

HOUSE BILL REPORT

HB 1076

As Passed House
March 8, 1993

Title: An act relating to the distribution of income earned during administration of a decedent's estate.

Brief Description: Allowing a personal representative with nonintervention powers to determine time and manner of distributing income.

Sponsors: Representatives Ludwig, Padden, Appelwick, Orr and Johanson.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1993, DP;
Passed House, March 8, 1993, 97-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 17 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Forner;
Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt;
Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: Beneficiaries of a will who are bequeathed a specific gift, such as stock in a company, are entitled to income earned on the gift during the administration of the testator's estate. Beneficiaries of a monetary interest, such as a specific sum of money, are not entitled to income earned on the money during the estate's administration.

The law is unclear regarding distributions of income to residuary beneficiaries. Residuary beneficiaries are beneficiaries that receive the "residue" of the estate after specific gifts are distributed. (I give the residue of my estate in equal shares to John and Mary.) The law does specify how the income rights of residuary beneficiaries are to be determined, but it does not specify when a personal representative may distribute income to the beneficiaries.

The law also does not state when estate income may be distributed to income beneficiaries of testamentary trusts who will eventually receive income accruing during estate administration, or to beneficiaries of testamentary trusts who may receive income accruing during administration.

Most Washington estates are administered under "nonintervention" powers, which gives the personal representative very broad powers of administration without court approval or intervention. Based upon the broad nonintervention power, personal representatives have made distributions, without first obtaining a court order, of estate income to residuary beneficiaries, testamentary trust beneficiaries who are entitled to receive that income eventually, and in some cases, to testamentary trust beneficiaries who may be entitled to that income on a discretionary basis.

In addition to the concern that personal representatives' power to make distributions without court approval is not explicitly acknowledged in statute, concern exists that the Internal Revenue Service may not acknowledge that power and consequently may not respect the representatives' reporting of these distributions as deductible by the estate. If the Internal Revenue Service does not acknowledge the legitimacy of the distribution, then the estate rather than the beneficiaries may be taxed on the income. A recent federal case suggested that the Internal Revenue Service could begin disallowing estate income tax return deductions if state law did not clearly authorize those income distributions.

The Washington State Bar Association recommends that state law be amended to clarify the power of the personal representatives.

Summary of Bill: A personal representative who has been granted nonintervention powers may determine the time and manner of distributing the income to a beneficiary entitled to receive the income including: (1) a residuary beneficiary; (2) a testamentary trust beneficiary to whom trust income must be distributed; and (3) a testamentary trust beneficiary to whom trust income may be distributed if the trustee named in the will approves or ratifies the distribution.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This act is necessary to clarify the power of personal representatives to make distributions and reduce their tax liability exposure.

Testimony Against: None.

Witnesses: Noreen Nearn, Washington State Bar Association Estate and Gift Tax Section (pro).