WEST VIRGINIA CODE: §35-2-9

§35-2-9. Distribution of income by trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; definition of terms.

(a) Distribution of income by trust which is deemed a private foundation; prohibitions as to such private foundation. -- Every trust, receiving a gift, grant, devise or bequest, which is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income for each taxable year at such time and in such manner as not to subject such trust to tax under section 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing as defined in section 4941 (d) of the Internal Revenue Code, retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code, make any investments in such manner as to subject the trust to tax under section 4944 of the Internal Revenue Code, or make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code. This subsection shall apply to any charitable trust established after December 31, 1969, and to any charitable trust established before January 1, 1970, only for its taxable years beginning on and after January 1, 1972.

(b) Prohibitions as to trust which is deemed a split-interest trust. -- Every trust, receiving a gift, grant, devise or bequest, to the extent that such trust is deemed to be a split-interest trust subject to the provisions of section 4947 (a) (2) of the Internal Revenue Code of 1954, unless its governing instrument expressly includes specific provisions to the contrary, shall not:

(1) Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code;

(2) Retain any excess business holdings, as defined in section 4943 (c) of the Internal Revenue Code;

(3) Make any investments in such manner as to subject the foundation to tax under section 4944 of the Internal Revenue Code; or

(4) Make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code.

Subparagraphs (2) and (3) of this subsection shall not apply to a split-interest trust if:

(1) All the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170 (c) (2) (B) of the Internal Revenue Code, and all amounts in such trust for which a deduction was allowed under section 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or section 2522 of the

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Internal Revenue Code have an aggregate fair market value not more than sixty percent of the aggregate fair market value of all amounts in such trust, or

(2) A deduction was allowed under section 170, 545 (b) (2), 556 (b) (2), 642 (c), 2055, 2106 (a) (2), or section 2522 of the Internal Revenue Code for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(c) Definitions; meaning of terms. -- Any term used in this section nine shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes and any reference in this section to the Internal Revenue Code or to the Internal Revenue Code of 1954 or to any section or provision thereof shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes, including all amendments made to the laws of the United States prior to January 1, 1971, but no amendment to the laws of the United States made on or after January 1, 1971, shall be given effect.

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