

## 2021 Kansas Statutes

**58-9a-401. Character of receipts from entity.** (a) In this section:

- (1) "Capital distribution" means an entity distribution of money which is a:
  - (A) Return of capital; or
  - (B) distribution in total or partial liquidation of the entity.
- (2) "Entity":
  - (A) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and
  - (B) does not include:
    - (i) A trust or estate to which K.S.A. 2021 Supp. 58-9a-402, and amendments thereto, applies;
    - (ii) a business or other activity to which K.S.A. 2021 Supp. 58-9a-403, and amendments thereto, applies which is not conducted by an entity described in subparagraph (A);
    - (iii) an asset-backed security; or
    - (iv) an instrument or arrangement to which K.S.A. 2021 Supp. 58-9a-416, and amendments thereto, applies.
- (3) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.
- (b) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.
- (c) Except as otherwise provided in subsections (d)(2) through (4), a fiduciary shall allocate to income:
  - (1) Money received in an entity distribution; and
  - (2) tangible personal property of nominal value received from the entity.
- (d) A fiduciary shall allocate to principal:
  - (1) Property received in an entity distribution which is not:
    - (A) Money; or
    - (B) tangible personal property of nominal value;
  - (2) money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;
  - (3) money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and
  - (4) money received in an entity distribution from an entity that is:
    - (A) A regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or
    - (B) treated for federal income tax purposes comparably to the treatment described in subparagraph (A).
- (e) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:
  - (1) By relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:
    - (A) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or
    - (B) owns or holds more than 50% of the voting interest in the entity;
  - (2) by determining or estimating, on the basis of information known to the fiduciary or

provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than 20% of the fair market value of the fiduciary's interest in the entity; or

(3) if neither paragraph (1) nor (2) applies, by considering the factors in subsection (f) and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(f) In making a determination or estimate under subsection (e)(3), a fiduciary may consider:

(1) A characterization of an entity distribution provided by or on behalf of the entity;

(2) the amount of money or property received in:

(A) The entity distribution; or

(B) what the fiduciary determines is or will be a series of related entity distributions;

(3) the amount described in paragraph (2) compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(A) The entity's operating income;

(B) the proceeds of the entity's sale or other disposition of:

(i) All or part of the business or other activity conducted by the entity;

(ii) one or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

(iii) one or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(C) if the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(D) the entity's regular, periodic entity distributions;

(E) the amount of money the entity has accumulated;

(F) the amount of money the entity has borrowed;

(G) the amount of money the entity has received from the sources described in K.S.A. 2021 Supp. 58-9a-407, 58-9a-410, 58-9a-411 and 58-9a-412, and amendments thereto; and

(H) the amount of money the entity has received from a source not otherwise described in this paragraph; and

(4) any other factor the fiduciary determines is relevant.

(g) If, after applying subsections (c) through (f), a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.

(h) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(i) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under K.S.A. 2021 Supp. 58-9a-203, and amendments thereto.

**History:** L. 2021, ch. 63, § 17; July 1.