

3A: 10-2

LEGISLATIVE FACT SHEET

ON Provides for corpus commissions on an intermediate or final settlement of fiduciary's accounts.

N.J.R.S. 3A:10--2

(1972 Amendment)

LAWS OF 1972

CHAPTER 1471 Sept. 7, 1972

SENATE 555 (A2314-1971)

ASSEMBLY

INTRODUCED Feb. 7, 1972

BY Thomas, Maraziti, Tanzman, Lynch

STATEMENT

YES

NO

AMENDED DURING PASSAGE

YES

NO

HEARING None discovered

VETO

STATEMENT - See page 3 of FINAL Fkt of Bill

The purpose of this bill is to permit fiduciaries to take annual corpus commissions, without court order, at the rate of 1/2 of 1% on the first \$100,000 of corpus plus 1/10 of 1% on the excess over \$100,000, with a maximum of \$1,100 in any one year. This does not increase fiduciaries' commissions. It simply permits them to reimburse themselves annually for corpus commissions, as they may now do in respect to income commissions, without waiting until a formal accounting. Commissions so taken would continue to be subject to judicial review on intermediate and final accountings. The Court's power to review commissions so taken would not be affected by the bill.

Income beneficiaries, who are generally the main objects of a testator's or settlor's concern, would benefit by annual payment of corpus commissions since such commissions may be taken as tax deductions against income earned each year, notwithstanding that the income paid to beneficiaries would not thereby be decreased because of the payment of corpus commissions. In addition, in many instances, termination fees and attorneys' fees will exceed taxable income of a trust in the year of termination, so that, unless taken annually, the tax benefit of deducting corpus commissions will be completely lost. →

7-22-68 L3/RSL

~~STATEMENT CONTINUED ON OTHER SIDE~~

SENATE, No. 555

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 7, 1972

By Senators THOMAS, LYNCH and TANZMAN

Referred to Committee on Judiciary

AN ACT concerning commissions payable to certain fiduciaries, and amending N. J. S. 3A:10-2.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 3A:10-2 is amended to read as follows:

2 3A:10-2. *a.* On the settlement of accounts of fiduciaries acting
3 in any capacity referred to in section 3A:10-1 of this Title, their
4 commissions over and above their actual expenses shall be computed
5 upon the following rates:

6 (1) On all income that comes into their hands, 6% without court
7 allowance. For the purposes of this section, income which is with-
8 held from payment to any such fiduciary pursuant to any law of
9 this State, or of the United States, or any other State, country or
10 sovereignty, or of any political subdivision or governmental unit
11 of any of the foregoing, requiring such withholding for income tax
12 or other tax purposes, shall be deemed to be income which comes
13 into the hands of such fiduciary, and shall be subject to income com-
14 missions as provided in this section in the same manner as if
15 actually received by such fiduciary.

16 (2) If there is but one fiduciary, 5% on all corpus that comes
17 into the fiduciary's hands in cases where corpus receipts do not
18 exceed \$100,000.00, and in cases where corpus receipts exceed
19 \$100,000.00, 5% on the first \$100,000.00 of corpus, and, on the excess
20 over \$100,000.00 of corpus, such percentage, not in excess of 5%,
21 as the court may determine on the intermediate or final settlement
22 of the fiduciary's accounts, according to actual services rendered.

23 (3) If there are two or more fiduciaries, their commissions on
24 corpus shall be the same as herein provided in the case of one
25 fiduciary, and, in addition thereto, the court may allow corpus com-
26 missions in excess of the commissions to which one fiduciary would
27 be entitled under this section, at a rate not exceeding 1% of all

28 corpus for each additional fiduciary. In any case in which the
29 administration of the fiduciary or fiduciaries has extended or
30 extends beyond a period of 25 years, corpus commissions for such
31 additional years shall be allowed at a rate not exceeding $\frac{1}{3}$ of 1%
32 per annum, irrespective of the number of fiduciaries.

33 *b. The court may, on an intermediate or the final settlement of*
34 *the fiduciary's accounts, allow corpus commissions in addition to*
35 *those provided by this section, on a showing that unusual or ex-*
36 *traordinary services have been rendered by the fiduciary for which*
37 *the fiduciary should receive extra compensation.*

38 *c. Fiduciaries may annually, without court allowance, take sums*
39 *as follows on account of corpus commissions: if there is but one*
40 *fiduciary, the amount so taken may equal $\frac{1}{5}$ of 1% of the first*
41 *\$100,000.00 of corpus and $\frac{1}{10}$ of 1% of the value of the corpus in*
42 *excess of \$100,000.00, or \$1,100.00, whichever is less; and, if there*
43 *are two or more fiduciaries, the amount so taken may equal the*
44 *commissions which may be taken pursuant to this subsection when*
45 *there is but one fiduciary, plus $\frac{1}{5}$ of such commissions for each*
46 *fiduciary more than one. In computing the amount of commissions*
47 *which may be taken annually pursuant to this subsection, the value*
48 *of any item of corpus at the time when such item came into the*
49 *hands of the fiduciary or fiduciaries, herein in this section referred*
50 *to as the "presumptive value" of such item, may be used as the*
51 *value of such item, or, at the option of the fiduciary, the value of*
52 *such item at the end of the period for which such commissions are*
53 *taken may be used. The failure of a fiduciary or fiduciaries to take*
54 *commissions in any year as provided in this subsection shall not*
55 *constitute a waiver of the right of such fiduciary or fiduciaries to*
56 *take in a subsequent year the commissions not taken for such year.*
57 *Commissions taken as provided in this subsection shall be subject*
58 *to review on intermediate and final accountings, and to the extent*
59 *that aggregate commissions so taken exceed the commissions*
60 *allowable under paragraphs (2) and (3) of subsection a. of this*
61 *section, they shall be disallowed.*

62 *d. In the event of a dispute as to the value of corpus on the*
63 *settlement of the account of a fiduciary or fiduciaries, the burden of*
64 *proving that the value of any item of corpus differs from the pre-*
65 *sumptive value of such item shall be upon such fiduciary or fidu-*
66 *ciaries or other party claiming such difference.*

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to permit fiduciaries to take annual corpus commissions, without court order, at the rate of $\frac{1}{5}$ of 1% on the first \$100,000 of corpus plus $\frac{1}{10}$ of 1% on the excess over \$100,000, with a maximum of \$1,100 in any one year. This does not increase fiduciaries' commissions. It simply permits them to reimburse themselves annually for corpus commissions, as they may now do in respect to income commissions, without waiting until a formal accounting. Commissions so taken would continue to be subject to judicial review on intermediate and final accountings. The Court's power to review commissions so taken would not be affected by the bill.

Income beneficiaries, who are generally the main objects of a testator's or settlor's concern, would benefit by annual payment of corpus commissions since such commissions may be taken as tax deductions against income earned each year, notwithstanding that the income paid to beneficiaries would not thereby be decreased because of the payment of corpus commissions. In addition, in many instances, termination fees and attorneys' fees will exceed taxable income of a trust in the year of termination, so that, unless taken annually, the tax benefit of deducting corpus commissions will be completely lost.

The annual taking of corpus commissions could well result in economies to an estate since such taking will tend to eliminate applications for costly formal accountings which are required under present procedure in seeking interim allowances of commissions.