



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BURIAL SERVICES**

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ADVISORY BULLETIN

TO: All Registered Cemeteries
FR: Robert B. Gribble, Executive Director
RE: Legislative Change for 2005
DT: August 1, 2005

Effective July 1, 2005, the Tennessee General Assembly enacted Public Chapter 217, which amends Tennessee Code Annotated § 46-2-302(e) and thereby affects improvement care trust funds. A copy of the bill is enclosed.

The primary change to the statute involves the calculation of “net earnings” of an improvement care trust fund. Under the old statute, “net earnings” was to be determined only by the method that was set forth at subsection (e)(1)(B).

Under the new law, cemetery owners now have a choice of methodology by which they may calculate the “net earnings” of an improvement care trust fund.

New subsection (e)(1) states that “net earnings” may be treated **either** as “[a]ll net income excluding capital gains” **or** as “[a]n amount not exceeding five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year....”

Subsection (e)(4) of the amended statute lays out the requirements which cemetery owners must follow in providing the trustee with timely written notice of the method to be used in calculating net earnings. If notice is not timely provided, the trustee is to calculate and disburse funds according to the first method: net income excluding capital gains.

If a cemetery owner chooses to calculate the fund's net earnings by the second method (the five percent method), then disbursements to the fund would be made on a monthly, quarterly, semi-annual or annual basis. The amount of the distribution would not be reduced by taxes or fees *unless* the fees exceed two and a half percent (2.5%) of the market value of the trust as of the last day of the preceding fiscal year, in which case the amount of the distribution would be reduced by such excess.

Finally, Tennessee Code Annotated § 46-2-302(e)(4)(E) makes it expressly clear that – regardless of the method of calculation chosen – no distributions may be made to a cemetery owner until and unless the following conditions are met: The cemetery must currently be registered with Burial Services and a copy of the registration must be forwarded to the trustee; and the cemetery must be current on required deposits to the improvement care trust fund, or it must be making payments on any arrearages through special arrangements approved by the commissioner. Those assurances must be provided to the trustee on certified forms provided by the commissioner.

If you have any questions, please do not hesitate to contact Burial Services at (615) 741-5062.