Example 3. Transfer of property at death: Basis not determined under section 1014(a). (i) The initial facts are the same as Example 1. (ii) A dies on July 1, 2004. The fair market value at A’s death of all property transferred to FT by A is $1500X. The basis in the property is $400X. A retains no power over FT, and FT’s basis in the property transferred is not determined under section 1014(a). Under §1.684–2(e)(1), A is treated as having transferred the property to FT immediately before his death, and must recognize $1100X of gain at that time under §1.684–1.

Example 4. Transfer of property for fair market value to an unrelated foreign trust. A sells a house with a fair market value of $1000X to FT in exchange for a 38-year note issued by FT. A is not related to FT as defined in §1.679–1(c)(5). FT is not treated as owned by any person. Pursuant to paragraph (d) of this section, A is not required to recognize gain under §1.684–1.

[T.D. 8956, 66 FR 37899, July 20, 2001]

§1.684–4 Outbound migrations of domestic trusts.

(a) In general. If a U.S. person transfers property to a domestic trust, and such trust becomes a foreign trust, and neither trust is treated as owned by any person under subpart E of part I of subchapter J, chapter 1 of the Internal Revenue Code, the trust shall be treated for purposes of this section as having transferred all of its assets to a foreign trust and the trust is required to recognize gain on the transfer under §1.684–1(a). The trust must also comply with the rules of section 6048.

(b) Date of transfer. The transfer described in this section shall be deemed to occur immediately before, but on the same date that, the trust meets the definition of a foreign trust set forth in section 7701(a)(31)(B).

(c) Inadvertent migrations. In the event of an inadvertent migration, as defined in §301.7701–7(d)(2) of this chapter, a trust may avoid the application of this section by complying with the procedures set forth in §301.7701–7(d)(2) of this chapter.

(d) Examples. The following examples illustrate the rules of this section. In all examples, A is a U.S. citizen, B is a U.S. citizen, C is a nonresident alien, and T is a trust. The examples are as follows:

Example 1. Migration of domestic trust with U.S. beneficiaries. A transfers property which has a fair market value of $1000X and an adjusted basis equal to $400X to T, a domestic trust, for the benefit of A’s children who are also U.S. citizens. B is the trustee of T. On January 1, 2001, while A is still alive, B resigns as trustee and C becomes successor trustee under the terms of the trust. Pursuant to §301.7701–7(d) of this chapter, T becomes a foreign trust. T has U.S. beneficiaries within the meaning of §1.679–2 and A is, therefore, treated as owning FT under section 679. Pursuant to §1.684–3(a), neither A nor T is required to recognize gain at the time of the migration. Section 1.684–2(e) provides rules that may require A to recognize gain upon a subsequent change in the status of the trust.

Example 2. Migration of domestic trust with no U.S. beneficiaries. A transfers property which has a fair market value of $1000X and an adjusted basis equal to $400X to T, a domestic trust for the benefit of A’s mother who is not a citizen or resident of the United States. T is not treated as owned by another person. B is the trustee of T. On January 1, 2001, while A is still alive, B resigns as trustee and C becomes successor trustee under the terms of the trust. Pursuant to §301.7701–7(d) of this chapter, T becomes a foreign trust, FT. FT has no U.S. beneficiaries within the meaning of §1.679–2 and no person is treated as owning any portion of FT. T is required to recognize gain of $600X on January 1, 2001. Paragraph (c) of this section provides rules with respect to an inadvertent migration of a domestic trust.

[T.D. 8956, 66 FR 37899, July 20, 2001]

§1.684–5 Effective date.

Sections 1.684–1 through 1.684–4 apply to transfers of property to foreign trusts and foreign estates after August 7, 2000.

[T.D. 8956, 66 FR 37899, July 20, 2001]

INCOME IN RESPECT OF DECEDENTS

§1.691(a)–1 Income in respect of a decedent.

(a) Scope of section 691. In general, the regulations under section 691 cover: (1) The provisions requiring that amounts which are not includible in gross income for the decedent’s last taxable year or for a prior taxable year be included in the gross income of the estate or persons receiving such income to the extent that such amounts constitute “income in respect of a decedent”; (2) the taxable effect of a transfer of the right to such income; (3) the treatment of certain deductions and credit in respect of a decedent which