

HOUSE BILL NO. 215

INTRODUCED BY RAMIREZ, SPAETH, MILLER

IN THE HOUSE

January 13, 1983	Introduced and referred to Committee on Judiciary.
January 19, 1983	Committee recommend bill do pass as amended. Report adopted.
January 20, 1983	Bill printed and placed on members' desks.
January 21, 1983	Second reading, do pass.
January 24, 1983	Considered correctly engrossed.
January 25, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 26, 1983	Introduced and referred to Committee on Judiciary.
March 19, 1983	Committee recommend bill be concurred in. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 24, 1983	Returned to House.
March 25, 1983	Sent to enrolling.
	Reported correctly enrolled.

1 House BILL NO. 215
 2 INTRODUCED BY Ramirez Speeth
Miller
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED
 5 UNIFORM PRINCIPAL AND INCOME ACT AS PROMULGATED BY THE
 6 NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS;
 7 AMENDING SECTIONS 72-25-101 THROUGH 72-25-103 AND 72-25-105,
 8 MCA; REPEALING SECTIONS 72-25-104, 72-25-201 THROUGH
 9 72-25-209, 72-25-301, AND 72-25-302, MCA; AND PROVIDING AN
 10 EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 72-25-101, MCA, is amended to read:
 14 "72-25-101. Short title. This chapter may be cited as
 15 the "Revised Uniform Principal and Income Act"."
 16 Section 2. Section 72-25-102, MCA, is amended to read:
 17 "72-25-102. Definitions. In this chapter, the
 18 following definitions apply:
 19 ~~(1) "Principal" means any realty or personalty which~~
 20 ~~has been so set aside or limited by the owner thereof or~~
 21 ~~person thereto legally empowered that it and any~~
 22 ~~substitutions for it are eventually to be conveyed,~~
 23 ~~delivered, or paid to a person, while the return therefrom~~
 24 ~~or use thereof or any part of such return or use is in the~~
 25 ~~meantime to be taken or received by or held for accumulation~~

1 ~~for the same or another person.~~
 2 ~~(2) "Income" means the return derived from principal.~~
 3 ~~(3) "Tenant" means the person to whom income is~~
 4 ~~presently or currently payable or for whom it is accumulated~~
 5 ~~or who is entitled to the beneficial use of the principal~~
 6 ~~presently and for a time prior to its distribution.~~
 7 (1) "Income beneficiary" means the person to whom
 8 income is presently payable or for whom it is accumulated
 9 for distribution as income.
 10 (2) "Inventory value" means the cost of property
 11 purchased by the trustee and the cost or adjusted basis for
 12 federal income tax purposes of other property at the time it
 13 became subject to the trust, but in case of a testamentary
 14 trust the trustee may use the value finally determined for
 15 the purposes of federal estate tax, if applicable; otherwise
 16 for inheritance tax.
 17 ~~(4)(3) "Remainderman" means the person ultimately~~
 18 ~~entitled to the principal, whether named or designated by~~
 19 ~~the terms of the transaction by which the principal was~~
 20 ~~established or determined by operation of law including~~
 21 ~~income which has been accumulated and added to principal.~~
 22 (5)(4) "Trustee" includes means the original trustee,
 23 of any trust to which the principal may be subject and also
 24 any succeeding or added trustee, and the personal
 25 representative of a decedent's estate whenever a provision

of this chapter is applicable to the estate."

Section 3. Section 72-25-103, MCA, is amended to read:

"72-25-103. Applicability. ~~This chapter shall apply to all estates of tenants or remaindermen which become legally effective after March 17, 1959. Except as specifically provided in the trust instrument or the will or in this chapter, this chapter applies to any receipt or expense received or incurred after July 1, 1983, by any trust or decedent's estate, whether established before or after July 1, 1983, and whether the asset involved was acquired by the trustee of a trust or a personal representative of a decedent's estate before or after July 1, 1983.~~"

Section 4. Section 72-25-105, MCA, is amended to read:

"72-25-105. Interpretation — uniformity. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

NEW SECTION. Section 5. Duty of trustee as to receipt and expenditure. (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) in accordance with the terms of the trust

instrument, notwithstanding contrary provisions of this chapter;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or

(c) if neither of the preceding rules of administration is applicable, 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 and in view of the manner in which men of ordinary prudence, discretion, and judgment would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of this chapter.

NEW SECTION. Section 6. Income — principal — charges. (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as

1 consideration for the privilege of prepayment of principal
2 except as provided in [section 10] on bond premium and bond
3 discount;

4 (c) income earned during administration of a
5 decedent's estate as provided in [section 8];

6 (d) corporate distributions as provided in [section
7 9];

8 (e) accrued increment on bonds or other obligations
9 issued at discount as provided in [section 10];

10 (f) receipts from business and farming operations as
11 provided in [section 11];

12 (g) receipts from disposition of natural resources as
13 provided in [sections 12 and 13];

14 (h) receipts from other principal subject to depletion
15 as provided in [section 14].

16 (2) Principal is the property which has been set aside
17 by the owner or the person legally empowered so that it is
18 held in trust, eventually to be delivered to a remainderman,
19 while the return or use of the principal is in the meantime
20 taken or received by or held for accumulation for an income
21 beneficiary. Principal includes:

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

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

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

6 (d) stock dividends, receipts on liquidation of a
7 corporation, and other corporate distributions as provided
8 in [section 9];

9 (e) receipts from the disposition of corporate
10 securities as provided in [section 10];

11 (f) royalties and other receipts from disposition of
12 natural resources as provided in [sections 12 and 13];

13 (g) receipts from other principal subject to depletion
14 as provided in [section 14];

15 (h) any profit resulting from any change in the form
16 of principal;

17 (i) any allowances for depreciation established under
18 [section 15(1)(b)].

19 (3) After determining income and principal in
20 accordance with the terms of the trust instrument or of this
21 chapter, the trustee shall charge to income or principal
22 expenses and other charges as provided in [section 15].

23 NEW SECTION. Section 7. When right to income arises
24 — apportionment of income. (1) An income beneficiary is
25 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 becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will:

(a) receipts due but not paid at the date of death of the testator are principal;

(b) receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income-producing asset is income, even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of

termination;

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

NEW SECTION. Section 8. Income earned during administration of a decedent's estate. (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this chapter and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

NEW SECTION. Section 9. Corporate distributions. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing

corporation accruing to stockholders on account of their stock ownership, and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are required by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any 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.

(3) 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

1 cash or an option to take new stock or cash or an option to
2 purchase additional shares, are principal.

3 (4) Except as provided in subsections (1) through (3),
4 all corporate distributions are income, including cash
5 dividends, distributions of or rights to subscribe to shares
6 or securities or obligations of corporations other than the
7 distributing corporation, and the proceeds of the rights or
8 property distributions. Except as provided in subsections
9 (2) and (3), if the distributing corporation gives a
10 stockholder an option to receive a distribution either in
11 cash or in its own shares, the distribution chosen is
12 income.

13 (5) The trustee may rely upon any statement of the
14 distributing corporation as to any fact relevant under any
15 provision of this chapter concerning the source or character
16 of dividends or distributions of corporate assets.

17 NEW SECTION. Section 10. Bond premium and discount.

18 (1) Bonds or other obligations for the payment of money are
19 principal at their inventory value, except as provided in
20 subsection (2) for discount bonds. No provision may be made
21 for amortization of bond premiums or for accumulation for
22 discount. The proceeds of sale, redemption, or other
23 disposition of the bonds or obligations are principal.

24 (2) The increment in value of a bond or other
25 obligation for the payment of money payable at a future time

1 in accordance with a fixed schedule of appreciation in
2 excess of the price at which it was issued is distributable
3 as income. The increment in value is distributable to the
4 beneficiary who was the income beneficiary at the time of
5 increment from the first principal cash available or, if
6 none is available, when realized by sale, redemption, or
7 other disposition. Whenever unrealized increment is
8 distributed as income but out of principal, the principal
9 shall be reimbursed for the increment when realized.

10 NEW SECTION. Section 11. Business and farming
11 operations. (1) If a trustee uses any part of the principal
12 in the continuance of a business of which the settlor was a
13 sole proprietor or a partner, the net profits of the
14 business, computed in accordance with generally accepted
15 accounting principles for a comparable business, are income.
16 If a loss results in any fiscal or calendar year, the loss
17 falls on principal and may not be carried into any other
18 fiscal or calendar year for purposes of calculating net
19 income.

20 (2) Generally accepted accounting principles shall be
21 used to determine income from an agricultural or farming
22 operation, including the raising of animals or the operation
23 of a nursery.

24 NEW SECTION. Section 12. Disposition of natural
25 resources. (1) If any part of the principal consists of a

right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsection (1)(a) or (1)(b) shall be apportioned on a yearly basis in accordance with subsection (1)(c), whether or not any natural resource was being taken from the land at the time the trust was established. Not less than 20% but not more than 50% of the

net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on July 1, 1983, held an item of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before July 1, 1983, but as to all depletable property acquired after July 1, 1983, by an existing or new trust, the method of allocation provided in this section shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

NEW SECTION. Section 13. Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 5(1)(c)].

NEW SECTION. Section 14. Other property subject to depletion. Except as provided in [sections 12 and 13], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of

5% per year of the net receipts remaining after payment of expenses, directly and indirectly computed without allowance for depletion, are income, and the balance is principal.

NEW SECTION. Section 15. Charges against income and principal. (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal; water rates; premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee; interest paid by the trustee; and ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee is not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily

concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise;

(f) any tax levied upon receipts defined as income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e); special compensation of trustees; expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1);

including the cost of investing and reinvesting principal;
the payments on principal of an indebtedness, including a
mortgage amortized by periodic payments of principal;
expenses for preparation of property for rental or sale;
and, unless the court directs otherwise, expenses incurred
in maintaining or defending any action to construe the trust
or protect it or the property or assure the title of any
trust property;

(c) extraordinary repairs or expenses incurred in
making a capital improvement to principal, including special
assessments, but a trustee may establish an allowance for
depreciation out of income to the extent permitted by
subsection (1)(b) and by [section 11];

(d) any tax levied upon profit, gain, or other
receipts allocated to principal, notwithstanding
denomination of the tax as an income tax by the taxing
authority;

(e) if an estate or inheritance tax is levied in
respect to a trust in which both an income beneficiary and a
remainderman have an interest, any amount apportioned to the
trust, including interest and penalties, even though the
income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income
shall be apportioned to the same extent and in the same
manner that income is apportioned under [section 7].

NEW SECTION. Section 16. Repealer. Sections
72-25-104, 72-25-201 through 72-25-209, 72-25-301, and
72-25-302, MCA, are repealed.

NEW SECTION. Section 17. Codification instruction.
Sections 5 through 15 are intended to be codified as an
integral part of Title 72, chapter 25, and the provisions of
Title 72, chapter 25, apply to sections 5 through 15.

NEW SECTION. Section 18. Effective date. This act is
effective July 1, 1983.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 215

INTRODUCED BY RAMIREZ, SPAETH, MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED
UNIFORM PRINCIPAL AND INCOME ACT AS PROMULGATED BY THE
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS;
AMENDING SECTIONS 72-25-101 THROUGH 72-25-103 AND 72-25-105,
MCA; REPEALING SECTIONS 72-25-104, 72-25-201 THROUGH
72-25-209, 72-25-301, AND 72-25-302, MCA; AND PROVIDING AN
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-25-101, MCA, is amended to read:

"72-25-101. Short title. This chapter may be cited as
the "Revised Uniform Principal and Income Act"."

Section 2. Section 72-25-102, MCA, is amended to read:

"72-25-102. Definitions. In this chapter, the
following definitions apply:

~~(1) "Principal" means any realty or personalty which
has been so set aside or limited by the owner thereof or
person thereto legally empowered that it and any
substitutions for it are eventually to be conveyed
delivered or paid to a person while the return therefrom
or use thereof or any part of such return or use is in the
meantime to be taken or received by or held for accumulation~~

~~for the same or another person.~~

~~(2) "Income" means the return derived from principal~~

~~(3) "Tenant" means the person to whom income is
presently or currently payable or for whom it is accumulated
or who is entitled to the beneficial use of the principal
presently and for a time prior to its distribution.~~

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

(2) "Inventory value" means the cost of property
purchased by the trustee and the cost or adjusted basis for
federal income tax purposes of other property at the time it
became subject to the trust but in case of a testamentary
trust the trustee may use the value finally determined for
the purposes of federal estate tax if applicable otherwise
for inheritance tax ADJUSTED BASIS FOR FEDERAL INCOME TAX
PURPOSES.

~~(4) (3) "Remainderman" means the person ultimately
entitled to the principal, whether named or designated by
the terms of the transaction by which the principal was
established or determined by operation of law including
income which has been accumulated and added to principal.~~

~~(5) (4) "Trustee" includes means the original trustee
of any trust to which the principal may be subject and also
any succeeding or added trustee and the personal~~

1 ~~representative of a decedent's estate whenever a provision~~
2 ~~of this chapter is applicable to the estate."~~

3 Section 3. Section 72-25-103, MCA, is amended to read:

4 "72-25-103. Applicability. ~~This chapter shall apply to~~
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6 ~~effective after March 17, 1959. Except as specifically~~
7 ~~provided in the trust instrument or the will or in this~~
8 ~~chapter, this chapter applies to any receipt or expense~~
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10 ~~decedent's estate, whether established before or after July~~
11 ~~1, 1983, and whether the asset involved was acquired by the~~
12 ~~trustee of a trust or a personal representative of a~~
13 ~~decedent's estate before or after July 1, 1983."~~

14 Section 4. Section 72-25-105, MCA, is amended to read:

15 "72-25-105. Interpretation -- uniformity. This chapter
16 shall be so interpreted and construed as to effectuate its
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19 NEW SECTION. Section 5. Duty of trustee as to receipt
20 and expenditure. (1) A trust shall be administered with due
21 regard to the respective interests of income beneficiaries
22 and remaindermen. A trust is so administered with respect to
23 the allocation of receipts and expenditures if a receipt is
24 credited or an expenditure is charged to income or principal
25 or partly to each:

1 (a) in accordance with the terms of the trust
2 instrument, notwithstanding contrary provisions of this
3 chapter;

4 (b) in the absence of any contrary terms of the trust
5 instrument, in accordance with the provisions of this
6 chapter; or

7 (c) if neither of the preceding rules of
8 administration is applicable, in accordance with what is
9 reasonable and equitable in view of the interests of those
10 entitled to income as well as of those entitled to principal
11 and in view of the manner in which men of ordinary prudence,
12 discretion, and judgment would act in the management of
13 their own affairs.

14 (2) If the trust instrument gives the trustee
15 discretion in crediting a receipt or charging an expenditure
16 to income or principal or partly to each, no inference of
17 imprudence or partiality arises from the fact that the
18 trustee has made an allocation contrary to a provision of
19 this chapter.

20 NEW SECTION. Section 6. Income -- principal --
21 charges. (1) Income is the return in money or property
22 derived from the use of principal, including return received
23 as:

24 (a) rent of real or personal property, including sums
25 received for cancellation or renewal of a lease;

1 (b) interest on money lent, including sums received as
2 consideration for the privilege of prepayment of principal
3 except as provided in [section 10] on bond premium and bond
4 discount;

5 (c) income earned during administration of a
6 decedent's estate as provided in [section 8];

7 (d) corporate distributions as provided in [section
8 9];

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10 issued at discount as provided in [section 10];

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12 provided in [section 11];

13 (g) receipts from disposition of natural resources as
14 provided in [sections 12 and 13];

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16 as provided in [section 14].

17 (2) Principal is the property which has been set aside
18 by the owner or the person legally empowered so that it is
19 held in trust, eventually to be delivered to a remainderman,
20 while the return or use of the principal is in the meantime
21 taken or received by or held for accumulation for an income
22 beneficiary. Principal includes:

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

1 principal;

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

4 (c) proceeds of insurance upon property forming part
5 of the principal, except proceeds of insurance upon a
6 separate interest of an income beneficiary;

7 (d) stock dividends, receipts on liquidation of a
8 corporation, and other corporate distributions as provided
9 in [section 9];

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11 securities as provided in [section 10];

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13 natural resources as provided in [sections 12 and 13];

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15 as provided in [section 14];

16 (h) any profit resulting from any change in the form
17 of principal;

18 (i) any allowances for depreciation established under
19 [section 15(1)(b)].

20 (3) After determining income and principal in
21 accordance with the terms of the trust instrument or of this
22 chapter, the trustee shall charge to income or principal
23 expenses and other charges as provided in [section 15].

24 NEW SECTION. Section 7. When right to income arises
25 -- apportionment of income. (1) An income beneficiary is

1 entitled to income from the date specified in the trust
 2 instrument or, if none is specified, from the date an asset
 3 becomes subject to the trust. In the case of an asset
 4 becoming subject to a trust by reason of a will, it becomes
 5 subject to the trust as of the date of the death of the
 6 testator even though there is an intervening period of
 7 administration of the testator's estate.

8 (2) In the administration of a decedent's estate or an
 9 asset becoming subject to a trust by reason of a will:

10 (a) receipts due but not paid at the date of death of
 11 the testator are principal;

12 (b) receipts in the form of periodic payments (other
 13 than corporate distributions to stockholders), including
 14 rent, interest, or annuities, not due at the date of the
 15 death of the testator shall be treated as accruing from day
 16 to day. That portion of the receipt accruing before the date
 17 of death is principal, and the balance is income.

18 (3) In all other cases, any receipt from an
 19 income-producing asset is income, even though the receipt
 20 was earned or accrued in whole or in part before the date
 21 when the asset became subject to the trust.

22 (4) On termination of an income interest, the income
 23 beneficiary whose interest is terminated, or his estate, is
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 10 distribution or, if no date is fixed, on the date of
 11 declaration of the distribution by the corporation.

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 13 administration of a decedent's estate. (1) Unless the will
 14 otherwise provides and subject to subsection (2), all
 15 expenses incurred in connection with the settlement of a
 16 decedent's estate, including debts, funeral expenses, estate
 17 taxes, interest and penalties concerning taxes, family
 18 allowances, fees of attorneys and personal representatives,
 19 and court costs, shall be charged against the principal of
 20 the estate.

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 22 the assets of a decedent's estate after the death of the
 23 testator and before distribution, including income from
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 25 in accordance with the rules applicable to a trustee under

1 this chapter and distributed as follows:

2 (a) to specific legatees and devisees, the income from
3 the property bequeathed or devised to them respectively,
4 less taxes, ordinary repairs, and other expenses of
5 management and operation of the property, and an appropriate
6 portion of interest accrued since the death of the testator
7 and of taxes imposed on income (excluding taxes on capital
8 gains) that accrue during the period of administration;

9 (b) to all other legatees and devisees, except
10 legatees of pecuniary bequests not in trust, the balance of
11 the income, less the balance of taxes, ordinary repairs, and
12 other expenses of management and operation of all property
13 from which the estate is entitled to income, interest
14 accrued since the death of the testator, and taxes imposed
15 on income (excluding taxes on capital gains) that accrue
16 during the period of administration, in proportion to their
17 respective interests in the undistributed assets of the
18 estate computed at times of distribution on the basis of
19 inventory value.

20 (3) Income received by a trustee under subsection (2)
21 shall be treated as income of the trust.

22 NEW SECTION. Section 9. Corporate distributions. (1)
23 Corporate distributions of shares of the distributing
24 corporation, including distributions in the form of a stock
25 split or stock dividend, are principal. A right to subscribe

1 to shares or other securities issued by the distributing
2 corporation accruing to stockholders on account of their
3 stock ownership, and the proceeds of any sale of the right,
4 are principal.

5 (2) Except to the extent that the corporation
6 indicates that some part of a corporate distribution is a
7 settlement of preferred or guaranteed dividends accrued
8 since the trustee became a stockholder or is in lieu of an
9 ordinary cash dividend, a corporate distribution is
10 principal if the distribution is pursuant to:

11 (a) a call of shares;

12 (b) a merger, consolidation, reorganization, or other
13 plan by which assets of the corporation are required by
14 another corporation; or

15 (c) a total or partial liquidation of the corporation,
16 including any distribution which the corporation indicates
17 is a distribution in total or partial liquidation or any
18 distribution of assets, other than cash, pursuant to a court
19 decree or final administrative order by a government agency
20 ordering distribution of the particular assets.

21 (3) Distributions made from ordinary income by a
22 regulated investment company or by a trust qualifying and
23 electing to be taxed under federal law as a real estate
24 investment trust are income. All other distributions made by
25 the company or trust, including distributions from capital

1 gains, depreciation, or depletion, whether in the form of
2 cash or an option to take new stock or cash or an option to
3 purchase additional shares, are principal.

4 (4) Except as provided in subsections (1) through (3),
5 all corporate distributions are income, including cash
6 dividends, distributions of or rights to subscribe to shares
7 or securities or obligations of corporations other than the
8 distributing corporation, and the proceeds of the rights or
9 property distributions. Except as provided in subsections
10 (2) and (3), if the distributing corporation gives a
11 stockholder an option to receive a distribution either in
12 cash or in its own shares, the distribution chosen is
13 income.

14 (5) The trustee may rely upon any statement of the
15 distributing corporation as to any fact relevant under any
16 provision of this chapter concerning the source or character
17 of dividends or distributions of corporate assets.

18 NEW SECTION. Section 10. Bond premium and discount.

19 (1) Bonds or other obligations for the payment of money are
20 principal at their inventory value, except as provided in
21 subsection (2) for discount bonds. No provision may be made
22 for amortization of bond premiums or for accumulation for
23 discount. The proceeds of sale, redemption, or other
24 disposition of the bonds or obligations are principal.

25 (2) The increment in value of a bond or other

1 obligation for the payment of money payable at a future time
2 in accordance with a fixed schedule of appreciation in
3 excess of the price at which it was issued is distributable
4 as income. The increment in value is distributable to the
5 beneficiary who was the income beneficiary at the time of
6 increment from the first principal cash available or, if
7 none is available, when realized by sale, redemption, or
8 other disposition. Whenever unrealized increment is
9 distributed as income but out of principal, the principal
10 shall be reimbursed for the increment when realized.

11 NEW SECTION. Section 11. Business and farming
12 operations. (1) If a trustee uses any part of the principal
13 in the continuance of a business of which the settlor was a
14 sole proprietor or a partner, the net profits of the
15 business, computed in accordance with generally accepted
16 accounting principles for a comparable business, are income.
17 If a loss results in any fiscal or calendar year, the loss
18 falls on principal and may not be carried into any other
19 fiscal or calendar year for purposes of calculating net
20 income.

21 (2) Generally accepted accounting principles shall be
22 used to determine income from an agricultural or farming
23 operation, including the raising of animals or the operation
24 of a nursery.

25 NEW SECTION. Section 12. Disposition of natural

1 resources. (1) If any part of the principal consists of a
2 right to receive royalties, overriding or limited royalties,
3 working interests, production payments, net profit
4 interests, or other interests in minerals or other natural
5 resources in, on, or under land, the receipts from taking
6 the natural resources from the land shall be allocated as
7 follows:

8 (a) If received as rent on a lease or extension
9 payments on a lease, the receipts are income.

10 (b) If received from a production payment, the
11 receipts are income to the extent of any factor for interest
12 or its equivalent provided in the governing instrument.
13 There shall be allocated to principal the fraction of the
14 balance of the receipts which the unrecovered cost of the
15 production payment bears to the balance owed on the
16 production payment, exclusive of any factor for interest or
17 its equivalent. The receipts not allocated to principal are
18 income.

19 (c) If received as a royalty, overriding or limited
20 royalty or bonus, or from a working, net profit, or any
21 other interest in minerals or other natural resources,
22 receipts not provided for in subsection (1)(a) or (1)(b)
23 shall be apportioned on a yearly basis in accordance with
24 subsection (1)(c), whether or not any natural resource was
25 being taken from the land at the time the trust was

1 established. Not less than 20% but not ~~Q8~~ more than 50% of
2 the net receipts ~~remaining after payment of all expenses~~
3 ~~direct and indirect, computed without allowance for~~
4 ~~depletion, to be determined in the discretion of the~~
5 ~~trustee~~, shall be added to principal as an allowance for
6 depletion. The balance of the gross ~~NET~~ receipts, ~~after~~
7 ~~payment therefrom of all expenses, direct and indirect, is~~
8 income.

9 (2) If a trustee, on July 1, 1983, held an item of
10 depletable property of a type specified in this section, he
11 shall allocate receipts from the property in the manner used
12 before July 1, 1983, but as to all depletable property
13 acquired after July 1, 1983, by an existing or new trust,
14 the method of allocation provided in this section shall be
15 used.

16 (3) This section does not apply to timber, water,
17 soil, sod, dirt, turf, or mosses.

18 NEW SECTION. Section 13. Timber. If any part of the
19 principal consists of land from which merchantable timber
20 may be removed, the receipts from taking the timber from the
21 land shall be allocated in accordance with [section
22 5(1)(c)].

23 NEW SECTION. Section 14. Other property subject to
24 depletion. Except as provided in [sections 12 and 13], if
25 the principal consists of property subject to depletion,

1 including leaseholds, patents, copyrights, royalty rights,
2 and rights to receive payments on a contract for deferred
3 compensation, receipts from the property, not in excess of
4 5% per year of the net receipts remaining after payment of
5 expenses, directly and indirectly computed without allowance
6 for depletion, are income, and the balance is principal.

7 NEW SECTION. Section 15. Charges against income and
8 principal. (1) The following charges shall be made against
9 income:

10 (a) ordinary expenses incurred in connection with the
11 administration, management, or preservation of the trust
12 property, including regularly recurring taxes assessed
13 against any portion of the principal; water rates; premiums
14 on insurance taken upon the interests of the income
15 beneficiary, remainderman, or trustee; interest paid by the
16 trustee; and ordinary repairs;

17 (b) a reasonable allowance for depreciation on
18 property subject to depreciation under generally accepted
19 accounting principles, but no allowance may be made for
20 depreciation of that portion of any real property used by a
21 beneficiary as a residence or for depreciation of any
22 property held by the trustee on July 1, 1983, for which the
23 trustee is not then making an allowance for depreciation;

24 (c) not less than one-half of court costs, attorney
25 fees, and other fees on periodic judicial accounting, unless

1 the court directs otherwise;

2 (d) court costs, attorney fees, and fees on other
3 accountings or judicial proceedings if the matter primarily
4 concerns the income interest, unless the court directs
5 otherwise;

6 (e) not less than one-half of the trustee's regular
7 compensation, whether based on a percentage of principal or
8 income, and all expenses reasonably incurred for current
9 management of principal and application of income, unless
10 the court directs otherwise;

11 (f) any tax levied upon receipts defined as income
12 under this chapter or the trust instrument and payable by
13 the trustee.

14 (2) If charges against income are of unusual amount,
15 the trustee may, by means of reserves or other reasonable
16 means, charge them over a reasonable period of time and
17 withhold from distribution sufficient sums to regularize
18 distributions.

19 (3) The following charges shall be made against
20 principal:

21 (a) trustee's compensation not chargeable to income
22 under subsections (1)(d) and (1)(e); special compensation of
23 trustees; expenses reasonably incurred in connection with
24 principal, court costs, and attorney fees primarily
25 concerning matters of principal; and trustee's compensation

1 computed on principal as an acceptance, distribution, or
2 termination fee;

3 (b) charges not provided for in subsection (1),
4 including the cost of investing and reinvesting principal;
5 the payments on principal of an indebtedness, including a
6 mortgage amortized by periodic payments of principal;
7 expenses for preparation of property for rental or sale;
8 and, unless the court directs otherwise, expenses incurred
9 in maintaining or defending any action to construe the trust
10 or protect it or the property or assure the title of any
11 trust property;

12 (c) extraordinary repairs or expenses incurred in
13 making a capital improvement to principal, including special
14 assessments, but a trustee may establish an allowance for
15 depreciation out of income to the extent permitted by
16 subsection (1)(b) and by [section 11];

17 (d) any tax levied upon profit, gain, or other
18 receipts allocated to principal, notwithstanding
19 denomination of the tax as an income tax by the taxing
20 authority;

21 (e) if an estate or inheritance tax is levied in
22 respect to a trust in which both an income beneficiary and a
23 remainderman have an interest, any amount apportioned to the
24 trust, including interest and penalties, even though the
25 income beneficiary also has rights in the principal.

1 (4) Regularly recurring charges payable from income
2 shall be apportioned to the same extent and in the same
3 manner that income is apportioned under [section 7].

4 NEW SECTION. Section 16. Repealer. Sections
5 72-25-104, 72-25-201 through 72-25-209, 72-25-301, and
6 72-25-302, MCA, are repealed.

7 NEW SECTION. Section 17. Codification instruction.
8 Sections 5 through 15 are intended to be codified as an
9 integral part of Title 72, chapter 25, and the provisions of
10 Title 72, chapter 25, apply to sections 5 through 15.

11 NEW SECTION. Section 18. Effective date. This act is
12 effective July 1, 1983.

-End-

HOUSE BILL NO. 215

INTRODUCED BY RAMIREZ, SPAETH, MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT AS PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTIONS 72-25-101 THROUGH 72-25-103 AND 72-25-105, MCA; REPEALING SECTIONS 72-25-104, 72-25-201 THROUGH 72-25-209, 72-25-301, AND 72-25-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-25-101, MCA, is amended to read:

"72-25-101. Short title. This chapter may be cited as the "Revised Uniform Principal and Income Act"."

Section 2. Section 72-25-102, MCA, is amended to read:

"72-25-102. Definitions. In this chapter, the following definitions apply:

~~{1}--"Principal"--means--any--realty--or--personalty--which has--been--set--aside--or--limited--by--the--owner--thereof--or person--thereto--legally--empowered--that--it--and--any substitutions--for--it--are--eventually--to--be--conveyed, delivered--or--paid--to--a--person--while--the--return--therefrom or--use--thereof--or--any--part--of--such--return--or--use--is--in--the meantime--to--be--taken--or--received--by--or--held--for--accumulation~~

for--the--same--or--another--person;

~~{2}--"Income"--means--the--return--derived--from--principal;~~

~~{3}--"Tenant"--means--the--person--to--whom--income--is presently--or--currently--payable--or--for--whom--it--is--accumulated or--who--is--entitled--to--the--beneficial--use--of--the--principal presently--and--for--a--time--prior--to--its--distribution;~~

{1} "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

{2} "Inventory value" means the cost--of--property purchased--by--the--trustee--and--the--cost--or--adjusted--basis--for federal--income--tax--purposes--of--other--property--at--the--time--it became--subject--to--the--trust--but--in--case--of--a--testamentary trust--the--trustee--may--use--the--value--finally--determined--for the--purposes--of--federal--estate--tax--if--applicable--otherwise for--inheritance--tax ADJUSTED BASIS FOR FEDERAL INCOME TAX PURPOSES.

~~{4}{3} "Remainderman" means the person ultimately entitled to the principal, whether named--or--designated--by the--terms--of--the--transaction--by--which--the--principal--was established--or--determined--by--operation--of--law including income which has been accumulated and added to principal.~~

~~{5}{4} "Trustee" includes means the original trustee, of any trust to which the principal may be subject and also any succeeding or added trustee, and the personal~~

1 representative of a decedent's estate whenever a provision
 2 of this chapter is applicable to the estate."

3 Section 3. Section 72-25-103, MCA, is amended to read:

4 "72-25-103. Applicability. ~~This chapter shall apply to~~
 5 ~~all estates of tenants or remaindermen which become legally~~
 6 ~~effective after March 17, 1959. Except as specifically~~
 7 ~~provided in the trust instrument or the will or in this~~
 8 ~~chapter, this chapter applies to any receipt or expense~~
 9 ~~received or incurred after July 1, 1983, by any trust or~~
 10 ~~decedent's estate, whether established before or after July~~
 11 ~~1, 1983, and whether the asset involved was acquired by the~~
 12 ~~trustee of a trust or a personal representative of a~~
 13 ~~decedent's estate before or after July 1, 1983."~~

14 Section 4. Section 72-25-105, MCA, is amended to read:

15 "72-25-105. Interpretation -- uniformity. This chapter
 16 shall be so interpreted and construed as to effectuate its
 17 general purpose to make uniform the law of those states
 18 which enact it."

19 NEW SECTION. Section 5. Duty of trustee as to receipt
 20 and expenditure. (1) A trust shall be administered with due
 21 regard to the respective interests of income beneficiaries
 22 and remaindermen. A trust is so administered with respect to
 23 the allocation of receipts and expenditures if a receipt is
 24 credited or an expenditure is charged to income or principal
 25 or partly to each:

1 (a) in accordance with the terms of the trust
 2 instrument, notwithstanding contrary provisions of this
 3 chapter;

4 (b) in the absence of any contrary terms of the trust
 5 instrument, in accordance with the provisions of this
 6 chapter; or

7 (c) if neither of the preceding rules of
 8 administration is applicable, in accordance with what is
 9 reasonable and equitable in view of the interests of those
 10 entitled to income as well as of those entitled to principal
 11 and in view of the manner in which men of ordinary prudence,
 12 discretion, and judgment would act in the management of
 13 their own affairs.

14 (2) If the trust instrument gives the trustee
 15 discretion in crediting a receipt or charging an expenditure
 16 to income or principal or partly to each, no inference of
 17 imprudence or partiality arises from the fact that the
 18 trustee has made an allocation contrary to a provision of
 19 this chapter.

20 NEW SECTION. Section 6. Income -- principal --
 21 charges. (1) Income is the return in money or property
 22 derived from the use of principal, including return received
 23 as:

24 (a) rent of real or personal property, including sums
 25 received for cancellation or renewal of a lease;

1 (b) interest on money lent, including sums received as
2 consideration for the privilege of prepayment of principal
3 except as provided in [section 10] on bond premium and bond
4 discount;

5 (c) income earned during administration of a
6 decedent's estate as provided in [section 8];

7 (d) corporate distributions as provided in [section
8 9];

9 (e) accrued increment on bonds or other obligations
10 issued at discount as provided in [section 10];

11 (f) receipts from business and farming operations as
12 provided in [section 11];

13 (g) receipts from disposition of natural resources as
14 provided in [sections 12 and 13];

15 (h) receipts from other principal subject to depletion
16 as provided in [section 14].

17 (2) Principal is the property which has been set aside
18 by the owner or the person legally empowered so that it is
19 held in trust, eventually to be delivered to a remainderman,
20 while the return or use of the principal is in the meantime
21 taken or received by or held for accumulation for an income
22 beneficiary. Principal includes:

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

1 principal;

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

4 (c) proceeds of insurance upon property forming part
5 of the principal, except proceeds of insurance upon a
6 separate interest of an income beneficiary;

7 (d) stock dividends, receipts on liquidation of a
8 corporation, and other corporate distributions as provided
9 in [section 9];

10 (e) receipts from the disposition of corporate
11 securities as provided in [section 10];

12 (f) royalties and other receipts from disposition of
13 natural resources as provided in [sections 12 and 13];

14 (g) receipts from other principal subject to depletion
15 as provided in [section 14];

16 (h) any profit resulting from any change in the form
17 of principal;

18 (i) any allowances for depreciation established under
19 [section 15(1)(b)].

20 (3) After determining income and principal in
21 accordance with the terms of the trust instrument or of this
22 chapter, the trustee shall charge to income or principal
23 expenses and other charges as provided in [section 15].

24 NEW SECTION. Section 7. When right to income arises
25 -- apportionment of income. (1) An income beneficiary is

1 entitled to income from the date specified in the trust
 2 instrument or, if none is specified, from the date an asset
 3 becomes subject to the trust. In the case of an asset
 4 becoming subject to a trust by reason of a will, it becomes
 5 subject to the trust as of the date of the death of the
 6 testator even though there is an intervening period of
 7 administration of the testator's estate.

8 (2) In the administration of a decedent's estate or an
 9 asset becoming subject to a trust by reason of a will:

10 (a) receipts due but not paid at the date of death of
 11 the testator are principal;

12 (b) receipts in the form of periodic payments (other
 13 than corporate distributions to stockholders), including
 14 rent, interest, or annuities, not due at the date of the
 15 death of the testator shall be treated as accruing from day
 16 to day. That portion of the receipt accruing before the date
 17 of death is principal, and the balance is income.

18 (3) In all other cases, any receipt from an
 19 income-producing asset is income, even though the receipt
 20 was earned or accrued in whole or in part before the date
 21 when the asset became subject to the trust.

22 (4) On termination of an income interest, the income
 23 beneficiary whose interest is terminated, or his estate, is
 24 entitled to income:

25 (a) undistributed on the date of termination;

1 (b) due but not paid to the trustee on the date of
 2 termination;

3 (c) in the form of periodic payments (other than
 4 corporate distributions to stockholders), including rent,
 5 interest, or annuities, not due on the date of termination,
 6 accrued from day to day.

7 (5) Corporate distributions to stockholders shall be
 8 treated as due on the day fixed by the corporation for
 9 determination of stockholders of record entitled to
 10 distribution or, if no date is fixed, on the date of
 11 declaration of the distribution by the corporation.

12 NEW SECTION. Section 8. Income earned during
 13 administration of a decedent's estate. (1) Unless the will
 14 otherwise provides and subject to subsection (2), all
 15 expenses incurred in connection with the settlement of a
 16 decedent's estate, including debts, funeral expenses, estate
 17 taxes, interest and penalties concerning taxes, family
 18 allowances, fees of attorneys and personal representatives,
 19 and court costs, shall be charged against the principal of
 20 the estate.

21 (2) Unless the will otherwise provides, income from
 22 the assets of a decedent's estate after the death of the
 23 testator and before distribution, including income from
 24 property used to discharge liabilities, shall be determined
 25 in accordance with the rules applicable to a trustee under

1 this chapter and distributed as follows:

2 (a) to specific legatees and devisees, the income from
3 the property bequeathed or devised to them respectively,
4 less taxes, ordinary repairs, and other expenses of
5 management and operation of the property, and an appropriate
6 portion of interest accrued since the death of the testator
7 and of taxes imposed on income (excluding taxes on capital
8 gains) that accrue during the period of administration;

9 (b) to all other legatees and devisees, except
10 legatees of pecuniary bequests not in trust, the balance of
11 the income, less the balance of taxes, ordinary repairs, and
12 other expenses of management and operation of all property
13 from which the estate is entitled to income, interest
14 accrued since the death of the testator, and taxes imposed
15 on income (excluding taxes on capital gains) that accrue
16 during the period of administration, in proportion to their
17 respective interests in the undistributed assets of the
18 estate computed at times of distribution on the basis of
19 inventory value.

20 (3) Income received by a trustee under subsection (2)
21 shall be treated as income of the trust.

22 NEW SECTION. Section 9. Corporate distributions. (1)
23 Corporate distributions of shares of the distributing
24 corporation, including distributions in the form of a stock
25 split or stock dividend, are principal. A right to subscribe

1 to shares or other securities issued by the distributing
2 corporation accruing to stockholders on account of their
3 stock ownership, and the proceeds of any sale of the right,
4 are principal.

5 (2) Except to the extent that the corporation
6 indicates that some part of a corporate distribution is a
7 settlement of preferred or guaranteed dividends accrued
8 since the trustee became a stockholder or is in lieu of an
9 ordinary cash dividend, a corporate distribution is
10 principal if the distribution is pursuant to:

11 (a) a call of shares;

12 (b) a merger, consolidation, reorganization, or other
13 plan by which assets of the corporation are required by
14 another corporation; or

15 (c) a total or partial liquidation of the corporation,
16 including any distribution which the corporation indicates
17 is a distribution in total or partial liquidation or any
18 distribution of assets, other than cash, pursuant to a court
19 decree or final administrative order by a government agency
20 ordering distribution of the particular assets.

21 (3) Distributions made from ordinary income by a
22 regulated investment company or by a trust qualifying and
23 electing to be taxed under federal law as a real estate
24 investment trust are income. All other distributions made by
25 the company or trust, including distributions from capital

1 gains, depreciation, or depletion, whether in the form of
2 cash or an option to take new stock or cash or an option to
3 purchase additional shares, are principal.

4 (4) Except as provided in subsections (1) through (3),
5 all corporate distributions are income, including cash
6 dividends, distributions of or rights to subscribe to shares
7 or securities or obligations of corporations other than the
8 distributing corporation, and the proceeds of the rights or
9 property distributions. Except as provided in subsections
10 (2) and (3), if the distributing corporation gives a
11 stockholder an option to receive a distribution either in
12 cash or in its own shares, the distribution chosen is
13 income.

14 (5) The trustee may rely upon any statement of the
15 distributing corporation as to any fact relevant under any
16 provision of this chapter concerning the source or character
17 of dividends or distributions of corporate assets.

18 NEW SECTION. Section 10. Bond premium and discount.
19 (1) Bonds or other obligations for the payment of money are
20 principal at their inventory value, except as provided in
21 subsection (2) for discount bonds. No provision may be made
22 for amortization of bond premiums or for accumulation for
23 discount. The proceeds of sale, redemption, or other
24 disposition of the bonds or obligations are principal.

25 (2) The increment in value of a bond or other

1 obligation for the payment of money payable at a future time
2 in accordance with a fixed schedule of appreciation in
3 excess of the price at which it was issued is distributable
4 as income. The increment in value is distributable to the
5 beneficiary who was the income beneficiary at the time of
6 increment from the first principal cash available or, if
7 none is available, when realized by sale, redemption, or
8 other disposition. Whenever unrealized increment is
9 distributed as income but out of principal, the principal
10 shall be reimbursed for the increment when realized.

11 NEW SECTION. Section 11. Business and farming
12 operations. (1) If a trustee uses any part of the principal
13 in the continuance of a business of which the settlor was a
14 sole proprietor or a partner, the net profits of the
15 business, computed in accordance with generally accepted
16 accounting principles for a comparable business, are income.
17 If a loss results in any fiscal or calendar year, the loss
18 falls on principal and may not be carried into any other
19 fiscal or calendar year for purposes of calculating net
20 income.

21 (2) Generally accepted accounting principles shall be
22 used to determine income from an agricultural or farming
23 operation, including the raising of animals or the operation
24 of a nursery.

25 NEW SECTION. Section 12. Disposition of natural

resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsection (1)(a) or (1)(b) shall be apportioned on a yearly basis in accordance with subsection (1)(c), whether or not any natural resource was being taken from the land at the time the trust was

established. Not less than 20% but not ~~Q8~~ more than 50% of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, TO BE DETERMINED IN THE DISCRETION OF THE TRUSTEE, shall be added to principal as an allowance for depletion. The balance of the gross NEI receipts, after payment thereof of all expenses, direct and indirect, is income.

(2) If a trustee, on July 1, 1983, held an item of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before July 1, 1983, but as to all depletable property acquired after July 1, 1983, by an existing or new trust, the method of allocation provided in this section shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

NEW SECTION. Section 13. Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 5(1)(c)].

NEW SECTION. Section 14. Other property subject to depletion. Except as provided in [sections 12 and 13], if the principal consists of property subject to depletion,

1 including leaseholds, patents, copyrights, royalty rights,
2 and rights to receive payments on a contract for deferred
3 compensation, receipts from the property, not in excess of
4 5% per year of the net receipts remaining after payment of
5 expenses, directly and indirectly computed without allowance
6 for depletion, are income, and the balance is principal.

7 NEW SECTION. Section 15. Charges against income and
8 principal. (1) The following charges shall be made against
9 income:

10 (a) ordinary expenses incurred in connection with the
11 administration, management, or preservation of the trust
12 property, including regularly recurring taxes assessed
13 against any portion of the principal; water rates; premiums
14 on insurance taken upon the interests of the income
15 beneficiary, remainderman, or trustee; interest paid by the
16 trustee; and ordinary repairs;

17 (b) a reasonable allowance for depreciation on
18 property subject to depreciation under generally accepted
19 accounting principles, but no allowance may be made for
20 depreciation of that portion of any real property used by a
21 beneficiary as a residence or for depreciation of any
22 property held by the trustee on July 1, 1983, for which the
23 trustee is not then making an allowance for depreciation;

24 (c) not less than one-half of court costs, attorney
25 fees, and other fees on periodic judicial accounting, unless

1 the court directs otherwise;

2 (d) court costs, attorney fees, and fees on other
3 accountings or judicial proceedings if the matter primarily
4 concerns the income interest, unless the court directs
5 otherwise;

6 (e) not less than one-half of the trustee's regular
7 compensation, whether based on a percentage of principal or
8 income, and all expenses reasonably incurred for current
9 management of principal and application of income, unless
10 the court directs otherwise;

11 (f) any tax levied upon receipts defined as income
12 under this chapter or the trust instrument and payable by
13 the trustee.

14 (2) If charges against income are of unusual amount,
15 the trustee may, by means of reserves or other reasonable
16 means, charge them over a reasonable period of time and
17 withhold from distribution sufficient sums to regularize
18 distributions.

19 (3) The following charges shall be made against
20 principal:

21 (a) trustee's compensation not chargeable to income
22 under subsections (1)(d) and (1)(e); special compensation of
23 trustees; expenses reasonably incurred in connection with
24 principal, court costs, and attorney fees primarily
25 concerning matters of principal; and trustee's compensation

1 computed on principal as an acceptance, distribution, or
2 termination fee;

3 (b) charges not provided for in subsection (1),
4 including the cost of investing and reinvesting principal;
5 the payments on principal of an indebtedness, including a
6 mortgage amortized by periodic payments of principal;
7 expenses for preparation of property for rental or sale;
8 and, unless the court directs otherwise, expenses incurred
9 in maintaining or defending any action to construe the trust
10 or protect it or the property or assure the title of any
11 trust property;

12 (c) extraordinary repairs or expenses incurred in
13 making a capital improvement to principal, including special
14 assessments, but a trustee may establish an allowance for
15 depreciation out of income to the extent permitted by
16 subsection (1)(b) and by [section 11];

17 (d) any tax levied upon profit, gain, or other
18 receipts allocated to principal, notwithstanding
19 denomination of the tax as an income tax by the taxing
20 authority;

21 (e) if an estate or inheritance tax is levied in
22 respect to a trust in which both an income beneficiary and a
23 remainderman have an interest, any amount apportioned to the
24 trust, including interest and penalties, even though the
25 income beneficiary also has rights in the principal.

1 (4) Regularly recurring charges payable from income
2 shall be apportioned to the same extent and in the same
3 manner that income is apportioned under [section 7].

4 NEW SECTION. Section 16. Repealer. Sections
5 72-25-104, 72-25-201 through 72-25-209, 72-25-301, and
6 72-25-302, MCA, are repealed.

7 NEW SECTION. Section 17. Codification instruction.
8 Sections 5 through 15 are intended to be codified as an
9 integral part of Title 72, chapter 25, and the provisions of
10 Title 72, chapter 25, apply to sections 5 through 15.

11 NEW SECTION. Section 18. Effective date. This act is
12 effective July 1, 1983.

-End-

HOUSE BILL NO. 215

INTRODUCED BY RAMIREZ, SPAETH, MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE REVISED
UNIFORM PRINCIPAL AND INCOME ACT AS PROMULGATED BY THE
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS;
AMENDING SECTIONS 72-25-101 THROUGH 72-25-103 AND 72-25-105,
MCA; REPEALING SECTIONS 72-25-104, 72-25-201 THROUGH
72-25-209, 72-25-301, AND 72-25-302, MCA; AND PROVIDING AN
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-25-101, MCA, is amended to read:

"72-25-101. Short title. This chapter may be cited as
the "Revised Uniform Principal and Income Act"."

Section 2. Section 72-25-102, MCA, is amended to read:

"72-25-102. Definitions. In this chapter, the
following definitions apply:

~~{1}--"Principal"--means--any--realty--or--personalty--which
has--been--so--set--aside--or--limited--by--the--owner--thereof--or
person--thereto--legally--empowered--that--it--and--any
substitutions--for--it--are--eventually--to--be--conveyed
delivered--or--paid--to--a--person--while--the--return--therefrom
or--use--thereof--or--any--part--of--such--return--or--use--is--in--the
meantime--to--be--taken--or--received--by--or--held--for--accumulation~~

for-the-same-or-another-person;

~~{2}--"Income"--means--the--return--derived--from--principal;~~

~~{3}--"Tenant"--means--the--person--to--whom--income--is
presently--or--currently--payable--or--for--whom--it--is--accumulated
or--who--is--entitled--to--the--beneficial--use--of--the--principal
presently--and--for--a--time--prior--to--its--distribution;~~

~~{1}--"Income beneficiary"--means--the--person--to--whom
income--is--presently--payable--or--for--whom--it--is--accumulated
for--distribution--as--income.~~

~~{2}--"Inventory value"--means--the--cost--of--property
purchased--by--the--trustee--and--the--cost--or--adjusted--basis--for
federal--income--tax--purposes--of--other--property--at--the--time--it
became--subject--to--the--trust--but--in--case--of--a--testamentary
trust--the--trustee--may--use--the--value--finally--determined--for
the--purposes--of--federal--estate--tax--if--applicable--otherwise
for--inheritance--tax~~ ADJUSTED BASIS FOR FEDERAL INCOME TAX
PURPOSES.

~~{4}{3} "Remainderman" means the person ultimately
entitled to the principal, whether named or designated by
the terms of the transaction by which the principal was
established or determined by operation of law including
income which has been accumulated and added to principal.~~

~~{5}{4} "Trustee" includes means the original trustee,
of any trust to which the principal may be subject and also
any succeeding or added trustee, and the personal~~

1 ~~representative of a decedent's estate whenever a provision~~
 2 ~~of this chapter is applicable to the estate."~~

3 Section 3. Section 72-25-103, MCA, is amended to read:

4 "72-25-103. Applicability. ~~This chapter shall apply to~~
 5 ~~all estates of tenants or remaindermen which become legally~~
 6 ~~effective after March 17, 1959. Except as specifically~~
 7 ~~provided in the trust instrument or the will or in this~~
 8 ~~chapter, this chapter applies to any receipt or expense~~
 9 ~~received or incurred after July 1, 1983, by any trust or~~
 10 ~~decedent's estate, whether established before or after July~~
 11 ~~1, 1983, and whether the asset involved was acquired by the~~
 12 ~~trustee of a trust or a personal representative of a~~
 13 ~~decedent's estate before or after July 1, 1983."~~

14 Section 4. Section 72-25-105, MCA, is amended to read:

15 "72-25-105. Interpretation -- uniformity. This chapter
 16 shall be so ~~interpreted and construed~~ as to effectuate its
 17 general purpose to make uniform the law of those states
 18 which enact it."

19 NEW SECTION. Section 5. Duty of trustee as to receipt
 20 and expenditure. (1) A trust shall be administered with due
 21 regard to the respective interests of income beneficiaries
 22 and remaindermen. A trust is so administered with respect to
 23 the allocation of receipts and expenditures if a receipt is
 24 credited or an expenditure is charged to income or principal
 25 or partly to each:

1 (a) in accordance with the terms of the trust
 2 instrument, notwithstanding contrary provisions of this
 3 chapter;

4 (b) in the absence of any contrary terms of the trust
 5 instrument, in accordance with the provisions of this
 6 chapter; or

7 (c) if neither of the preceding rules of
 8 administration is applicable, in accordance with what is
 9 reasonable and equitable in view of the interests of those
 10 entitled to income as well as of those entitled to principal
 11 and in view of the manner in which men of ordinary prudence,
 12 discretion, and judgment would act in the management of
 13 their own affairs.

14 (2) If the trust instrument gives the trustee
 15 discretion in crediting a receipt or charging an expenditure
 16 to income or principal or partly to each, no inference of
 17 imprudence or partiality arises from the fact that the
 18 trustee has made an allocation contrary to a provision of
 19 this chapter.

20 NEW SECTION. Section 6. Income -- principal --
 21 charges. (1) Income is the return in money or property
 22 derived from the use of principal, including return received
 23 as:

24 (a) rent of real or personal property, including sums
 25 received for cancellation or renewal of a lease;

1 (b) interest on money lent, including sums received as
2 consideration for the privilege of prepayment of principal
3 except as provided in [section 10] on bond premium and bond
4 discount;

5 (c) income earned during administration of a
6 decedent's estate as provided in [section 8];

7 (d) corporate distributions as provided in [section
8 9];

9 (e) accrued increment on bonds or other obligations
10 issued at discount as provided in [section 10];

11 (f) receipts from business and farming operations as
12 provided in [section 11];

13 (g) receipts from disposition of natural resources as
14 provided in [sections 12 and 13];

15 (h) receipts from other principal subject to depletion
16 as provided in [section 14].

17 (2) principal is the property which has been set aside
18 by the owner or the person legally empowered so that it is
19 held in trust, eventually to be delivered to a remainderman,
20 while the return or use of the principal is in the meantime
21 taken or received by or held for accumulation for an income
22 beneficiary. Principal includes:

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

1 principal;

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

4 (c) proceeds of insurance upon property forming part
5 of the principal, except proceeds of insurance upon a
6 separate interest of an income beneficiary;

7 (d) stock dividends, receipts on liquidation of a
8 corporation, and other corporate distributions as provided
9 in [section 9];

10 (e) receipts from the disposition of corporate
11 securities as provided in [section 10];

12 (f) royalties and other receipts from disposition of
13 natural resources as provided in [sections 12 and 13];

14 (g) receipts from other principal subject to depletion
15 as provided in [section 14];

16 (h) any profit resulting from any change in the form
17 of principal;

18 (i) any allowances for depreciation established under
19 [section 15(1)(b)].

20 (3) After determining income and principal in
21 accordance with the terms of the trust instrument or of this
22 chapter, the trustee shall charge to income or principal
23 expenses and other charges as provided in [section 15].

24 ~~NEW SECTION.~~ Section 7. When right to income arises
25 -- apportionment of income. (1) An income beneficiary is

1 entitled to income from the date specified in the trust
 2 instrument or, if none is specified, from the date an asset
 3 becomes subject to the trust. In the case of an asset
 4 becoming subject to a trust by reason of a will, it becomes
 5 subject to the trust as of the date of the death of the
 6 testator even though there is an intervening period of
 7 administration of the testator's estate.

8 (2) In the administration of a decedent's estate or an
 9 asset becoming subject to a trust by reason of a will:

10 (a) receipts due but not paid at the date of death of
 11 the testator are principal;

12 (b) receipts in the form of periodic payments (other
 13 than corporate distributions to stockholders), including
 14 rent, interest, or annuities, not due at the date of the
 15 death of the testator shall be treated as accruing from day
 16 to day. That portion of the receipt accruing before the date
 17 of death is principal, and the balance is income.

18 (3) In all other cases, any receipt from an
 19 income-producing asset is income, even though the receipt
 20 was earned or accrued in whole or in part before the date
 21 when the asset became subject to the trust.

22 (4) On termination of an income interest, the income
 23 beneficiary whose interest is terminated, or his estate, is
 24 entitled to income:

25 (a) undistributed on the date of termination;

1 (b) due but not paid to the trustee on the date of
 2 termination;

3 (c) in the form of periodic payments (other than
 4 corporate distributions to stockholders), including rent,
 5 interest, or annuities, not due on the date of termination,
 6 accrued from day to day.

7 (5) Corporate distributions to stockholders shall be
 8 treated as due on the day fixed by the corporation for
 9 determination of stockholders of record entitled to
 10 distribution or, if no date is fixed, on the date of
 11 declaration of the distribution by the corporation.

12 NEW SECTION. Section 8. Income earned during
 13 administration of a decedent's estate. (1) Unless the will
 14 otherwise provides and subject to subsection (2), all
 15 expenses incurred in connection with the settlement of a
 16 decedent's estate, including debts, funeral expenses, estate
 17 taxes, interest and penalties concerning taxes, family
 18 allowances, fees of attorneys and personal representatives,
 19 and court costs, shall be charged against the principal of
 20 the estate.

21 (2) Unless the will otherwise provides, income from
 22 the assets of a decedent's estate after the death of the
 23 testator and before distribution, including income from
 24 property used to discharge liabilities, shall be determined
 25 in accordance with the rules applicable to a trustee under

1 this chapter and distributed as follows:

2 (a) to specific legatees and devisees, the income from
3 the property bequeathed or devised to them respectively,
4 less taxes, ordinary repairs, and other expenses of
5 management and operation of the property, and an appropriate
6 portion of interest accrued since the death of the testator
7 and of taxes imposed on income (excluding taxes on capital
8 gains) that accrue during the period of administration;

9 (b) to all other legatees and devisees, except
10 legatees of pecuniary bequests not in trust, the balance of
11 the income, less the balance of taxes, ordinary repairs, and
12 other expenses of management and operation of all property
13 from which the estate is entitled to income, interest
14 accrued since the death of the testator, and taxes imposed
15 on income (excluding taxes on capital gains) that accrue
16 during the period of administration, in proportion to their
17 respective interests in the undistributed assets of the
18 estate computed at times of distribution on the basis of
19 inventory value.

20 (3) Income received by a trustee under subsection (2)
21 shall be treated as income of the trust.

22 **NEW SECTION.** Section 9. Corporate distributions. (1)
23 Corporate distributions of shares of the distributing
24 corporation, including distributions in the form of a stock
25 split or stock dividend, are principal. A right to subscribe

1 to shares or other securities issued by the distributing
2 corporation accruing to stockholders on account of their
3 stock ownership, and the proceeds of any sale of the right,
4 are principal.

5 (2) Except to the extent that the corporation
6 indicates that some part of a corporate distribution is a
7 settlement of preferred or guaranteed dividends accrued
8 since the trustee became a stockholder or is in lieu of an
9 ordinary cash dividend, a corporate distribution is
10 principal if the distribution is pursuant to:

11 (a) a call of shares;

12 (b) a merger, consolidation, reorganization, or other
13 plan by which assets of the corporation are required by
14 another corporation; or

15 (c) a total or partial liquidation of the corporation,
16 including any distribution which the corporation indicates
17 is a distribution in total or partial liquidation or any
18 distribution of assets, other than cash, pursuant to a court
19 decree or final administrative order by a government agency
20 ordering distribution of the particular assets.

21 (3) Distributions made from ordinary income by a
22 regulated investment company or by a trust qualifying and
23 electing to be taxed under federal law as a real estate
24 investment trust are income. All other distributions made by
25 the company or trust, including distributions from capital

1 gains, depreciation, or depletion, whether in the form of
2 cash or an option to take new stock or cash or an option to
3 purchase additional shares, are principal.

4 (4) Except as provided in subsections (1) through (3),
5 all corporate distributions are income, including cash
6 dividends, distributions of or rights to subscribe to shares
7 or securities or obligations of corporations other than the
8 distributing corporation, and the proceeds of the rights or
9 property distributions. Except as provided in subsections
10 (2) and (3), if the distributing corporation gives a
11 stockholder an option to receive a distribution either in
12 cash or in its own shares, the distribution chosen is
13 income.

14 (5) The trustee may rely upon any statement of the
15 distributing corporation as to any fact relevant under any
16 provision of this chapter concerning the source or character
17 of dividends or distributions of corporate assets.

18 NEW SECTION. Section 10. Bond premium and discount.
19 (1) Bonds or other obligations for the payment of money are
20 principal at their inventory value, except as provided in
21 subsection (2) for discount bonds. No provision may be made
22 for amortization of bond premiums or for accumulation for
23 discount. The proceeds of sale, redemption, or other
24 disposition of the bonds or obligations are principal.

25 (2) The increment in value of a bond or other

1 obligation for the payment of money payable at a future time
2 in accordance with a fixed schedule of appreciation in
3 excess of the price at which it was issued is distributable
4 as income. The increment in value is distributable to the
5 beneficiary who was the income beneficiary at the time of
6 increment from the first principal cash available or, if
7 none is available, when realized by sale, redemption, or
8 other disposition. Whenever unrealized increment is
9 distributed as income but out of principal, the principal
10 shall be reimbursed for the increment when realized.

11 NEW SECTION. Section 11. Business and farming
12 operations. (1) If a trustee uses any part of the principal
13 in the continuance of a business of which the settlor was a
14 sole proprietor or a partner, the net profits of the
15 business, computed in accordance with generally accepted
16 accounting principles for a comparable business, are income.
17 If a loss results in any fiscal or calendar year, the loss
18 falls on principal and may not be carried into any other
19 fiscal or calendar year for purposes of calculating net
20 income.

21 (2) Generally accepted accounting principles shall be
22 used to determine income from an agricultural or farming
23 operation, including the raising of animals or the operation
24 of a nursery.

25 NEW SECTION. Section 12. Disposition of natural

1 resources. (1) If any part of the principal consists of a
 2 right to receive royalties, overriding or limited royalties,
 3 working interests, production payments, net profit
 4 interests, or other interests in minerals or other natural
 5 resources in, on, or under land, the receipts from taking
 6 the natural resources from the land shall be allocated as
 7 follows:

8 (a) If received as rent on a lease or extension
 9 payments on a lease, the receipts are income.

10 (b) If received from a production payment, the
 11 receipts are income to the extent of any factor for interest
 12 or its equivalent provided in the governing instrument.
 13 There shall be allocated to principal the fraction of the
 14 balance of the receipts which the unrecovered cost of the
 15 production payment bears to the balance owed on the
 16 production payment, exclusive of any factor for interest or
 17 its equivalent. The receipts not allocated to principal are
 18 income.

19 (c) If received as a royalty, overriding or limited
 20 royalty or bonus, or from a working, net profit, or any
 21 other interest in minerals or other natural resources,
 22 receipts not provided for in subsection (1)(a) or (1)(b)
 23 shall be apportioned on a yearly basis in accordance with
 24 subsection (1)(c), whether or not any natural resource was
 25 being taken from the land at the time the trust was

1 established. Not less than 20% but not OR more than 50% of
 2 the net receipts ~~remaining after payment of all expenses,~~
 3 ~~direct and indirect, computed without allowance for~~
 4 ~~depletion, TO BE DETERMINED IN THE DISCRETION OF THE~~
 5 ~~TRUSTEE,~~ shall be added to principal as an allowance for
 6 depletion. The balance of the gross NET receipts ~~after~~
 7 ~~payment therefrom of all expenses, direct and indirect,~~ is
 8 income.

9 (2) If a trustee, on July 1, 1983, held an item of
 10 depletable property of a type specified in this section, he
 11 shall allocate receipts from the property in the manner used
 12 before July 1, 1983, but as to all depletable property
 13 acquired after July 1, 1983, by an existing or new trust,
 14 the method of allocation provided in this section shall be
 15 used.

16 (3) This section does not apply to timber, water,
 17 soil, sod, dirt, turf, or mosses.

18 NEW SECTION. Section 13. Timber. If any part of the
 19 principal consists of land from which merchantable timber
 20 may be removed, the receipts from taking the timber from the
 21 land shall be allocated in accordance with [section
 22 5(1)(c)].

23 NEW SECTION. Section 14. Other property subject to
 24 depletion. Except as provided in [sections 12 and 13], if
 25 the principal consists of property subject to depletion,

1 including leaseholds, patents, copyrights, royalty rights,
2 and rights to receive payments on a contract for deferred
3 compensation, receipts from the property, not in excess of
4 5% per year of the net receipts remaining after payment of
5 expenses, directly and indirectly computed without allowance
6 for depletion, are income, and the balance is principal.

7 NEW SECTION. Section 15. Charges against income and
8 principal. (1) The following charges shall be made against
9 income:

10 (a) ordinary expenses incurred in connection with the
11 administration, management, or preservation of the trust
12 property, including regularly recurring taxes assessed
13 against any portion of the principal; water rates; premiums
14 on insurance taken upon the interests of the income
15 beneficiary, remainderman, or trustee; interest paid by the
16 trustee; and ordinary repairs;

17 (b) a reasonable allowance for depreciation on
18 property subject to depreciation under generally accepted
19 accounting principles, but no allowance may be made for
20 depreciation of that portion of any real property used by a
21 beneficiary as a residence or for depreciation of any
22 property held by the trustee on July 1, 1983, for which the
23 trustee is not then making an allowance for depreciation;

24 (c) not less than one-half of court costs, attorney
25 fees, and other fees on periodic judicial accounting, unless

1 the court directs otherwise;

2 (d) court costs, attorney fees, and fees on other
3 accountings or judicial proceedings if the matter primarily
4 concerns the income interest, unless the court directs
5 otherwise;

6 (e) not less than one-half of the trustee's regular
7 compensation, whether based on a percentage of principal or
8 income, and all expenses reasonably incurred for current
9 management of principal and application of income, unless
10 the court directs otherwise;

11 (f) any tax levied upon receipts defined as income
12 under this chapter or the trust instrument and payable by
13 the trustee.

14 (2) If charges against income are of unusual amount,
15 the trustee may, by means of reserves or other reasonable
16 means, charge them over a reasonable period of time and
17 withhold from distribution sufficient sums to regularize
18 distributions.

19 (3) The following charges shall be made against
20 principal:

21 (a) trustee's compensation not chargeable to income
22 under subsections (1)(d) and (1)(e); special compensation of
23 trustees; expenses reasonably incurred in connection with
24 principal, court costs, and attorney fees primarily
25 concerning matters of principal; and trustee's compensation

1 computed on principal as an acceptance, distribution, or
2 termination fee;

3 (b) charges not provided for in subsection (1),
4 including the cost of investing and reinvesting principal;
5 the payments on principal of an indebtedness, including a
6 mortgage amortized by periodic payments of principal;
7 expenses for preparation of property for rental or sale;
8 and, unless the court directs otherwise, expenses incurred
9 in maintaining or defending any action to construe the trust
10 or protect it or the property or assure the title of any
11 trust property;

12 (c) extraordinary repairs or expenses incurred in
13 making a capital improvement to principal, including special
14 assessments, but a trustee may establish an allowance for
15 depreciation out of income to the extent permitted by
16 subsection (1)(b) and by [section 11];

17 (d) any tax levied upon profit, gain, or other
18 receipts allocated to principal, notwithstanding
19 denomination of the tax as an income tax by the taxing
20 authority;

21 (e) if an estate or inheritance tax is levied in
22 respect to a trust in which both an income beneficiary and a
23 remainderman have an interest, any amount apportioned to the
24 trust, including interest and penalties, even though the
25 income beneficiary also has rights in the principal.

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2 shall be apportioned to the same extent and in the same
3 manner that income is apportioned under [section 7].

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