

Assembly Bill No. 296

Passed the Assembly August 18, 2014

Chief Clerk of the Assembly

Passed the Senate June 30, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 16350 of the Probate Code, relating to trusts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 296, Wagner. Trusts.

Existing law generally requires a trustee to allocate money received from an entity to income. However, existing law requires a trustee to allocate to principal money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income taxes. Existing law also requires an allocation to principal of money received in total or partial liquidation of an entity. Existing law provides that money is to be treated as received in partial liquidation to the extent the amount received from the distributing entity is attributable to the proceeds from a sale by the distributing entity, or by the distributing entity's subsidiary or affiliate, of a capital asset, as defined.

This bill would provide that an allocation to principal of money received in total or partial liquidation of an entity does not include a net short-term capital gain distribution from a regulated investment company or a real estate investment trust.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 16350 of the Probate Code is amended to read:

16350. (a) For the purposes of this section:

(1) "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to which Section 16351 applies, a business or activity to which

Section 16352 applies, or an asset-backed security to which Section 16367 applies.

(2) “Capital asset” means a capital asset as defined in Section 1221 of the Internal Revenue Code.

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

(c) A trustee shall allocate to principal the following receipts from an entity:

(1) Property other than money.

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

(3) Money received in total liquidation of the entity or in partial liquidation of the entity, as defined in subdivision (d), except for money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a net short-term capital gain distribution.

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes. A capital gain dividend shall not include money received as a net short-term capital gain distribution from a regulated investment company or real estate investment trust.

(d) For purposes of paragraph (3) of subdivision (c), money shall be treated as received in partial liquidation to the extent the amount received from the distributing entity is attributable to the proceeds from a sale by the distributing entity, or by the distributing entity’s subsidiary or affiliate, of a capital asset. The following shall apply to determine whether money is received in partial liquidation:

(1) A trustee may rely without investigation on a written statement made by the distributing entity regarding the receipt.

(2) A trustee may rely without investigation on other information actually known by the trustee regarding whether the receipt is attributable to the proceeds from a sale by the distributing entity, or by the distributing entity’s subsidiary or affiliate, of a capital asset.

(3) With regard to each receipt from a distributing entity, if within 30 days from the date of the receipt the distributing entity provides no written statement to the trustee that the receipt is a

distribution attributable to the proceeds from a sale of a capital asset by the distributing entity or by the distributing entity's subsidiary or affiliate and the trustee has no actual knowledge that the receipt is a distribution attributable to the proceeds from a sale of a capital asset by the distributing entity or by the distributing entity's subsidiary or affiliate, then the following shall apply:

(A) The trustee shall have no duty to investigate whether the receipt from the distributing entity is in partial liquidation of the entity.

(B) If, on the date of receipt, the receipt from the distributing entity is in excess of 10 percent of the value of the trust's interest in the distributing entity, then the receipt shall be deemed to be received in partial liquidation of the distributing entity, and the trustee shall allocate all of the receipt to principal. For purposes of this subparagraph, the value of the trust's interest in the distributing entity shall be determined as follows:

(i) In the case of an interest that is a security regularly traded on a public exchange or market, the closing price of the security on the public exchange or market occurring on the last business day before the date of the receipt.

(ii) In the case of an interest that is not a security regularly traded on a public exchange or market, the trust's proportionate share of the value of the distributing entity as set forth in the most recent appraisal, if any, actually received by the trustee and prepared by a professional appraiser with a valuation date within three years of the date of the receipt. The trustee shall have no duty to investigate the existence of the appraisal or to obtain an appraisal nor shall the trustee have any liability for relying upon an appraisal prepared by a professional appraiser. The term "professional appraiser" shall refer to an appraiser who has earned an appraisal designation for valuing the type of property subject to the appraisal from a recognized professional appraiser organization.

(iii) If the trust's interest in the distributing entity cannot be valued under clause (i) or clause (ii), the trust's proportionate share of the distributing entity's net assets, to be calculated as gross assets minus liabilities, as shown in the distributing entity's yearend financial statements immediately preceding the receipt.

(iv) If the trust's interest in the distributing entity cannot be valued under clause (i), (ii), or (iii), the federal cost basis of the

trust's interest in the distributing entity on the date immediately before the date of the receipt.

(e) If a trustee allocates a receipt to principal in accordance with subdivision (d), or allocates a receipt to income because the receipt is not determined to be in partial liquidation under subdivision (d), the trustee shall not be liable for any claim of improper allocation of the receipt that is based on information that was not received or actually known by the trustee as of the date of allocation.

(f) (1) Notwithstanding anything to the contrary in subdivision (d), if the receipt was allocated between December 2, 2004, and July 18, 2005, a trustee shall not be liable for allocating the receipt to income if the amount received by the trustee, when considered together with the amount received by all owners, collectively, exceeded 20 percent of the entity's gross assets, but the amount received by the trustee did not exceed 20 percent of the entity's gross assets.

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

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify state law relative to federal tax law regarding capital gain dividends from a mutual fund or real estate investment trust, it is necessary that this act take effect immediately.

Approved _____, 2014

Governor