

Article 4A.

Tax Status of Charitable Trusts.

§ 36C-4A-1. Prohibited transactions.

(a) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (b) of this section, the trust instrument of each trust that is a private foundation described in section 509 of the Internal Revenue Code (including each nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code that is treated as a private foundation) and the trust instrument of each nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code (but only to the extent that section 508(e) of the Internal Revenue Code is applicable to the nonexempt split-interest trust under section 4947(a)(2) of the Internal Revenue Code) is considered to contain the following provisions: "The trust shall make distributions at any time and in any manner as not to subject it to tax under section 4942 of the Internal Revenue Code; the trust shall not engage in any act of self-dealing which would subject it to tax under section 4941 of the Internal Revenue Code; the trust shall not retain any excess business holdings that would subject it to tax under section 4943 of the Internal Revenue Code; the trust shall not make any investments that would subject it to tax under section 4944 of the Internal Revenue Code; and the trust shall not make any taxable expenditures that would subject it to tax under section 4945 of the Internal Revenue Code." With respect to any trust created before January 1, 1970, this section shall apply only for its taxable years beginning on or after January 1, 1972.

(b) Notwithstanding any provisions in the laws of this State or in the governing instrument to the contrary, unless otherwise decreed by a court of competent jurisdiction except as provided in subsection (a) of this section, the governing instrument of each trust that is a nonexempt charitable trust described in section 4947(a)(1) of the Internal Revenue Code is considered to contain the following provisions:

- (1) The trust shall be operated exclusively for charitable, educational, religious, and scientific purposes within the meaning of section 501(c)(3) and section 170(c)(2) of the Internal Revenue Code.
 - (2) Upon any dissolution, winding up, or liquidation of the trust, its assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or a state or local government for a public purpose.
- (c) The trustee of any trust described in this section may do one of the following:
- (1) Without judicial proceedings, amend the trust to expressly exclude the application of this section by executing a written amendment to the trust instrument and filing a duplicate original of the amendment with the Attorney General. Upon filing of the amendment, this section shall not apply to that trust.
 - (2) Institute a proceeding under Article 2 of this Chapter seeking reformation of the trust instrument. (1971, c. 1136, s. 4; 1977, c. 502, s. 2; 1981 (Reg. Sess., 1982), c. 1210, ss. 1-3; 2005-192, s. 2.)

§ 36C-4A-2. Reformation of charitable remainder trust.

If a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property that passes from the decedent under a will or trust to a person, or for a use, described in section 2055(a) of the Internal Revenue Code, to meet the requirements of subsections 2055(e)(2)(A) or (B) of the Internal Revenue Code, then in order that the deduction

shall nevertheless be allowable under section 2055(e)(3) of the Internal Revenue Code, the court may, on application of any trustee or interested party with either (i) the written consent of the qualified beneficiaries, or (ii) a finding that the interest of those beneficiaries is substantially preserved, order an amendment to the trust so that the remainder interest is in a trust that is a charitable remainder annuity trust, a charitable remainder unitrust (as those terms are described in section 664 of the Internal Revenue Code), or a pooled income fund (as that term is described in section 642(c)(5) of the Internal Revenue Code), or so that any other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly), in accordance with section 2055(e)(2)(B) of the Internal Revenue Code. In every proceeding under this section, the Attorney General shall be notified, and given an opportunity to be heard. (1971, c. 1136, s. 4; 1977, c. 502, s. 2; 1981 (Reg. Sess., 1982), c. 1210, ss. 1-3; 2005-192, s. 2.)