NEW YORK CITY BAR ASSOCIATION COMMITTEE
ON TRUSTS, ESTATES AND SURROGATE'S COURTS

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Via E-Mail to Notice.Comments@irscounsel.treas.gov
CC:PA:LPD:PR (REG-128224-06)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Comments on REG-128224-06 Regarding
Section 67 Limitations on Estates and Trusts'
Administrative Costs, Notice of Proposed Rulemaking (9/7/2011)

Dear Sir or Madam:

The Trusts, Estates and Surrogate's Courts Committee of the New York City Bar Association respectfully submits its comments in response to Prop. Treas. Reg. § 1.67-4, (the "Proposed Regulations") which describe certain estate or non-grantor trust administrative costs that are exempt or not exempt from the "2-percent floor" on miscellaneous itemized deductions under Section 67(e) of the Internal Revenue Code. More specifically, our comments respond to the request in the related Notice of Proposed Rulemaking (the "Notice") for comments on methods for reasonably estimating the portion of a bundled fee that is attributable to "investment advice" and therefore potentially subject to the 2-percent floor.

In this regard, we respectfully request the inclusion of a safe harbor in the form of an example recognizing the reasonableness of the method of allocation described below. Namely that, when a jurisdiction (such as New York) has recognized rules (statutory or otherwise) for generally determining the executor or trustee's commissions payable to an individual (i.e., a natural person and not a bank or trust company) possessing no special investment skills (a "non-professional fiduciary"), the portion of a commission payable to an executor or trustee of an estate or trust being administered in that jurisdiction (including to a bank or trust company) in an amount less than or equal to the commission payable to the equivalent non-professional fiduciary[1] is not allocable to investment advice within the meaning of the Proposed Regulations and therefore is not subject to the 2-percent floor.

Our rationale for requesting such a safe harbor, and a related discussion of state commission computations, is included in Section I below.[2]

In submitting our comments, we wish to note that, as a matter of tax policy, we are sympathetic to the view expressed in the Notice that "[i]n determining whether a cost is subject to the 2-percent floor, the relevant cost at issue under section 67(e)(1) should be defined by reference to the products or services that were provided in exchange for that cost, rather than the label that is given to the cost."

At the same time, we are concerned that the Proposed Regulations do not adequately address differences in fiduciary and agency relationships. We respectfully submit that it is these differences discussed in Section II below that should be driving the analysis as to whether any portion of an executor or trustee's commission (bundled or unbundled) is attributable to investment advice within the meaning of the Proposed Regulations.

Under these circumstances, we further respectfully submit that final regulations should expressly provide what may already be implicit in the Proposed Regulations, namely, that the first level inquiry in determining what, if any, portion of an executor or trustee's commission

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[1] By "equivalent", we mean an individual fiduciary serving as an executor or trustee of an estate or trust with the same number of co-fiduciaries as the estate or trust at issue, and that has identical assets and administrative issues as the estate or trust at issue, but whose governing instrument is silent as to matters of compensation.

[2] By suggesting this safe harbor, we are not negating the possibility that other safe harbors may be appropriate.

(bundled or unbundled) should be attributed to "investment advice" is whether, under the particular facts and circumstances, the traditional fiduciary relationship evidenced by labeling someone an executor or trustee has effectively been converted into an agency relationship.[3] If that is not the case under the particular facts and circumstances, we respectfully submit that the investment management services provided by an executor or trustee are not the same product or service commonly or customarily provided by investment advisors to individuals on an agency basis and that, correspondingly, no portion of the related commission is or should be attributable to investment advice within the meaning of the Proposed Regulations.[4]

To avoid confusion, we respectfully request that final regulations specifically address this issue, even if they reach a contrary conclusion.

I. Non-Professional Fiduciary Based Safe Harbor/ Allocation Example

A. Commissions in General

The fees typically payable to executors and trustees vary from state to state, can also vary between different geographical regions within a state and, particularly in the case of professional fiduciaries, may vary from fiduciary to fiduciary within a geographical region.

As a broad generalization, states may be divided into "reasonable compensation" states, under whose laws an executor or trustee is entitled to reasonable compensation and pursuant to which an executor or trustee takes the compensation that it believes to be reasonable, subject to potential challenge by beneficiaries, and "statutory commission" states, under whose laws an executor or trustee is entitled to commissions at the rates and in manner set forth by statute. In either case, the terms of the relevant governing instrument may provide for alternative compensation by, for example, referencing a professional fiduciary's published fee schedule,

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[3] For the reasons explained below, that might be the case where, for example, the relevant executor or trustee was able to seek and fully rely without any residual liability on the investment instructions of a specific beneficiary or other non-fiduciary and, as to matters within the scope of its responsibility, was liable only for its own gross negligence or willful misconduct.

[4] If, for example, the traditional fiduciary relationship had effectively been converted into an agency relationship for the reasons mentioned in footnote 3, it would at that point be appropriate to apply the further analysis reflected in Proposed Regulations, including as to whether the particular services at issue are in the nature of the special or extraordinary agency services hypothesized by the United States Supreme Court in Knight v. Comm'r., 128 U.S. 181 (2008).

providing that family members are to serve for no or some fixed dollar amount of compensation, or providing some alternative mechanism for determining compensation.

B. New York as an Example of Statutory Commissions

New York is a statutory commission state where, absent any provision to the contrary in the relevant governing instrument or another previously agreed upon special arrangement, an executor or trustee is entitled to the commissions prescribed by statute. Summary overviews of these statutory rate schedules are included as attachments to this letter.

As reflected in the attachments, the relevant New York statutes contain different rate schedules for executors and trustees and, in the case of trustees, contain one statutory rate schedule for determining the annual commissions for individual trustees and a separate, higher statutory rate schedule for determining the annual commission of banks and trust companies which are presumed to provide more services than an individual trustee.[5] In either case, a trustee of a New York trust, in addition to its annual commission, is entitled to a statutory "paying commission" on the amount of trust principal distributed from the trust. Additional commissions may also be payable to trustees managing real property.[6] Specific rules govern the calculation and timing of the payment of these statutory commissions, as well as the calculation of commissions payable to multiple executors and trustees. New York law further permits corporate trustees of trusts with a principal value in excess of four hundred thousand dollars to elect to take "reasonable commissions" in lieu of statutory commissions, i.e. as though they were in effect subject to the rules of a reasonable compensation state.

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[5] For example, a bank or trust company is generally held to a higher standard of care in investing trust assets than an individual trustee and, unlike an individual trustee, would traditionally be expected to provide custody and income tax return preparation services as part of its trust services.

[6] Other commentators have indicated why, contrary to the example included in the Proposed Regulations, commissions specifically relating to the management of real property should not be subject to the 2-percent floor. See Letter from Patricia A. Thompson, Chair, Tax Exec. Comm., American Inst. of CPAs to Douglas H. Shulman, Comm'r., IRS, William J. Wilkins, Chief Counsel, IRS, Jeffrey Van Hove, Legislative Counsel, IRS, and Curtis G. Wilson, Assoc. Chief Counsel, IRS at 4 (December 5, 2011), *available at* http://www.aicpa.org/interestareas/tax/resources/trustestateandgift/advocacy/pages/section67(e)trustinvestmentexpenses.aspx. (explaining, in part, that the Proposed Regulations fail to consider that IRC §62(a)(4) allows an above-the-line deduction for expenses attributable to property held for the production of rents and royalties).

C. Individual New York Executor or Trustee is Generally Assumed to Posses No Special Investment Skills

Under Section 11-2.3 of the New York Estates, Powers and Trusts Laws (the "NY EPTL"), an executor or trustee has a duty to invest and manage property held in a fiduciary capacity in accordance with the "prudent investor standard", except as otherwise provided by the express terms and provisions of the governing instrument within the limitations set forth under Section 11-1.7 of the NY EPTL discussed in Section II. D. below.

Section 11-2.3 (b)(6) of the NY EPTL further provides that

> "[f]or a bank, trust company or paid professional investment advisor (whether or not registered under any federal securities or investment law) which serves as a trustee [defined elsewhere to include executors], and any other trustee representing that such trustee has special investment skills, the exercise of skill contemplated by the prudent investor standard shall require the trustee to exercise such diligence in investing and managing assets as would customarily be exercised by prudent investors of discretion and intelligence having special investment skills."

The clear implication of this provision is that, while an individual might commonly or customarily seek to employ an investment advisor possessing special investment skills, an individual (i.e., non-bank or trust company) executor or trustee entitled to statutory commissions under New York law is generally assumed NOT to posses any special investment skills.

Similarly, the Uniform Trust Code ("UTC") also recognizes a class of trustees that do not possesses any special investment skills. The UTC requires a trustee to "administer the trust as a prudent person would" [7] by exercising "reasonable care, skill and caution"[8] and further provides that a "trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special

[7] UNIFORM TRUST CODE §803 (2005).

[8] *Id.*

skills or expertise."[9] The clear implication is that some trustees have no special skills or expertise, and are not required to exercise any special skills or expertise in fulfilling their fiduciary duties.

D. Rationale for Safe Harbor/Allocation Example

Under the circumstances described above, we respectfully submit that the commission determined under a jurisdiction's generally recognized rules for determining the commission payable to an executor or trustee possessing no special investment skills (such as New York's prescribed statutory rates for an individual executor or trustee) represents reasonable compensation for core fiduciary services (and related assumptions of potential liability) that could not include any "investment advice" within the meaning of the Proposed Regulations.

We further respectfully submit that, under these circumstances, any fees paid to an executor or trustee (including a bank or trust company) in an amount less than or equal to the commission that would be payable to an equivalent executor possessing no special investment skills[10] also should not be subject to the 2-percent floor.

We believe the only exception to a safe harbor/ generally applicable fee allocation example encompassing states, such as New York, that have recognized methodologies for determining the commissions of non-professional fiduciaries should be for situations in which the terms of the relevant governing instrument relieve an executor or trustee from non-investment responsibilities (for example, by placing responsibility for distribution decisions in some but not all of the trustees) and thereby create the possibility that a full statutory commission (or other full commission determined in accordance with the rules generally applicable to non-professional fiduciaries in that jurisdiction) might be additional compensation for the exercise of special investment skills by a fiduciary who is not responsible for making distribution decisions.

We note that, by suggesting a non-professional fiduciary based safe harbor/ fee allocation example, we are not negating the possibility that other safe harbors and examples may be

[9] *Id.* at §806.

[10] By "equivalent", we mean an individual fiduciary serving as an executor or trustee of an estate or trust with the same number of co-fiduciaries as the estate or trust at issue, and that has identical assets and administrative issues as the estate or trust at issue, but whose governing instrument is silent as to matters of compensation.

appropriate. Nevertheless, so long as a particular jurisdiction has locally recognized rules (statutory or otherwise) for generally determining the compensation of a non-professional executor or trustee, we respectfully submit that the portion of a commission payable to any executor or trustee of an estate or trust being administered in that jurisdiction in an amount less than or equal to the commission payable to the equivalent non-professional fiduciary should not be allocable to investment advice within the meaning of the Proposed Regulations and therefore should not be subject to the 2-percent floor.

E. Potential Difficulties; Recommendation to Focus on Differences Between Fiduciary and Agency Relationships

We would like to note that relying on the type of safe harbor/ allocation example described above could require multiple commission computations, the first based upon the actual fee arrangements and the second based upon a hypothetical non-professional individual fiduciary, and could also raise complicated issues, such as how to appropriately take into consideration principal paying commissions to which a non-professional individual trustee might be entitled in situations in which a professional trustee had elected to forgo those commissions in exchange for charging a higher, annual commission.

These and other related complications and practical difficulties are among the reasons we believe that, short of relying on mere labels for purposes of practicality and administerability (which may also be important and appropriate policy considerations), the preferable approach to differentiate between fiduciary asset management services and "investment advice" is to focus on the differences between fiduciary and agency relationships of the nature described in Section II of this letter.

II. Relevant Analysis Should Be Driven by Differences in Fiduciary vs. Agency Relationships

A. Estates and Trusts are Taxpayers but not Persons

Although treated as taxpayers distinct from their executors or trustees, estates and trusts are not separate juridical entities, i.e., they are not natural or corporate persons. As a result, there is no "estate" or "trust" that has the ability to hire or fire an executor or trustee; and an executor or trustee is not an agent of an estate or trust.[11] Instead, someone acting as an executor or trustee has a fiduciary duty to administer and manage property for the benefit of the beneficiaries of the estate or trust, including future, unborn and contingent beneficiaries, if any.

Correspondingly, an estate or trust cannot engage a third-party investment advisor. Instead, if the services of a third-party investment advisor are required in connection with the administration of a particular estate or trust, it is the individual, bank or trust company (the juridical person[12]) acting in its capacity as executor or trustee that engages the investment advisor. That relationship, between the executor or trustee and the third-party investment advisor, is an agency relationship.

[11] In most situations, the designation of someone as an executor or trustee is accomplished by the testator of the Will, the settlor of the trust or another fiduciary of the estate or trust. Even in those situations where a particular beneficiary or class of beneficiaries have the power to remove and replace a fiduciary, the fiduciary's duties run to all current and future beneficiaries (including those outside the class of beneficiaries that may have appointed that particular fiduciary).

[12] While a natural person generally may act as either an agent providing investment advice or as an executor or trustee, a corporate person (e.g., corporation or limited liability company) generally may act as an agent providing investment advice, but needs special trust powers generally reserved to banks and trust companies to act as an executor or trustee, even if that corporate person's activities as executor or trustee would be limited to providing asset management service. This limitation on the ability of corporate persons to serve as executors and trustees (even if their duties are limited to asset management services) may be another indication of the generally applicable understanding that providing investment advice on an agency basis (even when the agent has discretion to make investment decisions within parameters set by the principal) is a different product and service than providing asset management services on a fiduciary basis.

B. Technical Implication Regarding Commissions

One consequence of the property law distinctions mentioned above is that executor and trustee commissions, as a technical matter, cannot be incurred by an individual since, while an individual may appoint the fiduciary of an estate or trust, the fiduciary is not an employee or agent of the individual, i.e., individuals employ investment advisors but not executors and trustees.

Under theses circumstances, absent the concern expressed in the Notice regarding the mere labeling of identical products or services (which we share as a general matter of tax policy), it would appear that executor and trustee commissions are not only costs that are not commonly or customarily incurred by individuals, but are an obvious example of a cost that cannot be incurred by an individual.

For the reasons discussed below, we respectfully submit that in most estate and non-grantor trust administration situations (the situations to which the Proposed Regulations are addressed), there are significant and meaningful differences in providing services as an executor or trustee of estate or a non-grantor trust as compared to providing those services as an agent. In this regard, we also note that the category of non-grantor trusts does not include so called "living trusts" that are revocable by the settlor and often function much like a personal individual investment account so long as the settlor is not deceased or incapacitated.

C. Importance of Having a Principal

Typically, a principal employing an agent can at any time (i) change the scope of the agent's engagement (for example, instruct an investment advisor to invest in a conservative, balanced, growth oriented or other investment strategy), (ii) provide any consent necessary for the agent to engage in a transaction involving a potential conflict of interest (such as authorizing an investment advisor to purchase a bond for the principal's account from the advisor's own, personal holdings) and (iii) at any time terminate the services of the agent and employ a replacement agent.

By way of comparison, an executor or trustee is not an agent acting for a particular principal. As a result, an executor or trustee cannot typically look towards any one individual to

change the scope of the engagement (for example, to direct the trustee whether to pursue a conservative, balanced, growth oriented or other investment strategy). Instead, the executor or trustee must itself determine the appropriate investment strategy taking into account the terms of the governing instrument, the nature of the fiduciary relationship, the needs of the beneficiary or beneficiaries and other factors prescribed by statute or applicable case law. Similarly, it is often impractical for an executor or trustee to seek beneficiary consent for purposes of obtaining permission to engage in a transaction involving a potential conflict of interest, such as purchasing property for the estate or trust from its own inventory. That may be because the class of beneficiaries includes minor, unborn or contingent beneficiaries or for some other reason. It is often also more difficult to replace an executor or trustee (including for an executor or trustee to resign its office) than to replace an investment advisor, including because the change may require (i) obtaining some form of court approval (in the case of a testamentary trust or if the instrument does not provide a mechanism for removing a fiduciary or appointing a successor), (ii) the prior or contemporaneous appointment of a successor fiduciary, or (iii) addressing the right of a former fiduciary to a formal judicial accounting and release from liability.

We respectfully submit that these types of differences cause asset management services provided on a fiduciary basis to be a different product or service than the provision of "investment advice" by an agent to a principal on an agency basis.

D. Differences in Liability

Principals and agents generally have very wide latitude in structuring their relationships. In our experience, one consequence of this flexibility is that investment advisors often seek and receive exculpation and indemnification from liability to the maximum extent permitted by applicable law, which, in the context of an agency relationship, is often formulated as exculpation and indemnification for matters arising other than from the agent's (*e.g.*, investment advisor's) own gross negligence or willful misconduct.

By way of comparison, Section 11-1.7 of the NY EPTL, for example, specifically provides that any attempt to exonerate an executor or testamentary trustee "from liability for failure to exercise reasonable care diligence and prudence" is void as being contrary to public policy. Some New York courts have expressed the further view that this New York public

policy extends beyond executors and trustees of testamentary trusts (i.e., those created under a decedent's last Will and Testament) to trustees of trusts created during the settlor's lifetime.

Under these circumstances, we respectfully submit that asset management services provided by a New York executor or trustee, while they may in some respects resemble investment advisory services provided individuals on an agency basis, are clearly not the same service or product that individuals commonly or customarily obtain from investment advisors.

E. Implications for Understanding Views Expressed by Various United States Courts of Appeal and of the United States Supreme Court

We respectfully submit that the differences in the very nature of fiduciary and agency services discussed above, and not mere differences in labeling, are what underly the statements of various Courts of Appeals that trustee fees (without any distinction between distribution, investment or other services) are not subject to the 2-percent floor.[13]

Similarly, because the U.S. Supreme Court's decision in Knight v. Commissioner dealt exclusively with agency services and, at most, the potential unbundling of those agency services, we respectfully question what inferences, if any, may be drawn from that decision with respect to the unbundling of fees charged for an entirely separate and distinct product or service, namely asset management services provided on a fiduciary basis.

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[13] See Rudkin v Comm'r., 467 F.3d 149, 156 (2d Cir. 2006) ("the fact that investment-advice fees are subject to the two-percent floor under regulations applicable to individual taxpayers proves the fees to be a cost that individual taxpayers are capable of incurring. Investment-advice fees and other costs that individual taxpayers are capable of incurring are, therefore, not fully deductible pursuant to § 67(e)(1) when incurred by a trust. By contrast, costs that individuals are incapable of incurring, like 'fees paid to trustees, expenses associated with judicial accountings, and the costs of preparing and filing fiduciary income tax returns,' Scott, 328 F.3d at 140, are fully deductible."); Scott v. U.S., 328 F.3d 132, 140 (4th Cir. 2003) ("Because investment-advice fees [paid to investment advisors] are commonly incurred outside the context of trust administration, they are subject to the 2% floor created by § 67(a). Other costs ordinarily incurred by trusts, such as fees paid to trustees, expenses associated with judicial accountings, and the costs of preparing and filing fiduciary income tax returns, are not ordinarily incurred by individual taxpayers, and they would be fully deductible under the exception created by § 67(e)."). Mellon Bank, N. A. v. U.S., 265 F.3d 1275, 1279 -1282 (Fed. Cir. 2001) (explicitly stating that it was "undisputed" that trustee fees are deductible without regard to the 2-percent floor but rejecting the corporate trustee's argument that fees paid to a third-party investment advisor should be equated with trustee fees and admonishing the corporate trustee that "[t]he Supreme Court has 'observed repeatedly that, while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, . . . and may not enjoy the benefit of some other route he might have chosen to follow but did not.' [citation omitted]."); O'Neill v. Comm'r., 994 F.2d 302, 304 (6th Cir. 1993) ("Expenses such as trustee fees, costs of construction proceedings and judicial accountings are examples of expenses peculiar to a trust and, therefore, are subject to the § 67(e) exception [and are not subject to the 2-percent floor].").

F. Conclusion

For the reasons discussed above, we respectfully submit that, unless under the particular facts and circumstances the traditional fiduciary relationship evidenced by labeling someone an executor or trustee has effectively been converted into an agency relationship,[14] that no portion of a bundled (or unbundled) commission of an executor or trustee is or should be attributable to "investment advice" within the meaning of the Proposed Regulations and that, to avoid confusion, final regulations should specifically address issues associated with the absence of an agency relationship and related differing duties and standards of care, even if they reach a contrary conclusion.

If for some reason final regulations are issued that do not take into consideration differences inherent in fiduciary and agency relationships for purposes of determining whether a cost incurred in connection with the administration of an estate or non-grantor trust is subject to the 2-percent floor, we respectfully request the inclusion of the non-professional fiduciary commission safe harbor/ example discussed above, namely that: so long as a particular jurisdiction has locally recognized rules (statutory or otherwise) for generally determining the compensation of a non-professional executor or trustee, the portion of a commission payable to any executor or trustee of an estate or trust being administered in that jurisdiction in an amount less than or equal to the commission payable to the equivalent non-professional fiduciary should not be allocable to investment advice within the meaning of the Proposed Regulations and therefore should not be subject to the 2-percent floor.

If it would be of assistance to you, we would be happy to discuss these issues with you in greater detail and, if needed, to provide additional assistance in formulating the type of safe harbor/ allocation example described above.

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[14] For the reasons explained above, that might be the case where, for example, the relevant executor or trustee was able to seek and fully rely without any residual liability on the investment instructions of a specific beneficiary or other non-fiduciary and, as to matters within the scope of its responsibility, was only liable for its own gross negligence or willful misconduct.

These comments were prepared by the Committee on Trusts, Estates and Surrogate's Courts, and supported by the Committee on Estate and Gift Taxation.

Respectfully submitted,

Sharon L. Klein
Chair, Committee on Trusts, Estates and Surrogate's Courts

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Simplified General Description of
Calculation of New York Trustee Commissions [15]

Sources: N.Y. SURR. CT. PROC. ACT §§ 2309, 2312, 2313
N.Y. EST. POWERS & TRUSTS §§ 11-A-5.1, -5.2

Summary:[16]

Annual Commissions: (chargeable 1/3 to income 2/3 to principal):

- $10.50 per $1,000 (1.05%) or major fraction thereof on first $400,000 of principal
- $4.50 per $1,000 (0.45%) or major fraction thereof on next $600,000 of principal
- $3.00 per $1,000 (0.30%) or major fraction thereof on all additional principal

For collecting rents and managing real property: 6% of the gross rents collected.

Paying Commissions:

1% of value of principal paid out (to be taken on settlement of accounting).

If a trustee is authorized or required by the terms of the will to accumulate income, the trustee is entitled to commissions from such income, including income from the investment of the accumulated income, at the rate of:

- 2% of the first $2,500 of such income distributed, and
- 1% of all such income distributed in excess of $2,500

Increased Annual Commissions for Corporate Trustees:

Corporate trustees are permitted (i) a higher statutory annual commission for trusts with a principal value of not more than $400,000 ($12.35 per thousand or major fraction thereof in lieu of the above rates) and (ii) reasonable commissions for trusts with principal value of more than $400,000.

Multiple Trustees:

If there are more than two trustees, no more than two commissions are allowed (different rules apply to trusts established before September 1, 1993).

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[15] This attachment is intended to provide a general overview of the default rules that would apply in situations in which a trust instrument does not provide that a trustee is to serve without compensation or otherwise fix the compensation of the trustee. This attachment is a summary for informational purposes only and should not be relied upon as legal advice.

[16] Different rules apply to wholly charitable trusts and to pre-1957 trusts.

Simplified General Description of
Calculation of New York Executor Commissions[1]

Sources: N.Y. SURR. CT. PROC. ACT §§ 2307, 2313

Summary:[2]

Commissions:

- 5% for receiving and paying out all sums of money not exceeding $100,000
- 4% for receiving and paying out additional sums of money not exceeding $200,000
- 3% for receiving and paying out additional sums of money not exceeding $700,000
- 2.5% for receiving and paying out additional sums of money not exceeding $4,000,000
- 2% for receiving and paying out additional sums of money not exceeding $5,000,000

Special rules generally exclude property passing outside the Will and specifically bequeathed property from the commission base (i.e., that property is not treated as having been received and then paid out by the executor).

To account for changes in value between receipt and distribution, one-half of the commission is calculated on the value of the property received by the executor and the other one-half on the value of the property when paid out.

For collecting rents and managing real property: 5% of the gross rents collected, regardless of the number of executors

Multiple Executors:

If there are more than two executors, no more than two commissions are allowed, unless the decedent has provided otherwise in a signed writing.

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[1] This attachment is intended to provide a general overview of the default rules that would apply in situations in which a person other than an attorney draftsperson in appointed executor, the Will does not provide for the executor to serve without compensation or otherwise fix the compensation of the executor and there is no other instrument limiting or establishing the compensation of the executor. This attachment is a summary for informational purposes only and should not be relied upon as legal advice.

[2] This summary applies to the Wills of persons dying after August 31, 1993.