

SENATE BILL 637

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2000 Regular Session
0lr2314
CF 0lr2315

By: **Senator Baker**

Introduced and read first time: February 4, 2000

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Trusts - Allocation of Capital Gains Distributions by Investment Funds**

3 FOR the purpose of authorizing trustees to elect to allocate to income certain
4 distributions by certain investment funds of realized capital gains; and
5 generally relating to determining income and principal of a trust.

6 BY repealing and reenacting, with amendments,
7 Article - Estates and Trusts
8 Section 14-205
9 Annotated Code of Maryland
10 (1991 Replacement Volume and 1999 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Estates and Trusts**

14 14-205.

15 (a) The following are principal:

16 (1) A corporate distribution of shares of the distributing corporation
17 (whether or not of the same class), including distributions in the form of a stock split
18 or stock dividend, but the provisions of this subsection shall not apply to successive
19 estates or interests in existence prior to June 1, 1965, in which the life tenant is
20 entitled to stock dividends representing earnings during the life tenancy;

21 (2) A right to subscribe to shares or other securities issued by the
22 distributing corporation accruing to stockholders on account of their stock ownership
23 and the proceeds of any sale of the right; and

24 (3) A stock distribution or spin-off of shares of stock of a corporation that
25 had been owned or acquired by the distributing corporation.

26 (b) Except to the extent that the corporation indicates that some part of a
27 corporate distribution is a settlement of preferred or guaranteed dividends accrued

1 since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a
2 corporate distribution is principal if the distribution is pursuant to:

3 (1) A call of shares;

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

6 (3) A total or partial liquidation of the corporation, including any
7 distribution which the corporation indicates is a distribution in total or partial
8 liquidation or any distribution of assets, other than cash, pursuant to a court decree
9 or final administrative order by a government agency ordering distribution of the
10 particular assets.

11 (c) (1) (I) IN THIS SUBSECTION, THE FOLLOWING WORDS HAVE THE
12 MEANINGS INDICATED.

13 (II) "INVESTMENT FUND" MEANS AN ENTITY THAT IS TREATED AS A
14 PARTNERSHIP FOR FEDERAL INCOME TAX PURPOSES, HAS 50 OR MORE INVESTORS,
15 AND MORE THAN HALF THE ASSETS OF WHICH CONSIST OF CASH AND MARKETABLE
16 SECURITIES, INCLUDING ITS PROPORTIONATE SHARE OF THESE ASSETS OWNED BY
17 ANY ENTITY IN WHICH IT OWNS AN INTEREST.

18 (III) "UNIT" MEANS AN EQUITY INTEREST IN AN INVESTMENT FUND.

19 (2) (I) Distributions made from ordinary income by a regulated
20 investment company [or by], a trust qualifying and electing to be taxed under federal
21 law as a real estate investment trust, OR AN INVESTMENT FUND are income.

22 (II) [All] EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
23 PARAGRAPH, ALL other distributions made by the REGULATED INVESTMENT
24 company [or], REAL ESTATE INVESTMENT trust, OR INVESTMENT FUND including
25 distributions from capital gains, depreciation, or depletion, whether in the form of
26 cash or an option to take new stock OR UNITS or cash or an option to purchase
27 additional shares OR UNITS, are principal[; except that distributions].

28 (III) 1. DISTRIBUTIONS per share OR UNIT, made in any calendar
29 year, by a regulated investment company OR AN INVESTMENT FUND from realized
30 capital gains are income to the extent required in order for the sum of the
31 distributions per share OR UNIT from ordinary income and from realized capital gains
32 to equal an amount determined by multiplying the net asset value of a share OR UNIT
33 of the regulated investment company OR INVESTMENT FUND on January 1 of such
34 calendar year (or on such later date of acquisition by a trustee during such calendar
35 year) by the annual federal mid-term rate applicable to January 1 of such calendar
36 year (or to such later date of acquisition) established by the Secretary of the Treasury
37 under § 1274(d)(1) of the Internal Revenue Code of 1986, adjusted to reflect the
38 proportion of the calendar year in which the share has been held by a trustee[,
39 provided that].

1 2. THIS SUBPARAGRAPH APPLIES IF the trustee makes an
2 irrevocable written election to so treat such distributions on the first year-end
3 accounting of the trust's principal and income stated [(1) after]:

4 A. AFTER June 30, 1989, if such share OF A REGULATED
5 INVESTMENT COMPANY is owned on June 30, 1989[, or (2) after];

6 B. AFTER such share OF A REGULATED INVESTMENT
7 COMPANY is acquired, if such share is acquired on or after July 1, 1989;

8 C. AFTER SEPTEMBER 30, 2000, IF A UNIT OF AN INVESTMENT
9 FUND IS OWNED ON SEPTEMBER 30, 2000; OR

10 D. AFTER A UNIT OF AN INVESTMENT FUND IS ACQUIRED, IF
11 THE UNIT IS ACQUIRED ON OR AFTER OCTOBER 1, 2000.

12 3. AN ELECTION BY A TRUSTEE IN ACCORDANCE WITH
13 SUB-SUBPARAGRAPH 2 OF THIS SUBPARAGRAPH IS PRESUMED TO BE FAIR AND
14 REASONABLE TO ALL OF THE BENEFICIARIES.

15 (d) Except as provided in subsections (a), (b), and (c), all corporate
16 distributions are income, including cash dividends, distributions of or rights to
17 subscribe to shares or securities or obligations of corporations other than the
18 distributing corporation, and the proceeds of the rights or property distributions.
19 Except as provided in subsections (b) and (c), if the distributing corporation gives a
20 stockholder an option to receive a distribution either in cash or in its own shares, the
21 distribution chosen is income.

22 (e) The trustee may rely upon any statement of the distributing corporation as
23 to any fact relevant under any provision of this subtitle concerning the source or
24 character of dividends or distributions of corporate assets.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2000.