

Internal Revenue Service, Treasury

§ 1.642(i)-1

§ 1.642(h)-5 Example.

The application of section 642(h) may be illustrated by the following example:

Example. (a) A decedent dies January 31, 1954, leaving a will which provides for distributing all her estate equally to A and an existing trust for B. The period of administration of the estate terminates on December 31, 1954, at which time all the property of the estate is distributed to A and the trust. A reports his income for tax purposes on a calendar year basis, and the trust reports its income on the basis of a fiscal year ending August 31. During the period of the administration, the estate has the following items of income and deductions:

Taxable interest	\$2,500
Business income	3,000
Total	5,500
Business expenses (including administrative expense allocable to business income)	5,000
Administrative expenses and corpus commissions not allocable to business income	9,800
Total deductions	14,800

It also has a capital loss of \$5,000.

(b) Under section 642(h)(1), an unused net operating loss carryover of the estate on termination of \$2,000 will be allowable to: A to the extent of \$1,000 for his taxable year 1954 and the next four taxable years in accordance with section 172; and to the trust to the extent of \$1,000 for its taxable year ending August 31, 1955, and its next four taxable years. The amount of the net operating loss carryover is computed as follows:

Deductions of estate for 1954	\$14,800
Less adjustment under section 172(d)(4) (deductions not attributable to a trade or business (\$9,800) allowable only to extent of gross income not derived from such trade or business (\$2,500))	7,300
Deductions as adjusted	7,500
Gross income of estate for 1954	5,500
Net operating loss of estate for 1954 ... (No deduction for capital loss of \$5,000 under section 172(d)(2))	2,000

Neither A nor the trust will be allowed to carry back any part of the net operating loss made available to them under section 642(h)(1).

(c) Under section 642(h)(2), excess deductions of the estate of \$7,300 will be allowed as a deduction to A to the extent of \$3,650 for the calendar year 1954 and to the trust to the extent of \$3,650 for the taxable year ending August 31, 1955. The deduction of \$7,300 for administrative expenses and corpus commissions is the only amount which was not taken into account in determining the net operating loss of the estate (\$9,800 of such expenses less \$2,500 taken into account).

(d) Under section 642(h)(1), there will be allowable to A a capital loss carryover of \$2,500 for his taxable year 1954 and for his next 4 taxable years in accordance with paragraph (a) of §1.1212-1. There will be allowable to the trust a similar capital loss carryover of \$2,500 for its taxable year ending August 31, 1955, and its next 4 taxable years (but see paragraph (b) of §1.643(a)-3), (for taxable years beginning after December 31, 1963, net capital losses may be carried over indefinitely by beneficiaries other than corporations, in accordance with §1.642(h)-1 and paragraph (b) of §1.1212-1.)

(e) The carryovers and excess deductions are not allowable directly to B, the trust beneficiary, but to the extent the distributable net income of the trust is reduced by the carryovers and excess deductions B may receive indirect benefit.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960, as amended by T.D. 6828, 30 FR 7806, June 17, 1965]

§ 1.642(i)-1 Certain distributions by cemetery perpetual care funds.

(a) *In general.* Section 642 (i) provides that amounts distributed during taxable years ending after December 31, 1963, by a cemetery perpetual care fund trust for the care and maintenance of gravesites shall be treated as distributions solely for purposes of sections 651 and 661. The deduction for such a distribution is allowable only if the fund is taxable as a trust. In addition, the fund must have been created pursuant to local law by a taxable cemetery corporation (as defined in §1.642 (i)-2 (a)) expressly for the care and maintenance of cemetery property. A care fund will be treated as having been created by a taxable cemetery corporation ("cemetery") if the distributee cemetery is taxable, even though the care fund was created by the distributee cemetery in a year that it was tax-exempt or by a predecessor of such distributee cemetery which was tax-exempt in the year the fund was established. The deduction is the amount of the distributions during the fund's taxable year to the cemetery corporation for such care and maintenance that would be otherwise allowable under section 651 or 661, but in no event is to exceed the limitations described in paragraphs (b) and (c) of this section. The provisions of this paragraph shall not have the effect of extending the period of limitations under section 6511.