

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 short-term or long-term 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: 1989 c 340 art 1 s 53; 2001 c 15 s 7; 2010 c 334 s 4