

(6) royalties and other receipts from disposition of natural resources as provided in sections 501B.67 and 501B.68;

(7) receipts from other principal subject to depletion as provided in section 501B.69;

(8) profit resulting from a change in the form of principal, except as provided in section 501B.70 on underproductive property;

(9) receipts from disposition of underproductive property as provided in section 501B.70;

(10) allowances for depreciation established under sections 501B.66 and 501B.71, subdivision 1, clause (2); and

(11) gain or loss, including the purchase premium, if any, from the grant of an option to buy or sell property of the trust, whether or not the trust owns the property when the option is granted.

[For text of subd 3, see M.S.2000]

History: *2001 c 15 s 4*

501B.62 WHEN RIGHT TO INCOME ARISES; APPORTIONMENT OF INCOME.

Subdivision 1. **General rule.** An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset that becomes subject to a trust because of the death of any person, it becomes subject to the trust as of the date of the death of the person or, if later, the date the estate or trust becomes entitled to the asset if acquired after the death of the person, even though there is an intervening period of administration of an estate or trust during which the beneficiary may have no right to a distribution of the income.

[For text of subds 2 to 5, see M.S.2000]

History: *2001 c 15 s 5*

501B.63 INCOME EARNED DURING ADMINISTRATION OF A DECEDENT'S ESTATE.

[For text of subd 1, see M.S.2000]

Subd. 2. **Income.** Unless the will or trust instrument provides otherwise, income from the assets of a decedent's estate after the death of the testator and before distribution and income from the assets of a trust after an income interest in a trust terminates, including income from property used to discharge liabilities, must be determined in accordance with the rules applicable to a trustee and distributed as follows:

(1) to specific devisees or to any beneficiary who is to receive specific property from a trust, the income from the property devised or distributed to them respectively, less property taxes, ordinary repairs, interest, and other expenses of management and operation of the property, and less an appropriate portion of taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration or after an income interest in a trust terminates;

(2) to a devisee or to any beneficiary who receives a pecuniary amount outright, the interest or any other amount provided by the will, the terms of the trust instrument or applicable law from income determined in accordance with the rules applicable to a trustee or, to the extent income is insufficient, from principal. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust instrument or applicable law, the trustee shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will;

(3) to all other devisees or beneficiaries, the balance of the income determined in accordance with the rules applicable to a trustee, less the balance of property taxes, ordinary repairs, interest, and other expenses of management and operation of all

property from which the estate or trust is entitled to income, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration or after an income interest terminates, in proportion to their respective interests in the undistributed assets of the estate or trust computed at times of distribution on the basis of inventory value.

For purposes of this subdivision, an income interest in a trust terminates upon the occurrence of any event which causes the right of a person to receive mandatory or discretionary distributions of income from the trust to end.

[For text of subd 3, see M.S.2000]

History: *2001 c 15 s 6*

501B.64 ENTITY DISTRIBUTIONS.

Subdivision 1. **Distribution of ownership interests; shares; stock splits; stock dividends; subscription rights.** Distributions of shares of a distributing corporation or similar equity ownership interests in noncorporate entities, including distributions in the form of or equivalent to a stock split or stock dividend, are principal. An entity owner's right to subscribe to shares, ownership interests, or other securities of the distributing entity and the proceeds of any sale of that right are principal.

Subd. 2. **Redemption; merger; reorganization; liquidation.** Subject to subdivisions 3 and 4, and except to the extent that the entity indicates that some part of an entity distribution is a settlement of preferred or guaranteed corporate dividends or distribution preferences based upon a return on invested capital accrued under the governing instrument since the trustee acquired the related ownership interest or is in lieu of an ordinary cash dividend or similar distribution from current earnings of the entity, an entity distribution is principal if the distribution is pursuant to:

(1) redemption of the ownership interest or a call of shares;

(2) a merger, consolidation, reorganization, or other plan by which assets of the entity are acquired by another entity; or

(3) a total or partial liquidation of the entity, including a distribution the entity indicates is a distribution in total or partial liquidation or distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

Subd. 3. **Regulated investment company; real estate investment trust.** Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

Subd. 4. **Distributions from pass-through entities.** Distributions from pass-through entities must be allocated between income and principal as reasonably and equitably determined by the trustee. This subdivision applies for any accounting period during which an entity is a pass-through entity for any portion of the accounting period. In making its determination, the trustee may consider the following:

(1) characterization of income, distributions, and transactions in financial or other information received from the entity, including financial statements and tax information;

(2) whether the entity completed a significant capital transaction outside of the ordinary course of business that the trustee believes has resulted in a distribution to the owners of the entity in the nature of a partial liquidating distribution;

(3) the extent to which the burden for income tax with respect to the income of the entity is to be paid by the trustee out of trust assets or by the beneficiaries of the trust;

(4) the net amount of distributions from the entity available to the trustee after estimating or accounting for tax payments by the trustee or distributions to beneficiaries for the purpose of paying taxes on income earned by the entity;

(5) whether distributions appear to be made out of or contributed to by income earned by the entity and subjected to income taxes in a prior accounting period which may include accounting periods prior to the date the trustee acquired the related ownership interest;

(6) whether the entity is consistently a pass-through entity during multiple accounting periods or a change to or from being a pass-through entity has or will occur in accounting periods preceding or subsequent to the current accounting period;

(7) if the trust owns a controlling interest or total interest in an entity, the trustee may reasonably allocate distributions between income and principal and not necessarily as if that business interest were owned by the trust as a proprietorship; and

(8) other facts and circumstances as the trustee reasonably considers relevant to its determination.

Subd. 5. **Other distributions.** Except as provided in subdivisions 1, 2, 3, and 4, all distributions from entities are income. "Entity distributions" includes cash dividends, distributions of or rights to subscribe to shares or securities or obligations of entities other than the distributing entity, and the proceeds of the rights or property distributions. Except as provided in subdivisions 1, 2, 3, and 4, if the distributing entity gives the owner of an ownership interest an option to receive a distribution either in cash or in an ownership interest in the entity, the distribution chosen is income.

Subd. 6. **Reliance on statements.** The trustee may rely on a statement of the distributing entity as to a fact relevant under a provision of sections 501B.59 to 501B.76 concerning the source or character of dividends or distributions of corporate assets.

Subd. 7. **Definitions.** The definitions in this subdivision apply to this section.

(a) **Entity.** "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common or collective trust fund, or any other organization in which a trustee has an interest other than a trust or estate governed by any other provision of sections 501B.59 to 501B.76.

(b) **Pass-through entity.** "Pass-through entity" means any entity that passes through income, loss, deductions, credits, and other tax attributes to the owners of an interest in the entity under the Internal Revenue Code in such manner that the owner is directly subject to income taxation on all or any part of the income of the entity (whether or not the pass-through of the tax attributes is related to distributions from the entity), including, but not limited to, S corporations, partnerships, limited liability companies, or limited liability partnerships.

History: *2001 c 15 s 7*

501B.66 [Repealed, 2001 c 15 s 14]

501B.665 SOLE PROPRIETORSHIPS.

Subdivision 1. **Separate account.** A trustee who conducts a business or other activity as a sole proprietor may establish and maintain a separate account for the transactions of the business or other activity, whether or not its assets are segregated from other trust assets, if the trustee determines that it is in the best interest of all the beneficiaries to establish a separate account instead of accounting for the business or other activity as part of the trust's general accounting records.

(a) A trustee who establishes a separate account for a business or other activity shall determine the extent to which its net cash receipts will be retained in the separate account for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity or will be transferred out of the separate account and accounted for as principal or income in the trust's general accounting records as the trustee reasonably and equitably determines. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, and determines that any portion of the amount received is no longer required in the conduct of the business the trustee shall transfer that portion out of the separate account and shall account for that portion as principal in the trust's general accounting records.

(b) A trustee may not account separately for a traditional securities portfolio to avoid the provisions of sections 501B.59 to 501B.76 that otherwise apply to securities.

Subd. 2. **Other income or losses.** If a trustee does not maintain a separate account for a business or other activity conducted as a sole proprietorship, the net profits of the sole proprietorship in any fiscal or calendar year, as reasonably and equitably determined by the trustee, must be allocated to income while any net loss in that year must be charged to principal and must not be carried into any other fiscal or calendar year for purposes of calculating net income.

History: *2001 c 15 s 8*

501B.68 TIMBER.

Subdivision 1. **Net receipts.** If a part of the principal consists of land from which merchantable timber may be removed, the net receipts from taking the timber from the land must be allocated as follows:

(1) to income to the extent that the amount of timber removed from the land during the accounting period does not exceed the rate of growth of the timber;

(2) to principal to the extent that the amount of timber removed from the land during the accounting period 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 clause (1) or (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to clause (1), (2), or (3).

Subd. 2. **Depletion.** In determining net receipts to be allocated pursuant to subdivision 1, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

Subd. 3. **Scope.** This section applies whether or not timber was harvested from the property before it became subject to the trust.

History: *2001 c 15 s 9*

501B.69 ANNUITIES, QUALIFIED AND NONQUALIFIED EMPLOYEE COMPENSATION, RETIREMENT PLANS AND OTHER PROPERTY SUBJECT TO DEPLETION.

Except as provided in sections 501B.67 and 501B.68, if part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, rights to receive payments on a contract for deferred compensation, qualified and nonqualified employer retirement plans, individual retirement accounts, and annuities, the receipts from the property must be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal. The trustee may determine the allocation based on a fixed percentage of each payment, an amortization of the inventory value of the series of payments, or, if the individual retirement account, pension, profit-sharing, stock-bonus, or stock-ownership plan consists of segregated and identifiable assets, the trustee may apply the provisions of sections 501B.59 to 501B.76 to the receipts in the account or plan in order to characterize the payments received during a trust accounting period. To the extent that a payment is characterized by the payer as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The amount allocated to principal is presumed to be reasonable and equitable if it is neither substantially more nor less than the amount allowable as a deduction for depletion, amortization, depreciation, or similar costs under the Internal Revenue Code of 1986.

History: *2001 c 15 s 10*

501B.70 [Repealed, 2001 c 15 s 14]

501B.705 TRUSTEE'S POWER TO ADJUST.

Subdivision 1. **Power to adjust.** A trustee may adjust between principal and income to the extent the trustee considers necessary to comply with section 501B.60, subdivision 3, after applying section 501B.60, subdivisions 1 and 2, if the trustee invests and manages the trust assets as a prudent investor and the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.

Subd. 2. **Factors to consider.** In deciding whether and to what extent to exercise the power conferred by subdivision 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

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

(6) the net amount allocated to income under the other provisions of sections 501B.59 to 501B.76 and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) the anticipated tax consequences of an adjustment;

(10) the income return (determined without regard to adjustments under this section) during the accounting period from other trusts with similar purposes.

Subd. 3. **Limitation on trustee's power.** A trustee may not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed or allowable, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside; provided, however, that this limitation does not apply to any trust created prior to August 1, 2001, to the extent the trustee receives amounts during the accounting period which would, under the provisions of Minnesota Statutes 2000, section 501B.70, in effect prior to August 1, 2001, have been allocated to income;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove or appoint the trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

Subd. 4. **Cotrustee may exercise power.** If the provisions of subdivision 3, clause (5), (6), (7), or (8), apply to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

Subd. 5. **Release of power.** A trustee may release the entire power conferred by subdivision 1 or may release only the power to adjust from income to principal or to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivision 3, clause (1), (2), (3), (4), (5), (6), or (8), or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision 3. The release may be permanent or for a specified period, including a period measured by the life of an individual.

Subd. 6. **Power may be negated by specific reference.** Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subdivision 1.

Subd. 7. **No duty to adjust; remedy.** Nothing in this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment. In a proceeding with respect to the trustee's nonexercise of the power to make an adjustment from principal to income (or with respect to the trustee's failure to make a greater adjustment from principal to income), the sole remedy is to direct or deny an adjustment (or greater adjustment) from principal to income.

Subd. 8. **Notice of determination.** A trustee may give notice of a proposed action regarding a matter governed by this section as provided in this subdivision. For purposes of this subdivision, a proposed action includes a course of action and a determination not to take action.

(a) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. Notice may be given to any other beneficiary.

(b) The notice of proposed action must state that it is given pursuant to this subdivision and must state the following:

(1) the name and mailing address of the trustee;

(2) the name and telephone number of a person who may be contacted for additional information;

(3) a description of the action proposed to be taken and an explanation of the reasons for the action;

(4) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and

(5) the date on or after which the proposed action may be taken or is effective.

(c) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(d) If a trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period, the trustee is not liable for an action regarding a matter governed by this chapter to a beneficiary if:

(1) the beneficiary is an adult (or is a minor with a duly appointed conservator of the estate) and the notice is mailed to the adult beneficiary or conservator at the address determined by the trustee after reasonable diligence;

(2) the beneficiary is an adult (or is a minor with a duly appointed conservator of the estate) and the adult beneficiary or conservator receives actual notice;

(3) the beneficiary is not an adult and has no duly appointed conservator of the estate and an adult having a substantially identical interest and having no conflicting interest receives actual notice;

(4) the beneficiary (or the conservator of the estate of a minor beneficiary) consents in writing to the proposed action either before or after the action is taken; or

(5) the beneficiary is not an adult and has no duly appointed conservator of the estate and an adult having a substantially identical interest and having no conflicting interest consents in writing to the proposed action either before or after the action is taken.

(e) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proof as to whether the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

(f) Nothing in this subdivision limits the right of a trustee or beneficiary to petition the court pursuant to section 501B.16 for instructions as to any action, failure to act, or determination not to act regarding a matter governed by this section in the absence of notice as provided in this subdivision. In any such proceeding, any beneficiary filing such a petition or objecting to a petition of the trustee has the burden of proof as to any action taken, any failure to act, or determination not to act, by the trustee.

History: *2001 c 15 s 11*