

Internal Revenue Service, Treasury**§ 1.642(h)-3*****Beneficiary's Share of Income, Deductions, Credit, etc., or successor forms.***

(2) *Amount.* The amount of the excess deductions in the final year is determined as follows:

(i) Each deduction directly attributable to a class of income is allocated in accordance with the provisions in § 1.652(b)-(a);

(ii) To the extent of any remaining income after application of paragraph (b)(2)(i) of this section, deductions are allocated in accordance with the provisions in § 1.652(b)-3(b) and (d); and

(iii) Deductions remaining after the application of paragraph (b)(2)(i) and (ii) of this section comprise the excess deductions on termination of the estate or trust. These deductions are allocated to the beneficiaries succeeding to the property of the estate or trust in accordance with § 1.642(h)-4.

(c) *Year of termination—(1) In general.* The deductions provided for in paragraph (a) of this section are allowable only in the taxable year of the beneficiary in which or with which the estate or trust terminates, whether the year of termination of the estate or trust is of normal duration or is a short taxable year.

(2) *Example.* Assume that a trust distributes all its assets to B and terminates on December 31, Year X. As of that date, it has excess deductions of \$18,000, all characterized as allowable in arriving at adjusted gross income under section 67(e). B, who reports on the calendar year basis, could claim the \$18,000 as a deduction allowable in arriving at B's adjusted gross income for Year X. However, if the deduction (when added to other allowable deductions that B claims for the year) exceeds B's gross income, the excess may not be carried over to any year subsequent to Year X.

(d) *Net operating loss carryovers.* A deduction based upon a net operating loss carryover will never be allowed to beneficiaries under both paragraphs (1) and (2) of section 642(h). Accordingly, a net operating loss deduction which is allowable to beneficiaries succeeding to the property of the estate or trust under the provisions of paragraph (1) of section 642(h) cannot also be considered a deduction for purposes of paragraph (2) of section 642(h) and paragraph (a)

of this section. However, if the last taxable year of the estate or trust is the last year in which a deduction on account of a net operating loss may be taken, the deduction, to the extent not absorbed in that taxable year by the estate or trust, is considered an "excess deduction" under section 642(h)(2) and paragraph (a) of this section.

(e) *Items included in net operating loss or capital loss carryovers.* (c) Any item of income or deduction, or any part thereof, which is taken into account in determining the net operating loss or capital loss carryover of the estate or trust for its last taxable year shall not be taken into account again in determining excess deductions on termination of the trust or estate within the meaning of section 642(h)(2) and paragraph (a) of this section (see example in § 1.642(h)-5).

(f) *Applicability date.* Paragraphs (a) through (c) of this section apply to taxable years beginning after October 19, 2020. The rules applicable to taxable years beginning on or before October 19, 2020 are contained in § 1.642(h)-2 as in effect prior to October 19, 2020 (see 26 CFR part 1 revised as of April 1, 2020). Taxpayers may choose to apply paragraphs (a) through (c) of this section to taxable years beginning after December 31, 2017, and on or before October 19, 2020.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960, as amended by T.D. 7564, 43 FR 40495, Sept. 12, 1978; 85 FR 66224, Oct. 19, 2020]

§ 1.642(h)-3 Meaning of "beneficiaries succeeding to the property of the estate or trust".

(a) The phrase *beneficiaries succeeding to the property of the estate or trust* means those beneficiaries upon termination of the estate or trust who bear the burden of any loss for which a carryover is allowed, or of any excess of deductions over gross income for which a deduction is allowed, under section 642(h).

(b) With reference to an intestate estate, the phrase means the heirs and next of kin to whom the estate is distributed, or if the estate is insolvent, to whom it would have been distributed if it had not been insolvent. If a decedent's spouse is entitled to a specified dollar amount of property before any

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distribution to other heirs and next of kin, and if the estate is less than that amount, the spouse is the beneficiary succeeding to the property of the estate or trust to the extent of the deficiency in amount.

(c) In the case of a testate estate, the phrase normally means the residuary beneficiaries (including a residuary trust), and not specific legatees or devisees, pecuniary legatees, or other nonresiduary beneficiaries. However, the phrase does not include the recipient of a specific sum of money even though it is payable out of the residue, except to the extent that it is not payable in full. On the other hand, the phrase includes a beneficiary (including a trust) who is not strictly a residuary beneficiary but whose devise or bequest is determined by the value of the decedent's estate as reduced by the loss or deductions in question. Thus the phrase includes:

(1) A beneficiary of a fraction of a decedent's net estate after payment of debts, expenses, etc.;

(2) A nonresiduary legatee or devisee, to the extent of any deficiency in his legacy or devise resulting from the insufficiency of the estate to satisfy it in full;

(3) A surviving spouse receiving a fractional share of an estate in fee under a statutory right of election, to the extent that the loss or deductions are taken into account in determining the share. However, the phrase does not include a recipient of dower or curtesy, or any income beneficiary of the estate or trust from which the loss or excess deduction is carried over.

(d) The principles discussed in paragraph (c) of this section are equally applicable to trust beneficiaries. A remainderman who receives all or a fractional share of the property of a trust as a result of the final termination of the trust is a beneficiary succeeding to the property of the trust. For example, if property is transferred to pay the income to A for life and then to pay \$10,000 to B and distribute the balance of the trust corpus to C, C and not B is considered to be the succeeding beneficiary except to the extent that the trust corpus is insufficient to pay B \$10,000.

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§ 1.642(h)-4 Allocation.

The carryovers and excess deductions to which section 642(h) applies are allocated among the beneficiaries succeeding to the property of an estate or trust (see § 1.642(h)-3) proportionately according to the share of each in the burden of the loss or deductions. A person who qualified as a beneficiary succeeding to the property of an estate or trust with respect to one amount and does not qualify with respect to another amount is a beneficiary succeeding to the property of the estate or trust as to the amount with respect to which he qualifies. The application of this section may be illustrated by the following example:

Example. A decedent's will leaves \$100,000 to A, and the residue of his estate equally to B and C. His estate is sufficient to pay only \$90,000 to A, and nothing to B and C. There is an excess of deductions over gross income for the last taxable year of the estate or trust of \$5,000, and a capital loss carryover of \$15,000, to both of which section 642(h) applies. A is a beneficiary succeeding to the property of the estate to the extent of \$10,000, and since the total of the excess of deductions and the loss carryover is \$20,000, A is entitled to the benefit of one half of each item, and the remaining half is divided equally between B and C.

§ 1.642(h)-5 Examples.

Paragraphs (a) and (b) of this section (*Examples 1* and *2*) illustrate the application of section 642(h).

(a) *Example 1: Computations under section 642(h) when an estate has a net operating loss—(1) Facts.* On January 31, 2020, A dies leaving a will that provides for the distribution of all of A's estate equally to B and an existing trust for C. The period of administration of the estate terminates on December 31, 2020, at which time all the property of the estate is distributed to B and the trust. For tax purposes, B and the trust report income on a calendar year basis. During the period of administration, the estate has the following items of income and deductions: