Chapter 129

1991 EDITION

Principal and Income Act

129.005 **Short title**

129.015 **Application of ORS 129.005 to 129.125**

129.025 **Definitions for ORS 129.005 to 129.125**

129.035 **Definitions of principal and income**

129.045 **Administration of trust; allocation of receipts and expenditures generally; allocation when trustee given discretion**

129.055 **Apportionment of income**

129.065 **Corporate dividend and share rights**

129.075 **Bonds**

129.085 **Principal used in business; agricultural operation**

129.090 **Disposition of natural resources**

129.100 **Principal subject to depletion**

129.105 **Unproductive estate**

129.115 **Charges against principal and income**

129.125 **Severability**

CROSS REFERENCES

Investment securities, Ch. 78

129.055

Duty as to disposition of income by custodian of gift to minor, 126.842

Note: 129.010, 129.020, 129.030, 129.040, 129.050, 129.060, 129.070, 129.080, 129.110, 129.120, 129.130 and 129.140 were repealed by section 1, chapter 717, Oregon Laws 1975, and 129.005, 129.015, 129.025, 129.035, 129.045, 129.055, 129.065, 129.075, 129.085, 129.105, 129.115 and 129.125 were enacted in lieu thereof.

129.005 Short title. ORS 129.005 to 129.125 may be cited as the "Principal and Income Act." [1975 c.717 §12 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.010 [Repealed by 1975 c.717 §1]

129.015 Application of ORS 129.005 to 129.125. Except as specifically provided in the trust instrument or the will or in ORS 116.007 and 129.005 to 129.125, ORS 116.007 and 129.005 to 129.125 shall apply to any receipt or expense received or incurred after September 13, 1975, by any trust or decedent's estate whether established before or after September 13, 1975, and whether the asset involved was acquired by the trustee before or after September 13, 1975. [1975 c.717 §11(enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.020 [Repealed by 1975 c.717 §1]

129.025 Definitions for ORS 129.005 to 129.125. As used in ORS 116.007 and 129.005 to 129.125:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax.

(3) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means an original trustee and any successor or added trustee. [1975 c.717 §2 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.030 [Repealed by 1975 c.717 §1]

129.035 Definitions of principal and income. (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) Rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in ORS 129.075 on bond premium and bond discount;

(c) Income earned during administration of a decedent's estate as provided in ORS 116.007;

(d) Corporate distributions as provided in ORS 129.065;

(e) Accrued increment on bonds or other obligations issued at discount as provided in ORS 129.075;

(f) Receipts from business and farming operations as provided in ORS 129.085;

(g) Receipts from principal subject to depletion as provided in ORS 129.100; and

(h) Receipts from disposition of underproductive property as provided in ORS 129.105.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(a) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(b) Proceeds of property taken on eminent domain proceedings;

(c) Proceeds of insurance upon property forming part of the principal, except proceeds of insurance upon a separate interest of an income beneficiary;

(d) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in ORS 129.065;

(e) Receipts from the disposition of corporate securities as provided in ORS 129.075;

(f) Receipts from disposition of natural resources as provided in ORS 129.090;

(g) Receipts from principal subject to depletion as provided in ORS 129.100;

(h) Any profit resulting from any change in the form of principal, except as provided in ORS 129.105 on underproductive property;

(i) Receipts from disposition of underproductive property as provided in ORS 129.105; and

(j) Any allowances for depreciation established under ORS 129.085.

(3) After determining income and principal in accordance with the terms of the trust instrument or of ORS 116.007 and 129.005 to 129.125, the trustee shall charge to income or principal expenses and other charges as provided in ORS 129.115. [1975 c.717 §4 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.040 [Repealed by 1975 c.717 §1]

129.045 Administration of trust; allocation of receipts and expenditures generally; allocation when trustee given discretion. (1) A trust shall be administered

with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of ORS 116.007 and 129.005 to 129.125;

(b) In the absence of any contrary terms of the trust instrument, in accordance with the provisions of ORS 116.007 and 129.005 to 129.125; or

(c) If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of ordinary prudence, discretion and judgment would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of ORS 116.007 and 129.005 to 129.125. [1975 c.717 §3 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.050 [Amended by 1963 c.437 §1; 1973 c.272 §1; repealed by 1975 c.717 §1]

129.055 Apportionment of income. (1) An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will:

(a) Receipts due but not paid at the date of death of the testator are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or the estate of the income beneficiary, is entitled to:

(a) Income undistributed on the date of termination;

(b) Income due but not paid to the trustee on the date of termination; and

(c) Income in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation. [1975 c.717 §5 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.060 [Repealed by 1975 c.717 §1]

129.065 Corporate dividend and share rights. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) A call of shares;

(b) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any 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.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions

made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1), (2) and (3) of this section, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3) of this section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of ORS 116.007 and 129.005 to 129.125 concerning the source or character of dividends or distributions of corporate assets. [1975 c.717 §6 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.070 [Repealed by 1975 c.717 §1]

129.075 Bonds. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) of this section for discount bonds. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized. [1975 c.717 §7 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140); 1991 c.620 §1]

129.080 [Repealed by 1975 c.717 §1]

129.085 Principal used in business; agricultural operation. (1) If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operations of a nursery. [1975 c.717 §8 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

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 income beneficiary 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 an income beneficiary 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. [Amended by 1975 c.717 §16]

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 income beneficiary 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 income beneficiary; but where the trustee or income beneficiary 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. [Amended by 1975 c.717 §17]

129.105 Unproductive estate. (1) Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least one percent per year of its inventory value for more than a year (including as income the value of any beneficial use of the property by the income beneficiary) shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charge paid while the property was underproductive.

(2) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year

while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

(3) An income beneficiary or the estate of the income beneficiary is entitled to delayed income under this section as if it accrued from day to day during the time the income beneficiary was a beneficiary.

(4) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages (for example, realty acquired by or in lieu of foreclosure), the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made. [1975 c.717 §9 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.110 [Repealed by 1975 c.717 §1]

129.115 Charges against principal and income. (1) The following charges shall be made against income:

(a) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes, except deferred real property taxes, assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(b) One-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(c) Court costs, attorney fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(d) One-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, except that this allocation shall not be required if the trustee determines that some other allocation is reasonable and equitable in view of the interests of those entitled to income as well as those entitled to principal, and in view of the manner in which persons of ordinary prudence, discretion and judgment would act in the management of their own affairs; and

(e) Any tax levied upon receipts defined as income under ORS 116.007 and 129.005 to 129.125 or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) Trustee's compensation not chargeable to income under paragraphs (c) and (d) of subsection (1) of this section, special compensation of trustees, expenses reasonably incurred in connection with principal, including real property taxes deferred by reason of application of the life tenant or trustee or by reason of land use deferrals, court costs and attorney fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) Charges not provided for in subsection (1) of this section, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness (including a mortgage amortized by periodic payments of principal), expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by ORS 129.085;

(d) Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights to the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under ORS 129.055. [1975 c.717

§10 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.120 [Repealed by 1975 c.717 §1]

129.125 Severability. If any provision of ORS 116.007 and 129.005 to 129.125 or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ORS 116.007 and 129.005 to 129.125 which can be given effect without the invalid provision or application and to this end the provisions of ORS 116.007 and 129.005 to 129.125 are severable. [1975 c.717 §13 (enacted in lieu of 129.010 to 129.080 and 129.110 to 129.140)]

129.130 [Repealed by 1975 c.717 §1]

129.140 [Repealed by 1975 c.717 §1]

CHAPTER 130

[Reserved for expansion]