

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2013, CHAPTER 55, *approved May 9, 2013*
Senate, No. 765

1 AN ACT concerning trusts and amending N.J.S.3B:11-1.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.3B:11-1 is amended to read as follows:

7 3B:11-1. Creator's reserved interest in trust alienable subject to
8 creditors' claims.

9 a. The right of any creator of a trust to receive either the
10 income or the principal of the trust or any part of either thereof,
11 presently or in the future, shall be freely alienable and shall be
12 subject to the claims of his creditors, notwithstanding any provision
13 to the contrary in the terms of the trust.

14 b. A trustee's discretionary authority to pay trust income or
15 principal to the creator of such trust in an amount equal to the
16 income taxes on any portion of the trust principal chargeable to the
17 creator shall not be considered to be a right of the trust creator to
18 receive trust income or principal within the meaning of subsection
19 a. of this section. The trust creator shall not be considered to have
20 the right to receive income or principal of the trust solely because
21 the trustee is authorized under the trust instrument or any other
22 provision of law to pay or reimburse the creator for any tax on trust
23 income or trust principal that is payable by the creator under the law
24 imposing such tax or to pay any such tax directly to the taxing
25 authorities. No creditor of a trust creator shall be entitled to reach
26 any trust property based on the discretionary powers described in
27 this subsection.

28 (cf: N.J.S.3B:11-1)

29

30 2. This act shall take effect immediately and shall be applicable
31 to any trust created on or after the effective date.

32

33

34

35

36 Clarifies trustee's discretionary authority concerning income tax
37 liability.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

SENATE, No. 765

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

SYNOPSIS

Clarifies trustee's discretionary authority concerning income tax liability.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 7/27/2012)

1 AN ACT concerning trusts and amending N.J.S.3B:11-1.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.3B:11-1 is amended to read as follows:

7 3B:11-1. Creator's reserved interest in trust alienable subject to
8 creditors' claims.

9 a. The right of any creator of a trust to receive either the
10 income or the principal of the trust or any part of either thereof,
11 presently or in the future, shall be freely alienable and shall be
12 subject to the claims of his creditors, notwithstanding any provision
13 to the contrary in the terms of the trust.

14 b. A trustee's discretionary authority to pay trust income or
15 principal to the creator of such trust in an amount equal to the
16 income taxes on any portion of the trust principal chargeable to the
17 creator shall not be considered to be a right of the trust creator to
18 receive trust income or principal within the meaning of subsection
19 a. of this section. The trust creator shall not be considered to have
20 the right to receive income or principal of the trust solely because
21 the trustee is authorized under the trust instrument or any other
22 provision of law to pay or reimburse the creator for any tax on trust
23 income or trust principal that is payable by the creator under the law
24 imposing such tax or to pay any such tax directly to the taxing
25 authorities. No creditor of a trust creator shall be entitled to reach
26 any trust property based on the discretionary powers described in
27 this subsection.

28 (cf: P.L.1981, c.405, s.3B:11-1)

29

30 2. This act shall take effect immediately and shall be applicable
31 to any trust created on or after the effective date.

32

33

34

STATEMENT

35

36 This bill amends N.J.S.A.3B:11-1, which allows creditors to
37 make claims against the assets of a trust from which the creator can
38 receive income. The bill specifies that the trustee's discretion to
39 pay taxes of the trust creator should not be considered the kind of
40 right that would make the assets of the trust subject to the claims of
41 the creditors of the trust's creator.

42 The amendment is in response to IRS revenue ruling 2004-64
43 (2004-2 C.B.7). The ruling states that a trustee's payment of trust
44 income taxes attributed to the grantor of the trust, if made solely at
45 the discretion of the trustee, is not a retained right of the creator in

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S765 SCUTARI, CARDINALE

1 the trust assets that causes the trust assets to become part of the
2 taxable estate of the creator, unless something more creates that
3 right, such as state law subjecting the assets in the trust to the
4 claims of the trust's creditors. If the assets of the trust were to be
5 subject to the claims of the creditors of the trust's creator, the assets
6 would, under the IRS ruling, become part of the creator's taxable
7 estate for federal estate tax purposes. (Under federal tax law, a
8 "grantor" is the person subject to income tax on trust earnings.
9 Under New Jersey property law, a "creator" is an individual who
10 establishes a trust.)

11 Many states have modified their laws in response to the IRS
12 ruling with regard to the trustee's ability to utilize assets to satisfy
13 income tax obligations of the trust creator. This bill is modeled on
14 one of these state statutes, New York EPTL 7-3.1(d).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 765

STATE OF NEW JERSEY

DATED: JULY 26, 2012

The Senate Judiciary Committee reports favorably Senate Bill No. 765.

This bill concerns any trust for which the trust creator remains obligated to pay the income taxes on the trust's income, but the governing trust instrument provides the benefiting trustee the discretion to use a portion of the trust's income or principal to cover such income tax obligations on behalf of the trust creator. The trustee may accomplish this by: (1) directly paying the taxes on behalf of the trust creator; or (2) reimbursing the trust creator for any income tax obligations paid. Under the provisions of the bill, the use of the trust's income or principal, being employed at the *sole discretion* of the trustee, does not constitute a *right* by the trust creator to receive that income or principal. By expressly denying that any right to trust income or principal exists for the trust creator under such an arrangement, the bill would prevent a creditor of the trust creator from recognizing the arrangement as creating such right and thus being able to subject that right to a claim, potentially reaching the trust income or principal in fulfillment thereof.

The bill responds to a Revenue Ruling by the Internal Revenue Service (Rev. Rul. 2004-64, 2004-2 C.B. 7). In the ruling, the IRS indicated that the aforementioned discretionary tax payment arrangement, by itself, does not establish a retained right of the trust creator to trust income or principal and therefore does not cause the trust to be added to the trust creator's estate for federal estate tax purposes. However, a retained right to trust income or principal may be demonstrated by such arrangement, if combined with other factors, ultimately resulting in the addition of the trust to the trust creator's taxable estate. One possible added factor to showing the trust creator's retained right is a state law subjecting the trust assets (i.e., trust income or principal) to the claims of the trust creator's creditors.

New Jersey law, at N.J.S.3B:11-1, currently permits creditor claims against a trust creator's receipt of trust income or principal. The bill, therefore, adds provisions to this section of law to expressly indicate that the aforementioned discretionary tax payment arrangement shall not be considered a right to receive trust income or principal; thus, the arrangement could not be used by a trust creator's creditor to reach such trust income or principal to fulfill any claim, and

further, such arrangement could not result in the addition of the trust to the trust creator's taxable estate.

Several other states, including Delaware, New York, and Florida, have similarly modified their statutory law in response to the IRS Revenue Ruling. This bill is modeled after New York's statute. See N.Y. Est. Powers & Trusts (EPTL) sec. 7-3.1(d).

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY, No. 1086

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman CAROLINE CASAGRANDE

District 11 (Monmouth)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

SYNOPSIS

Clarifies trustee's discretionary authority concerning income tax liability.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning trusts and amending N.J.S.3B:11-1.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.3B:11-1 is amended to read as follows:

7 3B:11-1. Creator's reserved interest in trust alienable subject to
8 creditors' claims.

9 a. The right of any creator of a trust to receive either the
10 income or the principal of the trust or any part of either thereof,
11 presently or in the future, shall be freely alienable and shall be
12 subject to the claims of his creditors, notwithstanding any provision
13 to the contrary in the terms of the trust.

14 b. A trustee's discretionary authority to pay trust income or
15 principal to the creator of such trust in an amount equal to the
16 income taxes on any portion of the trust principal chargeable to the
17 creator shall not be considered to be a right of the trust creator to
18 receive trust income or principal within the meaning of subsection
19 a. of this section. The trust creator shall not be considered to have
20 the right to receive income or principal of the trust solely because
21 the trustee is authorized under the trust instrument or any other
22 provision of law to pay or reimburse the creator for any tax on trust
23 income or trust principal that is payable by the creator under the law
24 imposing such tax or to pay any such tax directly to the taxing
25 authorities. No creditor of a trust creator shall be entitled to reach
26 any trust property based on the discretionary powers described in
27 this subsection.

28 (cf: P.L.1981, c.405, s.3B:11-1)

29

30 2. This act shall take effect immediately and shall be applicable
31 to any trust created on or after the effective date.

32

33

34

STATEMENT

35

36 This bill amends N.J.S.A.3B:11-1, which allows creditors to
37 make claims against the assets of a trust from which the creator can
38 receive income. The bill specifies that the trustee's discretion to pay
39 taxes of the trust creator should not be considered the kind of right
40 that would make the assets of the trust subject to the claims of the
41 creditors of the trust's creator.

42 The amendment is in response to IRS revenue ruling 2004-64
43 (2004-2 C.B.7). The ruling states that a trustee's payment of trust
44 income taxes attributed to the grantor of the trust, if made solely at
45 the discretion of the trustee, is not a retained right of the creator in

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

A1086 QUIJANO, CASAGRANDE

1 the trust assets that causes the trust assets to become part of the
2 taxable estate of the creator, unless something more creates that
3 right, such as state law subjecting the assets in the trust to the
4 claims of the trust's creditors. If the assets of the trust were to be
5 subject to the claims of the creditors of the trust's creator, the assets
6 would, under the IRS ruling, become part of the creator's taxable
7 estate for federal estate tax purposes. (Under federal tax law, a
8 "grantor" is the person subject to income tax on trust earnings.
9 Under New Jersey property law, a "creator" is an individual who
10 establishes a trust.)

11 Many states have modified their laws in response to the IRS
12 ruling with regard to the trustee's ability to utilize assets to satisfy
13 income tax obligations of the trust creator. This bill is modeled on
14 one of these state statutes, New York EPTL 7-3.1(d).

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1086

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2012

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1086.

This bill concerns any trust for which the trust creator remains obligated to pay the income taxes on the trust's income, but the governing trust instrument provides the benefiting trustee the discretion to use a portion of the trust's income or principal to cover such income tax obligations on behalf of the trust creator. The trustee may accomplish this by: (1) directly paying the taxes on behalf of the trust creator; or (2) reimbursing the trust creator for any income tax obligations paid. Under the provisions of the bill, the use of the trust's income or principal, being employed at the *sole discretion* of the trustee, does not constitute a *right* by the trust creator to receive that income or principal. By expressly denying that any right to trust income or principal exists for the trust creator under such an arrangement, the bill would prevent a creditor of the trust creator from recognizing the arrangement as creating such right and thus being able to subject that right to a claim, potentially reaching the trust income or principal in fulfillment thereof.

The bill responds to a Revenue Ruling by the Internal Revenue Service (Rev. Rul. 2004-64, 2004-2 C.B. 7). In the ruling, the IRS indicated that the aforementioned discretionary tax payment arrangement, by itself, does not establish a retained right of the trust creator to trust income or principal and therefore does not cause the trust to be added to the trust creator's estate for federal estate tax purposes. However, a retained right to trust income or principal may be demonstrated by such arrangement, if combined with other factors, ultimately resulting in the addition of the trust to the trust creator's taxable estate. One possible added factor to showing the trust creator's retained right is a state law subjecting the trust assets (i.e., trust income or principal) to the claims of the trust creator's creditors.

New Jersey law, at N.J.S.3B:11-1, currently permits creditor claims against a trust creator's receipt of trust income or principal. The bill, therefore, adds provisions to this section of law to expressly indicate that the aforementioned discretionary tax payment arrangement shall not be considered a right to receive trust income or principal; thus, the arrangement could not be used by a trust creator's creditor to reach such trust income or principal to fulfill any claim, and

further, such arrangement could not result in the addition of the trust to the trust creator's taxable estate.

Several other states, including Delaware, New York, and Florida, have similarly modified their statutory law in response to the IRS Revenue Ruling. This bill is modeled after New York's statute. See N.Y. Est. Powers & Trusts (EPTL) sec. 7-3.1(d).

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As reported by the committee, Assembly Bill No. 1086 is identical to Senate Bill No. 765 which was also reported by the committee on this date.