ASSEMBLY, No. 3723

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JANUARY 11, 2011

Sponsored by:
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman CAROLINE CASAGRANDE
District 12 (Mercer and Monmouth)
Assemblywoman MILA M. JASEY
District 27 (Essex)

Co-Sponsored by:
Senator Scutari

SYNOPSIS
Clarifies trustee’s discretionary authority concerning income tax liability.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/10/2012)
AN ACT concerning trusts and amending N.J.S.3B:11-1.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.3B:11-1 is amended to read as follows:

   3B:11-1. Creator's reserved interest in trust alienable subject to creditors' claims.
   a. The right of any creator of a trust to receive either the income or the principal of the trust or any part of either thereof, presently or in the future, shall be freely alienable and shall be subject to the claims of his creditors, notwithstanding any provision to the contrary in the terms of the trust.
   b. A trustee's discretionary authority to pay trust income or principal to the creator of such trust in an amount equal to the income taxes on any portion of the trust principal chargeable to the creator shall not be considered to be a right of the trust creator to receive trust income or principal within the meaning of subsection a. of this section. The trust creator shall not be considered to have the right to receive income or principal of the trust solely because the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator shall be entitled to reach any trust property based on the discretionary powers described in this subsection.

   (cf: P.L.1981, c.405, s.3B:11-1)

2. This act shall take effect immediately and shall be applicable to any trust created on or after the effective date.

STATEMENT

The bill is intended to clarify New Jersey’s trust law in light of the recent IRS revenue ruling 2004-64 (2004-2 C.B.7). The ruling holds that the payment by the trustee of trust income taxes attributed to the grantor of the trust, if made solely at the discretion of the trustee, is not a retained right of the creator in the trust assets that causes the trust assets to become part of the taxable estate of the creator, unless something more creates that right, such as state law subjecting the assets in the trust to the claims of the trust’s creditors.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
This bill amends N.J.S.A.3B:11-1, which allows creditors to make claims against the assets of a trust from which the creator can receive income. The bill specifies that the trustee’s discretion to pay taxes of the trust creator should not be considered the kind of right that would make the assets of the trust subject to the claims of the creditors of the trust’s creator. This prevents N.J.S.A.3B:11-1 from making the assets of the trust subject to the claims of the creditors of the trust’s creator, and prevents trust assets from being subject to the federal estate tax.

By amending N.J.S.A.3B:11-1 in this manner, this bill provides clarification in the law that a trustee’s discretionary authority to either reimburse the trust creator for income tax liability on the trust assets or pay taxes directly to the taxing authority on behalf of the trust creator is not the kind of right that would make the assets of the trust subject to the claims of the creditors of the trust’s creator. If the assets of the trust were subject to the claims of the creditors of the trust’s creator, the assets of the trust would, under a recent federal ruling, become part of the trust creator’s taxable estate for federal estate tax purposes.

Since this revenue ruling came into effect, many states have modified their laws with regard to the trustee’s ability to utilize assets to satisfy income tax obligations of the trust creator. This bill is intended to make New Jersey’s law comparable to New York’s statute EPTL 7-3.1(d).