Chapter 129

1963 REPLACEMENT PART

Uniform Principal and Income Act

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129.010 Definitions. As used in this chapter:

(1) "Principal" means any realty or personalty which has been so set aside or limited by the owner thereof or a 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 a principal.

(3) "Tenant" means the person to whom the income is first payable, or for whom it is accumulated, or who is beneficially entitled to the possession of the principal presently and for a time prior to its distribution.

(4) "Remainderman" means the person ultimately entitled to the principal, whether named or designated by the creator of the principal, or determined by operation of law, and also includes the person entitled to the income after the rights of the tenant shall cease.

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

(6) "Trustee's compensation" means the normal, recurring fee of the trustee for its services in the management and administration of the trust estate, irrespective of the manner of computation of such fee.

(7) "Trustee's commission" means the fee of the trustee for services rendered, other than in the normal management and administration of the trust estate, and includes remuneration of the trustee for acceptance, distribution, termination, and all other fees of like nature, as distinguished from regularly recurring compensation for management and supervision of the trust estate by the trustee.

129.020 Application of chapter. This chapter shall govern the ascertainment of income and principal, and the apportionment of receipts and expenses between tenants and remaindermen, in all cases where a principal has been established with or, except as otherwise stated in this chapter, without the interposition of a trust; provided, however, that the creator of the principal, or any person thereto legally empowered, may make any provision he desires touching matters covered by this chapter, and may himself direct the manner of ascertainment of income, principal and expenses or grant discretion to the trustee or other person so to do, and such provision and direction, where not otherwise contrary to law, shall control, notwithstanding this chapter.

129.030 Income and principal; disposition. (1) All receipts of money or other property paid or delivered in return for the use of principal shall be deemed income unless otherwise expressly provided in this chapter. Such receipts shall include those paid as rent of realty, hire of personalty or dividends on corporate shares payable other than in shares of the corporation itself, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld.

(2) All receipts of money or other property paid or delivered as a refund or replacement or change in form of principal shall be deemed principal unless otherwise expressly provided in this chapter. Such receipts shall include those paid as the consideration for the sale or other transfer, not a leasing or letting, of property forming a part of the principal, or as a repayment of loans, or in liquidation of the assets of a corporation, or as the proceeds of property taken on eminent domain proceedings where separate awards to tenant and remainderman are not made, or as proceeds of insurance issued for the benefit of both tenant and remainderman upon property forming a part of the principal. Any profit or loss resulting upon any change in form of principal shall inure to or fall upon the principal.

(3) All income after payment of expenses properly chargeable to it shall be paid and delivered to the tenant at regular intervals, or retained by him if already in his possession; while the principal shall be held for ultimate distribution as determined by the instrument by which it is created or by law.

129.040 Apportionment of income. Whenever a tenant shall have the right to income from periodic payments which shall include rent, interest on loans and annuities, but shall not include dividends or corporate shares, and such right shall cease and determine by death or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that

portion of any such income next payable as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right bears to the total period during which such income would normally accrue. The remaining income shall be paid to the person or persons next entitled thereto by the terms of the transaction under which the principal was established. But no action shall be brought to recover such apportioned income or any portion thereof until after the day on which it would have become due but for the determination of the right of the tenant entitled thereon. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise, when the tenant first becomes entitled to take such periodic payments as income at a time other than their payment dates, he shall only receive that portion of such income as the period during which he has been so entitled bears to the total period during which such income would normally accrue.

129.050 Corporate dividends and share rights. (1) All dividends on shares of a corporation which form a part of the principal and are payable in the shares of the corporation shall be deemed principal. Subject to the provisions of this section, all dividends payable otherwise than in the shares of the corporation itself, including ordinary and extraordinary dividends and dividends payable in shares or other securities or obligations of corporations other than the declaring corporation, shall be deemed income. Where the trustee has the option of receiving a dividend either in cash or in the shares of the declaring corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(2) All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights, shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares in another corporation, and the proceeds of any sale of such rights, shall be deemed income.

(3) When a corporation calls in a share of stock, or when a corporation succeeds another by merger, consolidation, reorganization or by other method of acquiring its assets, or when a corporation is being wholly or partially liquidated, shares of stock in the succeeding corporation and cash or other assets distributed to stockholders are principal, except that, if the corporation indicates that some part of the distribution is a settlement of preferred or guaranteed dividends, that part of the distribution settling dividends accruing since the trustee became a stockholder is income. For purposes of this section, a corporation is in liquidation if the corporation indicates that the distribution is in total or partial liquidation, or if the corporation is making a 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, unless the distributing corporation indicates that a distribution pursuant to such court or administrative order is wholly or partly in lieu of an ordinary cash dividend, in which case the distribution is to that extent income.

(4) Where a corporation succeeds another by merger, consolidation or reorganization or otherwise acquires its assets, and the corporate shares of the succeeding corporation are issued in substitution for those of the original corporation, the two corporations shall be considered a single corporation in applying the provisions of this section. But two corporations shall not be considered a single corporation under this section merely because one owns corporate shares of or otherwise controls or directs the other.

(5) For the purposes of applying this section the date when a dividend accrues to the person who is entitled to it shall be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or, in default thereof, the payment date of the dividend.

[Amended by 1963 c.437 §1]

129.060 Premium and discount bonds. Where any part of the principal consists of bonds or other obligations for the payment of money they shall be deemed principal at their value at the time the principal is established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale any loss or gain realized

thereon shall fall upon or inure to the principal. However, the foregoing shall not apply to bonds issued on a discount basis and subject to definite appreciation in value on a fixed schedule. The increment in value of such bonds shall constitute income as of each date on which an increment occurs, and shall be made available as income for such disposition as is provided by the terms of the transaction under which the principal was established, by transferring from the principal on each such date an amount equivalent to the increment then occurring.

129.070 Principal used in business. (1) Whenever a trustee or a tenant is authorized by the terms of the instrument by which the principal is created or by law, to use any part of the principal in the continuance of a business which the creator of the principal had been carrying on, the net profits of such business, attributable to such principal, shall be deemed income.

(2) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross returns during, and the inventory value of the property at the end of, such period, the expenses during and the inventory value of the property at the beginning of such period.

(3) Where such business does not consist in buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in a way as to decrease the principal.

(4) Any increase in the value of such business shall be deemed principal, and all losses, after the income from such business has been exhausted, shall fall upon principal.

129.080 Principal comprising livestock. Whenever any part of the principal comprises livestock and is not subject to ORS 129.070, and such livestock is held or retained partly or wholly because of its reproductive qualities, the offspring or increase of such livestock shall be deemed principal to the extent necessary to maintain the original quantity of such livestock; all the remainder shall be deemed income. In all other cases, except those subject to ORS 129.070, the offspring or increase of livestock forming a part of the principal shall be deemed income.

129.090 Disposition of natural resources. Whenever any part of the principal consists of land from which may be taken timber, minerals, oils, gas or other natural resources and the trustee or tenant in possession is authorized by the terms of the instrument creating the principal or by law, to sell or dispose of such natural resources, the net proceeds therefrom shall be deemed principal. Nothing in this section abrogates any right which a tenant may otherwise have to work mines or quarries, to cut or consume timber or otherwise to make use of the natural resources of such land.

129.100 Principal subject to depletion. Whenever any part of the principal consists of property subject to depletion, such as leaseholds, patents, copyrights and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties or return from the property is income to the tenant; but where the trustee or tenant is under a duty, arising either by law or because of the direction of the creator of the principal, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of six percent per year of the value of the property shall be deemed income and the remainder principal.

129.110 Unproductive estate. (1) Where any part of a principal in the possession of a trustee consists of realty or personalty which for more than a year and until disposed of as in this section stated has not produced an average net income of at least one percent per year of its value at the time it first became a part of the principal, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of his death, his personal representative, is entitled to share in the net proceeds received from the property as delayed income to the extent stated in this section.

(2) Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of six percent per year for the period during which the change was delayed would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the value of the property at

the time it became a part of the principal. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive.

(3) If the tenant has received any income from the property, or has had any beneficial use thereof, during the period while the change has been delayed, his share of the delayed income shall be reduced by the amount of such income received, or the value of the use had.

(4) In the case of successive tenants the delayed income shall be divided among them or their representatives, according to the duration of time for which each was entitled to income.

129.120 Apportioning expenses in trust estates. (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums or insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation, except commissions computed on principal, compensation of assistants, and court and other fees on regular accountings, shall be paid out of income; but such expenses where incurred in disposing of, or as carrying charges on, unproductive estates as defined in ORS 129.110 shall be paid out of principal, subject to the provisions of subsection (2) of ORS 129.110.

(2) All other expenses, including trustees' commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal, under the terms of subsection (2) of ORS 129.030, shall be paid out of principal, notwithstanding such tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) of this section, which represent regularly recurring charges, shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. When the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant begins or ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

129.130 Apportioning expenses in nontrust estates. (1) The provisions of ORS 129.120 shall apply to tenants and remaindermen where no trust has been created, subject, however, to any legal agreement of the parties or any specific direction of the taxing or other statutes; but where either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the provisions of subsection (1) of this section the cost of or special taxes or assessments for an improvement to property forming part of the principal, and representing an addition of value to the property, shall be paid by the tenant, where such improvement is not reasonably expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American Experience Tables of Mortality and no other evidence of duration or expectancy shall be considered.

129.140 Exemption of state administered trusts. The provisions of this chapter shall not apply to trusts or trust funds under the administration of the State of Oregon.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel

CHAPTER 130

[Reserved for expansion]