

graphical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country or such possession and over which the foreign country (or the United States in case of such possession) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this paragraph shall apply in the case of a foreign country only if it exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation.

No foreign country shall, by reason of the application of this section, be treated as a country contiguous to the United States.

(Added Pub. L. 91-172, title V, §505(a), Dec. 30, 1969, 83 Stat. 634.)

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

- Part
I. Estates, trusts, and beneficiaries.
II. Income in respect of decedents.

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

- Subpart
A. General rules for taxation of estates and trusts.
B. Trusts which distribute current income only.
C. Estates and trusts which may accumulate income or which distribute corpus.
D. Treatment of excess distributions by trusts.
E. Grantors and others treated as substantial owners.
F. Miscellaneous.

SUBPART A—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

- Sec.
641. Imposition of tax.
642. Special rules for credits and deductions.
643. Definitions applicable to subparts A, B, C, and D.
644. Taxable year of trusts.
645. Certain revocable trusts treated as part of estate.
646. Tax treatment of electing Alaska Native Settlement Trusts.

AMENDMENTS

- 2001—Pub. L. 107-16, title VI, §671(c)(1), June 7, 2001, 115 Stat. 147, added item 646.
1998—Pub. L. 105-206, title VI, §6013(a)(2), July 22, 1998, 112 Stat. 819, renumbered item 646 as 645.
1997—Pub. L. 105-34, title V, §507(b)(3), title XIII, §1305(c), Aug. 5, 1997, 111 Stat. 857, 1041, added items 644 and 646 and struck out former items 644 “Special rule for gain on property transferred to trust at less than fair market value” and 645 “Taxable year of trusts”.
1986—Pub. L. 99-514, title XIV, §1403(b), Oct. 22, 1986, 100 Stat. 2713, added item 645.
1976—Pub. L. 94-455, title VII, §701(g)(2), Oct. 4, 1976, 90 Stat. 1580, added item 644.

§ 641. Imposition of tax

(a) Application of tax

The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including—

- (1) income accumulated in trust for the benefit of unborn or unascertained persons or per-

sons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a non-resident alien individual who is not present in the United States at any time.

(c) Special rules for taxation of electing small business trusts

(1) In general

For purposes of this chapter—

(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

(2) Modifications

For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

(B) The exemption amount under section 55(d) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section 1366.

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

(3) Treatment of remainder of trust and distributions

For purposes of determining—

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

(4) Treatment of unused deductions where termination of separate trust

If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

(5) Electing small business trust

For purposes of this subsection, the term “electing small business trust” has the meaning given such term by section 1361(e)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 91-172, title VIII, §803(d)(3), Dec. 30, 1969, 83 Stat. 684; Pub. L. 94-455, title VII, §701(e)(2), Oct. 4, 1976, 90 Stat. 1579; Pub. L. 95-30, title I, §101(d)(8), May 23, 1977, 91 Stat. 134; Pub. L. 104-188, title I, §1302(d), Aug. 20, 1996, 110 Stat. 1778; Pub. L. 105-34, title XVI, §1601(i)(3)(B), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105-206, title VI, §6007(f)(2), July 22, 1998, 112 Stat. 810; Pub. L. 110-28, title VIII, §8236(a), May 25, 2007, 121 Stat. 199.)

AMENDMENTS

2007—Subsec. (c)(2)(C)(iv). Pub. L. 110-28 added cl. (iv).
1998—Subsecs. (c), (d). Pub. L. 105-206 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

“(1) GENERAL RULE.—For purposes of this part, the taxable income of a trust does not include the amount of any includible gain as defined in section 644(b) reduced by any deductions properly allocable thereto.

“(2) CROSS REFERENCE.—

“For the taxation of any includible gain, see section 644.”

1997—Subsec. (b). Pub. L. 105-34 inserted at end “For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.”

1996—Subsec. (d). Pub. L. 104-188 added subsec. (d).

1977—Subsec. (a). Pub. L. 95-30 substituted “section 1(e)” for “section 1(d)” in introductory provisions.

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1969—Subsec. (a). Pub. L. 91-172 substituted “The tax imposed by section 1(d)” for “The taxes imposed by this chapter on individuals”.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-28, title VIII, §8236(b), May 25, 2007, 121 Stat. 199, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection

Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1317(a) of title I of Pub. L. 104-188 provided that: “Except as otherwise provided in this subtitle [subtitle C (§§1301-1317) of title I of Pub. L. 104-188], the amendments made by this subtitle [amending this section and sections 170, 404, 512, 1042, 1237, 1361, 1362, 1366 to 1368, 1371, 1375, 1377, 1504, 6037, and 6233 of this title and repealing sections 6241 to 6245 of this title] shall apply to taxable years beginning after December 31, 1996.”

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to transfers in trust made after May 21, 1976, see section 701(h) of Pub. L. 94-455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91-172, set out as a note under section 1 of this title.

§ 642. Special rules for credits and deductions

(a) Foreign tax credit allowed

An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(b) Deduction for personal exemption

(1) Estates

An estate shall be allowed a deduction of \$600.

(2) Trusts

(A) In general

Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of \$100.

(B) Trusts distributing income currently

A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$300.

(C) Disability trusts

(i) In general

A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust

For purposes of clause (i), the term “qualified disability trust” means any trust if—

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(3) Deductions in lieu of personal exemption

The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

(1) General rule

In the case of an estate or trust (other than¹ a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170(c) (determined without regard to section 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

(2) Amounts permanently set aside

In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was—

(A) created on or before October 9, 1969, if—

(i) an irrevocable remainder interest is transferred to or for the use of an organization described in section 170(c), or

(ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or

(B) established by a will executed on or before October 9, 1969, if—

(i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

(ii) the testator at no time after October 9, 1969, had the right to change the por-

tions of the will which pertain to the trust, or

(iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

(3) Pooled income funds

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 1 year, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

(5) Definition of pooled income fund

For purposes of paragraph (3), a pooled income fund is a trust—

(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

(E) which is maintained by the organization to which the remainder interest is con-

¹ So in original. Probably should be "than".

tributed and of which no donor or beneficiary of an income interest is a trustee, and

(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is made the rate of return shall be deemed to be 6 percent per annum, except that the Secretary may prescribe a different rate of return.

(6) Taxable private foundations

In the case of a private foundation which is not exempt from taxation under section 501(a) for the taxable year, the provisions of this subsection shall not apply and the provisions of section 170 shall apply.

(d) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall be allowed to estates and trusts under regulations prescribed by the Secretary.

(e) Deduction for depreciation and depletion

An estate or trust shall be allowed the deduction for depreciation and depletion only to the extent not allowable to beneficiaries under section 167(d) and 611(b).

(f) Amortization deductions

The benefit of the deductions for amortization provided by sections 169 and 197 shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary.

(g) Disallowance of double deductions

Amounts allowable under section 2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary, a statement that the amounts have not been allowed as deductions under section 2053 or 2054 and a waiver of the right to have such amounts allowed at any time as deductions under section 2053 or 2054. Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under section 2621(a)(2) or 2622(b). This subsection shall not apply with respect to deductions allowed under part II (relating to income in respect of decedents).

(h) Unused loss carryovers and excess deductions on termination available to beneficiaries

If on the termination of an estate or trust, the estate or trust has—

(1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subsections (b) or (c)) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

(i) Certain distributions by cemetery perpetual care funds

In the case of a cemetery perpetual care fund which—

(1) was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property, and

(2) is treated for the taxable year as a trust for purposes of this subchapter,

any amount distributed by such fund for the care and maintenance of gravesites which have been purchased from the cemetery corporation before the beginning of the taxable year of the trust and with respect to which there is an obligation to furnish care and maintenance shall be considered to be a distribution solely for purposes of sections 651 and 661, but only to the extent that the aggregate amount so distributed during the taxable year does not exceed \$5 multiplied by the aggregate number of such gravesites.

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 87-834, §13(c)(2)(A), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88-272, title II, §201(d)(6)(A), (B), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89-621, §2(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 91-172, title II, §201(b), title VII, §704(b)(2), Dec. 30, 1969, 83 Stat. 558, 669; Pub. L. 92-178, title III, §303(c)(4), title VII, §§701(b), 702(b), Dec. 10, 1971, 85 Stat. 522, 561, 562; Pub. L. 94-455, title XIV, §1402(b)(1)(J), (2), title XIX, §§1901(b)(1)(H)(i), 1906(b)(13)(A), 1951(c)(2)(B), title XX, §2009(d), title XXI, §2124(a)(3)(B), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834, 1840, 1896, 1917; Pub. L. 94-528, §1(a), Oct. 17, 1976, 90 Stat. 2483; Pub. L. 95-30, title I, §101(d)(9), May 23, 1977, 91 Stat. 134; Pub. L. 95-600, title I, §113(a)(2)(B), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97-34, title II, §212(d)(2)(D), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98-369, div. A, title IV, §474(r)(17), title X, §1001(b)(8), (e), July 18, 1984, 98 Stat. 843, 1011, 1012; Pub. L. 99-514, title I, §112(b)(2), title III, §301(b)(6), title VI, §612(b)(3), Oct. 22, 1986, 100 Stat. 2108, 2217, 2250; Pub. L. 101-239, title VII, §7811(j)(3), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101-508, title XI, §§11801(c)(6)(B), 11812(b)(9), Nov. 5, 1990, 104 Stat. 1388-524, 1388-535; Pub. L. 103-66, title XIII, §§13113(d)(2), 13261(f)(2), Aug. 10, 1993, 107 Stat. 429, 539; Pub. L. 104-188, title I, §1704(t)(8), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 107-134, title I, §116(a), Jan. 23, 2002, 115 Stat. 2439.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-134 reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: “An estate shall be allowed a deduction of \$600. A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$300. All other trusts shall be allowed a deduction of \$100. The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).”

1996—Subsec. (g). Pub. L. 104-188 substituted “under section 2621(a)(2)” for “under 2621(a)(2)”.

1993—Subsec. (c)(4). Pub. L. 103-66, §13113(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: “In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).”

Subsec. (f). Pub. L. 103-66, §13261(f)(2), substituted “sections 169 and 197” for “section 169”.

1990—Subsec. (e). Pub. L. 101-508, §11812(b)(9), substituted “167(d)” for “167(h)”.

Subsec. (f). Pub. L. 101-508, §11801(c)(6)(B), substituted “section 169” for “sections 169, 184, 187, and 188”.

1989—Subsec. (g). Pub. L. 101-239 inserted after first sentence “Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under 2621(a)(2) or 2622(b).”

1986—Subsec. (a). Pub. L. 99-514, §112(b)(2), amended subsec. (a) generally, substituting “Foreign tax credit allowed” for “Credits against tax” in heading, striking out designation and heading for par. (1), and striking out par. (2) which read as follows: “An estate or trust shall not be allowed the credit against tax for political contributions provided by section 24.”

Subsec. (c)(4). Pub. L. 99-514, §301(b)(6), in heading, substituted “Coordination with section 681” for “Adjustments”, and in text struck out first sentence which read as follows: “To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses).”

Subsec. (j). Pub. L. 99-514, §612(b)(3), struck out subsec. (j) which provided a cross reference to section 116(c)(3).

1984—Subsec. (a)(2). Pub. L. 98-369, §474(r)(17), substituted “section 24” for “section 41”.

Subsec. (c)(3), (4). Pub. L. 98-369, §1001(b)(8), (e), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1981—Subsec. (f). Pub. L. 97-34 substituted “and 188” for “188, and 191”.

1978—Subsecs. (i) to (k). Pub. L. 95-600 redesignated subsecs. (j) and (k) as (i) and (j), respectively. Former subsec. (i), which did not allow estates or trusts the deduction for contributions to candidates for public office provided by section 218, was struck out.

1977—Subsec. (k). Pub. L. 95-30 struck out par. (1) which made a cross reference to section 142(b)(4) for disallowance of the standard deduction in the case of estates and trusts and struck out “(2)” at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94-455, §1901(b)(1)(H)(i), redesignated former pars. (2) and (3) as (1) and (2), respectively. Former par. (1), relating to the credit against tax for partially tax-exempt interest, was struck out.

Subsec. (c)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(3), (4). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Subsec. (c)(3), (4). Pub. L. 94-455, §1402(b)(1)(J), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsecs. (c)(5), (d). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, §§1906(b)(13)(A), 1951(c)(2)(B), 2124(a)(3)(B), substituted “sections 169, 184, 187, 188, and 191” for “sections 168, 169, 184, 187, and 188”, and struck out “or his delegate” after “Secretary”.

Subsec. (g). Pub. L. 94-455, §§1906(b)(13)(A), 2009(d), inserted “(or as an offset against the sales price of property in determining gain or loss)” after “shall not be allowed as a deduction”, and struck out “or his delegate” after “Secretary”.

Subsec. (h). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsecs. (j), (k). Pub. L. 94-528 added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (a)(3). Pub. L. 92-178, §701(b), added par. (3).

Subsec. (f). Pub. L. 92-178, §303(c)(4), inserted reference to section 188.

Subsecs. (i), (j). Pub. L. 92-178, §702(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1969—Subsec. (c). Pub. L. 91-172, §201(b), designated existing provisions, with minor changes, as par. (1) and added pars. (2) to (6).

Subsec. (f). Pub. L. 91-172, §704(b)(2), struck out reference to emergency or grain storage facilities both in heading and in text, and inserted reference to sections 184 and 187 in text.

1966—Subsec. (g). Pub. L. 89-621 inserted “or of any other person” after “shall not be allowed as a deduction in computing the taxable income of the estate”.

1964—Subsec. (a)(3). Pub. L. 88-272, §201(d)(6)(A), struck out par. (3) which related to dividends received by individuals.

Subsec. (i). Pub. L. 88-272, §201(d)(6)(B), designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (e). Pub. L. 87-834 substituted a reference to section 167(h) for a reference to section 167(g).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-134, title I, §116(b), Jan. 23, 2002, 115 Stat. 2440, provided that: “The amendment made by this section [amending this section] shall apply to taxable years ending on or after September 11, 2001.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(2) of Pub. L. 103-66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as a note under section 53 of this title.

Amendment by section 13261(f)(2) of Pub. L. 103-66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103-66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(9) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 301(b)(6) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986,

see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 612(b)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99-514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(17) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 1001(b)(8) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97-34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 113(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section and section 24 of this title and repealing section 218 of this title] shall apply with respect to contributions the payment of which is made after December 31, 1978, in taxable years beginning after such date."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(H)(i) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(B) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1952(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

Section 2009(e)(4) of Pub. L. 94-455 provided that: "The amendment made by subsection (d) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]."

Section 2124(a)(4) of Pub. L. 94-455 provided that: "The amendments made by this subsection [enacting section 191 of this title and amending this section and sections 1082, 1245, and 1250 of this title] shall apply with respect to additions to capital account made after June 14, 1976 and before June 15, 1981."

Section 1(b) of Pub. L. 94-528 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1977, and shall apply to amounts distributed during taxable years ending after December 31, 1963."

EFFECTIVE DATE OF 1971 AMENDMENT

Section 303(d) of Pub. L. 92-178 provided that: "The amendments made by this section [enacting section 188 of this title and amending this section and sections 57, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971."

Section 703 of Pub. L. 92-178 provided that: "The amendments made by this title [enacting sections 24 and 218 of this title and amending this section] shall

apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(b) of Pub. L. 91-172 applicable with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after Dec. 31, 1969, except that subsec. (c)(5) applicable to transfers in trust made after July 31, 1969, see section 201(g) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 704(b)(2) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91-172, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2(b) of Pub. L. 89-621 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1966], but only with respect to amounts paid or incurred, and losses sustained, after such date."

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to dividends received after December 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88-272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 643. Definitions applicable to subparts A, B, C, and D

(a) Distributable net income

For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

(1) Deduction for distributions

No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

(2) Deduction for personal exemption

No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).

(3) Capital gains and losses

Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital as-

sets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account.

(4) Extraordinary dividends and taxable stock dividends

For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) Tax-exempt interest

There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

(6) Income of foreign trust

In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(a)(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges.

(7) Abusive transactions

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(b) Income

For purposes of this subpart and subparts B, C, and D, the term “income”, when not preceded by

the words “taxable”, “distributable net”, “undistributed net”, or “gross”, means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.

(c) Beneficiary

For purposes of this part, the term “beneficiary” includes heir, legatee, devisee.

(d) Coordination with back-up withholding

Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

(e) Treatment of property distributed in kind

(1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

(3) Election to recognize gain

(A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

(B) Election

Any election under this paragraph shall apply to all distributions made by the estate

or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) Exception for distributions described in section 663(a)

This subsection shall not apply to any distribution described in section 663(a).

(f) Treatment of multiple trusts

For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

- (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and
- (2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

(g) Certain payments of estimated tax treated as paid by beneficiary

(1) In general

In the case of a trust—

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and

(C) for purposes of subtitle F, the amount so treated—

- (i) shall not be treated as a payment of estimated tax made by the trust, but
- (ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

(2) Time for making election

An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe.

(3) Extension to last year of estate

In the case of a taxable year reasonably expected to be the last taxable year of an estate—

(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

(B) the fiduciary of the estate shall be treated as the trustee.

(h) Distributions by certain foreign trusts through nominees

For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.

(i) Loans from foreign trusts

For purposes of subparts B, C, and D—

(1) General rule

Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities directly or indirectly to—

(A) any grantor or beneficiary of such trust who is a United States person, or

(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

(2) Definitions and special rules

For purposes of this subsection—

(A) Cash

The term “cash” includes foreign currencies and cash equivalents.

(B) Related person

(i) In general

A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

(ii) Allocation

If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

(C) Exclusion of tax-exempts

The term “United States person” does not include any entity exempt from tax under this chapter.

(D) Trust not treated as simple trust

Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

(3) Subsequent transactions regarding loan principal

If any loan is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 217; Pub. L. 87-834, §7(a), Oct. 16, 1962, 76 Stat. 985; Pub. L. 94-455, title X, §1013(c), (e)(2), Oct. 4, 1976, 90 Stat. 1615, 1616; Pub. L. 96-223, title IV, §404(b)(4), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97-34, title III, §301(b)(4), (6)(B), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97-248, title III, §§302(b)(1), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 97-448, title I, §103(a)(3), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title I, §§81(a), 82(a), title VII, §722(h)(3), July 18, 1984, 98 Stat. 597, 598, 975; Pub. L. 99-514, title III, §301(b)(7), title VI, §612(b)(4), title XIV, §1404(b), title XVIII, §1806(a), (c), Oct. 22, 1986, 100 Stat. 2217, 2250, 2713, 2810, 2811; Pub. L. 100-647, title I, §1014(d)(3), (4), Nov. 10, 1988, 102 Stat. 3561; Pub. L. 101-239, title VII, §7811(b), (f)(1), Dec. 19, 1989, 103 Stat.

2406, 2409; Pub. L. 103-66, title XIII, §13113(d)(3), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104-188, title I, §§1904(c)(1), 1906(b), (c)(1), Aug. 20, 1996, 110 Stat. 1912, 1915.)

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104-188, §1906(b), added par. (7).

Subsec. (h). Pub. L. 104-188, §1904(c)(1), added subsec. (h).

Subsec. (i). Pub. L. 104-188, §1906(c)(1), added subsec. (i).

1993—Subsec. (a)(3). Pub. L. 103-66 inserted at end “The exclusion under section 1202 shall not be taken into account.”

1989—Subsec. (a)(6)(A). Pub. L. 101-239, §7811(f)(1), substituted “section 265(a)(1)” for “section 265(1)”.

Subsec. (a)(6)(C). Pub. L. 101-239, §7811(b)(1), struck out “(i)” after “such a trust,” and “, and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account” before period at end.

Subsec. (a)(6)(D). Pub. L. 101-239, §7811(b)(2), struck out subpar. (D) which read as follows: “Effective for distributions made in taxable years beginning after December 31, 1975, the undistributed net income of each foreign trust for each taxable year beginning on or before December 31, 1975, remaining undistributed at the close of the last taxable year beginning on or before December 31, 1975, shall be redetermined by taking into account the deduction allowed by section 1202.”

1988—Subsec. (g)(1). Pub. L. 100-647, §1014(d)(3)(A), struck out at end “The preceding sentence shall apply only to the extent the payments of estimated tax made by the trust for the taxable year exceed the tax imposed by this chapter shown on its return for the taxable year.”

Subsec. (g)(2). Pub. L. 100-647, §1014(d)(3)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “An election under paragraph (1) may be made—

“(A) only on the trust’s return of the tax imposed by this chapter for the taxable year, and

“(B) only if such return is filed on or before the 65th day after the close of the taxable year.”

Subsec. (g)(3). Pub. L. 100-647, §1014(d)(4), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99-514, §301(b)(7), struck out “The deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.”

Subsec. (a)(7). Pub. L. 99-514, §612(b)(4), struck out par. (7), dividends or interest, which read as follows: “There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest).”

Subsec. (d). Pub. L. 99-514, §1806(c)(1), redesignated subsec. (d), relating to treatment of property distributed in kind, as (e). Former subsec. (e) redesignated (f).

Subsec. (e). Pub. L. 99-514, §1806(a), (c)(1), redesignated subsec. (d) relating to treatment of property distributed in kind as (e) and amended par. (3)(B) generally, substituting “shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year” for “shall be made by the estate or trust on its return for the taxable year for which the distribution was made”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 99-514, §1806(c)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 99-514, §1404(b), added subsec. (g).

1984—Subsec. (d). Pub. L. 98-369, §81(a), added subsec. (d) relating to treatment of property distributed in kind.

Pub. L. 98-369, §722(h)(3), added subsec. (d) relating to coordination with back-up withholding.

Subsec. (e). Pub. L. 98-369, §82(a), added subsec. (e).

1983—Subsec. (a)(7). Pub. L. 97-448 substituted “section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest)” for “section 116 (relating to partial exclusion of dividends or interest received) or section 128 (relating to interest on certain savings certificates)”.

Subsec. (d). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Subsec. (d). Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by adding subsec. (d) relating to coordination with withholding on interest and dividends. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (a)(7). Pub. L. 97-34, §301(b)(6)(A), inserted reference to “interest” in heading and text, which continued the amendment made by Pub. L. 96-223.

Pub. L. 97-34, §301(b)(4), inserted “or section 128 (relating to interest on certain savings certificates)” after “received”.

1980—Subsec. (a)(7). Pub. L. 96-223 inserted “or interest” after “dividends” in heading and text.

1976—Subsec. (a)(6)(C). Pub. L. 94-455, §1013(c)(1), struck out “created by a United States person” after “foreign trust”.

Subsec. (a)(6)(D). Pub. L. 94-455, §1013(c)(2), added subpar. (D).

Subsec. (d). Pub. L. 94-455, §1013(e)(2), struck out subsec. (a) which defined a foreign trust created by a United States person.

1962—Subsec. (a)(6). Pub. L. 87-834, §7(a)(1), substituted “Income of foreign trust” for “Foreign income” in heading, designated existing provisions as subpar. (A), and added subpars. (B) and (C).

Subsec. (d). Pub. L. 87-834, §7(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1904(d) of Pub. L. 104-188 provided that:

“(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section [amending this section and sections 665, 672, and 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

“(2) EXCEPTION FOR CERTAIN TRUSTS.—The amendments made by this section shall not apply to any trust—

“(A) which is treated as owned by the grantor under section 676 or 677 (other than subsection (a)(3) thereof) of the Internal Revenue Code of 1986, and

“(B) which is in existence on September 19, 1995.

The preceding sentence shall not apply to the portion of any such trust attributable to any transfer to such trust after September 19, 1995.”

Section 1906(d)(2), (3) of Pub. L. 104-188 provided that:

“(2) ABUSIVE TRANSACTIONS.—The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

“(3) LOANS FROM TRUSTS.—The amendment made by subsection (c) [amending this section and section 7872 of this title] shall apply to loans of cash or marketable securities made after September 19, 1995.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988,

Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 612(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99-514, set out as a note under section 301 of this title.

Section 1404(d) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section and sections 6215, 6601, and 6654 of this title and repealing section 6152 of this title] shall apply to taxable years beginning after December 31, 1986."

Amendment by section 1806(a), (c) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 81(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to distributions after June 1, 1984, in taxable years ending after such date.

"(2) TIME FOR MAKING ELECTION.—In the case of any distribution before the date of the enactment of this Act [July 18, 1984]—

"(A) the time for making an election under section 643(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not expire before January 1, 1985, and

"(B) the requirement that such election be made on the return of the estate or trust shall not apply."

Section 82(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, title XVIII, § 1806(b), Oct. 22, 1986, 100 Stat. 2811, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust which was irrevocable on March 1, 1984, such amendment shall so apply only to that portion of the trust which is attributable to contributions to corpus after March 1, 1984."

Section 722(h)(5) of Pub. L. 98-369 provided that:

"(A) Except as provided in this paragraph, the amendments made by this subsection [amending this section and sections 3405, 3406, and 6041 of this title] shall apply as if included in the amendments made by the Interest and Dividend Tax Compliance Act of 1983 [Pub. L. 98-67].

"(B) The amendments made by paragraph (4) [amending sections 3405 and 6041 of this title] shall apply to payments or distributions after December 31, 1984, unless the payor elects to have such amendments apply to payments or distributions before January 1, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 97-34 applicable to taxable years ending after Sept. 30, 1981, and

amendment by section 301(b)(6)(A) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97-34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96-223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1013(e)(2) of Pub. L. 94-455, see section 1013(f)(1) of Pub. L. 94-455, set out as an Effective Date note under section 679 of this title.

Section 1013(f)(2) of Pub. L. 94-455 provided that: "The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7(j) of Pub. L. 87-834 provided that: "The amendments made by this section [amending this section and sections 665, 666, and 668 of this title and enacting section 669 of this title] (other than by subsections (f), (g) and (h) [enacting sections 6048 and 6677 of this title and amending section 7701 of this title]), shall apply with respect to distributions made after December 31, 1962."

TREATMENT AS SINGLE TRUST

Section 1018(e) of Pub. L. 100-647 provided that: "If—

"(1) on a return for the 1st taxable year of the trusts involved beginning after March 1, 1984, 2 or more trusts were treated as a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986],

"(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act [Pub. L. 99-514, which amended provisions set out as an Effective Date of 1984 Amendment note above], and

"(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year, then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 644. Taxable year of trusts

(a) In general

For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

(b) Exception for trusts exempt from tax and charitable trusts

Subsection (a) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1).

(Added Pub. L. 99-514, title XIV, § 1403(a), Oct. 22, 1986, 100 Stat. 2713, § 645; renumbered § 644, Pub. L. 105-34, title V, § 507(b)(1), Aug. 5, 1997, 111 Stat. 856.)

PRIOR PROVISIONS

A prior section 644, added Pub. L. 94-455, title VII, §701(e)(1), Oct. 4, 1976, 90 Stat. 1578; amended Pub. L. 95-600, title VII, §701(p)(1)–(3), Nov. 6, 1978, 92 Stat. 2908; Pub. L. 96-471, §2(b)(4), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99-514, title XV, §1511(c)(5), Oct. 22, 1986, 100 Stat. 2745, related to special rule for gain on property transferred to trust at less than fair market value, prior to repeal by Pub. L. 105-34, title V, §507(b)(1), Aug. 5, 1997, 111 Stat. 856.

AMENDMENTS

1997—Pub. L. 105-34 renumbered section 645 of this title as this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 507(c)(2) of Pub. L. 105-34 provided that: “The amendments made by subsection (b) [amending section 706 of this title, repealing section 644 of this title, and renumbering section 645 of this title as this section] shall apply to sales or exchanges after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE; TRANSITION RULE

Section 1403(c) of Pub. L. 99-514 provided that: “(1) EFFECTIVE DATE.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

“(2) TRANSITION RULE.—With respect to any trust beneficiary who is required to include in gross income amounts under sections 652(a) or 662(a) of the Internal Revenue Code of 1986 in the 1st taxable year of the beneficiary beginning after December 31, 1986, by reason of any short taxable year of the trust required by the amendments made by this section, such income shall be ratably included in the income of the trust beneficiary over the 4-taxable year period beginning with such taxable year.”

APPLICATION OF TRANSITION RULES TO TRUST BENEFICIARIES TO WHICH SECTION 664 APPLIES

Pub. L. 100-647, title I, §1014(c), Nov. 10, 1988, 102 Stat. 3559, provided that:

“(1) If a beneficiary of a trust to which section 664 of the 1986 Code applies elects (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph apply, such beneficiary shall be entitled to the benefits of section 1403(c)(2) of the Reform Act [Pub. L. 99-514, set out as an Effective Date; Transition Rule note above] with respect to amounts included in gross income under section 664(b) of the 1986 Code in the same manner as if such amounts were included in gross income under section 652(a) of the 1986 Code.

“(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

“(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) [Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 1378 of this title] (other than with respect to income from a common trust fund) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act [Pub. L. 99-514, which enacted this section and amended sections 267, 441, 706, and 1378 of this title].

“(B) For purposes of subparagraph (A), the term ‘pass-thru entity’ means any trust, partnership, S corporation, or common trust fund.

“(4) If any trust was required to change its taxable year by the amendments made by section 1403 of the Reform Act [Pub. L. 99-514, which enacted this section], such change shall be treated as initiated by such trust and approved by the Secretary of the Treasury or his delegate.”

§ 645. Certain revocable trusts treated as part of estate**(a) General rule**

For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

(b) Definitions

For purposes of subsection (a)—

(1) Qualified revocable trust

The term “qualified revocable trust” means any trust (or portion thereof) which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section 672(e)).

(2) Applicable date

The term “applicable date” means—

(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

(c) Election

The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.

(Added Pub. L. 105-34, title XIII, §1305(a), Aug. 5, 1997, 111 Stat. 1040, §646; renumbered §645, Pub. L. 105-206, title VI, §6013(a)(1), July 22, 1998, 112 Stat. 819.)

PRIOR PROVISIONS

A prior section 645 was renumbered section 644 of this title.

AMENDMENTS

1998—Pub. L. 105-206 renumbered section 646 of this title as this section.

EFFECTIVE DATE

Section 1305(d) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting this section and amending section 2652 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

§ 646. Tax treatment of electing Alaska Native Settlement Trusts**(a) In general**

If an election under this section is in effect with respect to any Settlement Trust, the provisions of this section shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust.

(b) Taxation of income of trust

Except as provided in subsection (f)(1)(B)(ii)—

(1) In general

There is hereby imposed on the taxable income of an electing Settlement Trust, other than its net capital gain, a tax at the lowest rate specified in section 1(c).

(2) Capital gain

In the case of an electing Settlement Trust with a net capital gain for the taxable year, a tax is hereby imposed on such gain at the rate of tax which would apply to such gain if the taxpayer were subject to a tax on its other taxable income at only the lowest rate specified in section 1(c).

Any such tax shall be in lieu of the income tax otherwise imposed by this chapter on such income or gain.

(c) One-time election**(1) In general**

A Settlement Trust may elect to have the provisions of this section apply to the trust and its beneficiaries.

(2) Time and method of election

An election under paragraph (1) shall be made by the trustee of such trust—

(A) on or before the due date (including extensions) for filing the Settlement Trust's return of tax for the first taxable year of such trust ending after the date of the enactment of this section, and

(B) by attaching to such return of tax a statement specifically providing for such election.

(3) Period election in effect

Except as provided in subsection (f), an election under this subsection—

(A) shall apply to the first taxable year described in paragraph (2)(A) and all subsequent taxable years, and

(B) may not be revoked once it is made.

(d) Contributions to trust**(1) Beneficiaries of electing trust not taxed on contributions**

In the case of an electing Settlement Trust, no amount shall be includible in the gross income of a beneficiary of such trust by reason of a contribution to such trust.

(2) Earnings and profits

The earnings and profits of the sponsoring Native Corporation shall not be reduced on account of any contribution to such Settlement Trust.

(e) Tax treatment of distributions to beneficiaries

Amounts distributed by an electing Settlement Trust during any taxable year shall be considered as having the following characteristics in the hands of the recipient beneficiary:

(1) First, as amounts excludable from gross income for the taxable year to the extent of the taxable income of such trust for such taxable year (decreased by any income tax paid by the trust with respect to the income) plus any amount excluded from gross income of the trust under section 103.

(2) Second, as amounts excludable from gross income to the extent of the amount de-

scribed in paragraph (1) for all taxable years for which an election is in effect under subsection (c) with respect to the trust, and not previously taken into account under paragraph (1).

(3) Third, as amounts distributed by the sponsoring Native Corporation with respect to its stock (within the meaning of section 301(a)) during such taxable year and taxable to the recipient beneficiary as amounts described in section 301(c)(1), to the extent of current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

(4) Fourth, as amounts distributed by the trust in excess of the distributable net income of such trust for such taxable year.

Amounts distributed to which paragraph (3) applies shall not be treated as a corporate distribution subject to section 311(b), and for purposes of determining the amount of a distribution for purposes of paragraph (3) and the basis to the recipients, section 643(e) and not section 301(b) or (d) shall apply.

(f) Special rules where transfer restrictions modified**(1) Transfer of beneficial interests**

If, at any time, a beneficial interest in an electing Settlement Trust may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such interest were Settlement Common Stock—

(A) no election may be made under subsection (c) with respect to such trust, and

(B) if such an election is in effect as of such time—

(i) such election shall cease to apply as of the first day of the taxable year in which such disposition is first permitted,

(ii) the provisions of this section shall not apply to such trust for such taxable year and all taxable years thereafter, and

(iii) the distributable net income of such trust shall be increased by the current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

In no event shall the increase under clause (iii) exceed the fair market value of the trust's assets as of the date the beneficial interest of the trust first becomes so disposable. The earnings and profits of the sponsoring Native Corporation shall be adjusted as of the last day of such taxable year by the amount of earnings and profits so included in the distributable net income of the trust.

(2) Stock in corporation

If—

(A) stock in the sponsoring Native Corporation may be disposed of to a person in a manner which would not be permitted by

section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such stock were Settlement Common Stock, and

(B) at any time after such disposition of stock is first permitted, such corporation transfers assets to a Settlement Trust,

paragraph (1)(B) shall be applied to such trust on and after the date of the transfer in the same manner as if the trust permitted dispositions of beneficial interests in the trust in a manner not permitted by such section 7(h).

(3) Certain distributions

For purposes of this section, the surrender of an interest in a Native Corporation or an electing Settlement Trust in order to accomplish the whole or partial redemption of the interest of a shareholder or beneficiary in such corporation or trust, or to accomplish the whole or partial liquidation of such corporation or trust, shall be deemed to be a transfer permitted by section 7(h) of the Alaska Native Claims Settlement Act.

(g) Taxable income

For purposes of this title, the taxable income of an electing Settlement Trust shall be determined under section 641(b) without regard to any deduction under section 651 or 661.

(h) Definitions

For purposes of this section—

(1) Electing Settlement Trust

The term “electing Settlement Trust” means a Settlement Trust which has made the election, effective for a taxable year, described in subsection (c).

(2) Native Corporation

The term “Native Corporation” has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(3) Settlement Common Stock

The term “Settlement Common Stock” has the meaning given such term by section 3(p) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(p)).

(4) Settlement Trust

The term “Settlement Trust” means a trust that constitutes a settlement trust under section 3(t) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(t)).

(5) Sponsoring Native Corporation

The term “sponsoring Native Corporation” means the Native Corporation which transfers assets to an electing Settlement Trust.

(i) Special loss disallowance rule

Any loss that would otherwise be recognized by a shareholder upon a disposition of a share of stock of a sponsoring Native Corporation shall be reduced (but not below zero) by the per share loss adjustment factor. The per share loss adjustment factor shall be the aggregate of all contributions to all electing Settlement Trusts sponsored by such Native Corporation made on or after the first day each trust is treated as an electing Settlement Trust expressed on a per share basis and determined as of the day of each such contribution.

(j) Cross reference

For information required with respect to electing Settlement Trusts and sponsoring Native Corporations, see section 6039H.

(Added Pub. L. 107-16, title VI, §671(a), June 7, 2001, 115 Stat. 144.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2)(A), is the date of enactment of Pub. L. 107-16, which was approved June 7, 2001.

PRIOR PROVISIONS

A prior section 646 was renumbered section 645 of this title.

EFFECTIVE AND TERMINATION DATES

Pub. L. 107-16, title VI, §671(d), June 7, 2001, 115 Stat. 148, provided that: “The amendments made by this section [enacting this section and section 6039H of this title] shall apply to taxable years ending after the date of the enactment of this Act [June 7, 2001] and to contributions made to electing Settlement Trusts for such year or any subsequent year.”

Section inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if it had never been enacted, see section 901 of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

SUBPART B—TRUSTS WHICH DISTRIBUTE
CURRENT INCOME ONLY

Sec. 651.	Deduction for trusts distributing current income only.
652.	Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only.

§ 651. Deduction for trusts distributing current income only

(a) Deduction

In the case of any trust the terms of which—

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642(c) (relating to deduction for charitable, etc., purposes),

there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in paragraph (1).

(b) Limitation on deduction

If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not in-

cluded in the gross income of the trust and the deductions allocable thereto.

(Aug. 16, 1954, ch. 736, 68A Stat. 219.)

§ 652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only

(a) Inclusion

Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 219; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

SUBPART C—ESTATES AND TRUSTS WHICH MAY ACCUMULATE INCOME OR WHICH DISTRIBUTE CORPUS

Sec.	
661.	Deductions for estates and trusts accumulating income or distributing corpus. ¹
662.	Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.
663.	Special rules applicable to sections 661 and 662.

¹ So in original. Does not conform to section catchline.

664. Charitable remainder trusts.

AMENDMENTS

1969—Pub. L. 91-172, title II, §201(e)(2), Dec. 30, 1969, 83 Stat. 564, added item 664.

§ 661. Deduction for estates and trusts accumulating income or distributing corpus

(a) Deduction

In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

- (1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and
- (2) any other amounts properly paid or credited or required to be distributed for such taxable year;

but such deduction shall not exceed the distributable net income of the estate or trust.

(b) Character of amounts distributed

The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Limitation on deduction

No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title III, §§302(b)(2), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Subsec. (a). Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (a) is amended by inserting at end “For purposes of paragraph (1), the amount of distributable net income shall be computed without the deduction allowed by section 642(c).”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954

(this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

(a) Inclusion

Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) Amounts required to be distributed currently

The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642(c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase “the amount of income for the taxable year required to be distributed currently” includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) Other amounts distributed

All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of—

(A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of

each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section 642(c) which is not attributable to income of the taxable year.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited, or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 663. Special rules applicable to sections 661 and 662

(a) Exclusions

There shall not be included as amounts falling within section 661(a) or 662(a)—

(1) Gifts, bequests, etc.

Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(2) Charitable, etc., distributions

Any amount paid or permanently set aside or otherwise qualifying for the deduction provided in section 642(c) (computed without regard to sections 508(d), 681, and 4948(c)(4)).

(3) Denial of double deduction

Any amount paid, credited, or distributed in the taxable year, if section 651 or section 661 applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

(b) Distributions in first sixty-five days of taxable year**(1) General rule**

If within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year.

(2) Limitation

Paragraph (1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations, to have paragraph (1) apply for such taxable year.

(c) Separate shares treated as separate estates or trusts

For the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts or estates, including the application of subpart D, shall be determined in accordance with regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 222; Pub. L. 91-172, title I, §101(j)(17), title III, §331(b), Dec. 30, 1969, 83 Stat. 528, 598; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XIII, §§1306(a), (b), 1307(a), (b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-34, §1306(a), inserted “an estate or” before “a trust” in pars. (1) and (2).

Subsec. (b)(2). Pub. L. 105-34, §1306(b), substituted “the executor of such estate or the fiduciary of such trust (as the case may be)” for “the fiduciary of such trust”.

Subsec. (c). Pub. L. 105-34, §1307(a), (b), inserted “estates or” before “trusts” in heading, “Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.” before last sentence, and “or estates” after “trusts” in last sentence.

1976—Subsecs. (b)(2), (c). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1969—Subsec. (a)(2). Pub. L. 91-172, §101(j)(17), substituted “sections 508(d), 681, and 4948(c)(4)” for “section 681”.

Subsec. (b)(2). Pub. L. 91-172, §331(b), incorporated existing provisions of subpar. (C) of former first sentence making subsec. (b) applicable only to a trust where the fiduciary elected to have the subsec. apply and part of former second sentence making the election applicable in accordance with prescribed regulations; substituted provisions for regulations to spell out manner and time of election for part of former second sentence requiring the election to be made not later than the time prescribed by law for filing the return for the year, includ-

ing any extension; and omitted: subpars. (A) and (B) of former first sentence which had provided for application of subsec. (b) only to a trust “(A) which was in existence prior to January 1, 1954” and “(B) which, under the terms of its governing instrument, may not distribute in any taxable year amounts in excess of the income of the preceding taxable year”; part of former second sentence which required the election to be made for first taxable year to which this part is applicable; and third sentence that “If such election is made with respect to a taxable year, this subsection shall apply to all amounts properly paid or credited within the first 65 days of all subsequent taxable years of such trust.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1306(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

Section 1307(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(17) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 331(b) of Pub. L. 91-172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91-172, set out as a note under section 665 of this title.

§ 664. Charitable remainder trusts**(a) General rule**

Notwithstanding any other provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary, apply in the case of a charitable remainder annuity trust and a charitable remainder unitrust.

(b) Character of distributions

Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d)(1)(A) or the payment described in subsection (d)(2)(A):

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

For purposes of this section, the trust shall determine the amount of its undistributed capital gain on a cumulative net basis.

(c) Taxation of trusts**(1) Income tax**

A charitable remainder annuity trust and a charitable remainder unitrust shall, for any

taxable year, not be subject to any tax imposed by this subtitle.

(2) Excise tax

(A) In general

In the case of a charitable remainder annuity trust or a charitable remainder unitrust which has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

(B) Certain rules to apply

The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

(C) Tax court proceedings

For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.

(d) Definitions

(1) Charitable remainder annuity trust

For purposes of this section, a charitable remainder annuity trust is a trust—

(A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) the value (determined under section 7520) of such remainder interest is at least 10 percent of the initial net fair market value of all property placed in the trust.

(2) Charitable remainder unitrust

For purposes of this section, a charitable remainder unitrust is a trust—

(A) from which a fixed percentage (which is not less than 5 percent nor more than 50

percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

(3) Exception

Notwithstanding the provisions of paragraphs (2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year—

(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(4) Severance of certain additional contributions

If—

(A) any contribution is made to a trust which before the contribution is a charitable remainder unitrust, and

(B) such contribution would (but for this paragraph) result in such trust ceasing to be a charitable unitrust by reason of paragraph (2)(D),

such contribution shall be treated as a transfer to a separate trust under regulations prescribed by the Secretary.

(e) Valuation for purposes of charitable contribution

For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or

charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year.

(f) Certain contingencies permitted

(1) General rule

If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

(2) Value determined without regard to qualified contingency

For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

(3) Qualified contingency

For purposes of this subsection, the term “qualified contingency” means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

(g) Qualified gratuitous transfer of qualified employer securities

(1) In general

For purposes of this section, the term “qualified gratuitous transfer” means a transfer of qualified employer securities to an employee stock ownership plan (as defined in section 4975(e)(7)) but only to the extent that—

(A) the securities transferred previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d),

(B) no deduction under section 404 is allowable with respect to such transfer,

(C) such plan contains the provisions required by paragraph (3),

(D) such plan treats such securities as being attributable to employer contributions but without regard to the limitations otherwise applicable to such contributions under section 404, and

(E) the employer whose employees are covered by the plan described in this paragraph files with the Secretary a verified written statement consenting to the application of sections 4978 and 4979A with respect to such employer.

(2) Exception

The term “qualified gratuitous transfer” shall not include a transfer of qualified employer securities to an employee stock ownership plan unless—

(A) such plan was in existence on August 1, 1996,

(B) at the time of the transfer, the decedent and members of the decedent’s family (within the meaning of section 2032A(e)(2)) own (directly or through the application of section 318(a)) no more than 10 percent of the value of the stock of the corporation referred to in paragraph (4), and

(C) immediately after the transfer, such plan owns (after the application of section 318(a)(4)) at least 60 percent of the value of the outstanding stock of the corporation.

(3) Plan requirements

A plan contains the provisions required by this paragraph if such plan provides that—

(A) the qualified employer securities so transferred are allocated to plan participants in a manner consistent with section 401(a)(4),

(B) plan participants are entitled to direct the plan as to the manner in which such securities which are entitled to vote and are allocated to the account of such participant are to be voted,

(C) an independent trustee votes the securities so transferred which are not allocated to plan participants,

(D) each participant who is entitled to a distribution from the plan has the rights described in subparagraphs (A) and (B) of section 409(h)(1),

(E) such securities are held in a suspense account under the plan to be allocated each year, up to the applicable limitation under paragraph (7) (determined on the basis of fair market value of securities when allocated to participants), after first allocating all other annual additions for the limitation year, up to the limitations under sections 415(c) and (e),¹ and

(F) on termination of the plan, all securities so transferred which are not allocated to plan participants as of such termination are to be transferred to, or for the use of, an organization described in section 170(c).

For purposes of the preceding sentence, the term “independent trustee” means any trustee who is not a member of the family (within the meaning of section 2032A(e)(2)) of the decedent or a 5-percent shareholder. A plan shall not fail to be treated as meeting the requirements of section 401(a) by reason of meeting the requirements of this subsection.

(4) Qualified employer securities

For purposes of this section, the term “qualified employer securities” means employer securities (as defined in section 409(l)) which are issued by a domestic corporation—

(A) which has no outstanding stock which is readily tradable on an established securities market, and

(B) which has only 1 class of stock.

(5) Treatment of securities allocated by employee stock ownership plan to persons related to decedent or 5-percent shareholders

(A) In general

If any portion of the assets of the plan attributable to securities acquired by the plan in a qualified gratuitous transfer are allocated to the account of—

(i) any person who is related to the decedent (within the meaning of section 267(b)) or a member of the decedent’s family (within the meaning of section 2032A(e)(2)), or

¹ See References in Text note below.

(ii) any person who, at the time of such allocation or at any time during the 1-year period ending on the date of the acquisition of qualified employer securities by the plan, is a 5-percent shareholder of the employer maintaining the plan,

the plan shall be treated as having distributed (at the time of such allocation) to such person or shareholder the amount so allocated.

(B) 5-percent shareholder

For purposes of subparagraph (A), the term “5-percent shareholder” means any person who owns (directly or through the application of section 318(a)) more than 5 percent of the outstanding stock of the corporation which issued such qualified employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of section 409(l)(4)) as such corporation. For purposes of the preceding sentence, section 318(a) shall be applied without regard to the exception in paragraph (2)(B)(i) thereof.

(C) Cross reference

For excise tax on allocations described in subparagraph (A), see section 4979A.

(6) Tax on failure to transfer unallocated securities to charity on termination of plan

If the requirements of paragraph (3)(F) are not met with respect to any securities, there is hereby imposed a tax on the employer maintaining the plan in an amount equal to the sum of—

(A) the amount of the increase in the tax which would be imposed by chapter 11 if such securities were not transferred as described in paragraph (1), and

(B) interest on such amount at the underpayment rate under section 6621 (and compounded daily) from the due date for filing the return of the tax imposed by chapter 11.

(7) Applicable limitation

(A) In general

For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

(i) \$30,000, or

(ii) 25 percent of the participant’s compensation (as defined in section 415(c)(3)).

(B) Cost-of-living adjustment

The Secretary shall adjust annually the \$30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

(Added Pub. L. 91-172, title II, §201(e)(1), Dec. 30, 1969, 83 Stat. 562; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title X, §1022(d), July 18, 1984, 98 Stat. 1029; Pub. L. 105-34, title X, §1089(a)(1), (b)(1), (2), (4), title XV, §1530(a), (b),

(c)(5), 111 Stat. 960, 1075, 1078; Pub. L. 105-206, title VI, §6010(r), July 22, 1998, 112 Stat. 817; Pub. L. 106-554, §1(a)(7) [title III, §319(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646; Pub. L. 107-16, title VI, §632(a)(3)(H), June 7, 2001, 115 Stat. 114; Pub. L. 109-280, title VIII, §868(a), Aug. 17, 2006, 120 Stat. 1025; Pub. L. 109-432, div. A, title IV, §424(a), Dec. 20, 2006, 120 Stat. 2974.)

REFERENCES IN TEXT

Section 415(e) of this title, referred to in subsec. (g)(3)(E), was repealed by Pub. L. 104-188, title I, §1452(a), Aug. 20, 1996, 110 Stat. 1816.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-432 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).”

Subsec. (g)(3)(E). Pub. L. 109-280 inserted “(determined on the basis of fair market value of securities when allocated to participants)” after “paragraph (7)”.

2001—Subsec. (g)(3)(E). Pub. L. 107-16, §632(a)(3)(H)(i), substituted “applicable limitation under paragraph (7)” for “limitations under section 415(c)”.

Subsec. (g)(7). Pub. L. 107-16, §632(a)(3)(H)(ii), added par. (7).

2000—Subsec. (d)(1)(C), (2)(C). Pub. L. 106-554 struck out period after “(as defined by subsection (g))”. See 1997 Amendment notes below.

1998—Subsec. (d)(1)(C), (2)(C). Pub. L. 105-206 inserted “, and” at end.

1997—Subsec. (d)(1)(A). Pub. L. 105-34, §1089(a)(1), inserted “nor more than 50 percent” after “not less than 5 percent”.

Subsec. (d)(1)(B). Pub. L. 105-34, §1530(c)(5), inserted “and other than qualified gratuitous transfers described in subparagraph (C)” after “subparagraph (A)”.

Pub. L. 105-34, §1089(b)(1), struck out “and” at end.

Subsec. (d)(1)(C). Pub. L. 105-34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting “or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).”, was executed by making the insertion after “for such a use” to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105-34, §1089(b)(1). See below.

Pub. L. 105-34, §1089(b)(1), struck out period after “for such a use”.

Subsec. (d)(1)(D). Pub. L. 105-34, §1089(b)(1), added subpar. (D).

Subsec. (d)(2)(A). Pub. L. 105-34, §1089(a)(1), inserted “nor more than 50 percent” after “not less than 5 percent”.

Subsec. (d)(2)(B). Pub. L. 105-34, §1530(c)(5), inserted “and other than qualified gratuitous transfers described in subparagraph (C)” after “subparagraph (A)”.

Pub. L. 105-34, §1089(b)(2), struck out “and” at end.

Subsec. (d)(2)(C). Pub. L. 105-34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting “or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).”, was executed by making the insertion after “for such a use” to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105-34, §1089(b)(2). See below.

Pub. L. 105-34, §1089(b)(2), struck out period after “for such a use”.

Subsec. (d)(2)(D). Pub. L. 105-34, §1089(b)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 105-34, §1089(b)(4), added par. (4).

Subsec. (g). Pub. L. 105-34, §1530(b), added subsec. (g).

1984—Subsec. (f). Pub. L. 98-369 added subsec. (f).

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Sec. 666. Accumulation distribution allocated to preceding years.

667. Treatment of amounts deemed distributed by trust in preceding years.

668. Interest charge on accumulation distributions from foreign trusts.

[669. Repealed.]

AMENDMENTS

1976—Pub. L. 94-455, title VII, §701(g)(1), title X, §1014(c), Oct. 4, 1976, 90 Stat. 1580, 1617, substituted in item 667 “Treatment of amounts deemed distributed by trust in preceding years” for “Denial of refund to trusts; authorization of credit to beneficiaries”, in item 668 “Interest charge on accumulation distributions from foreign trusts” for “Treatment of amounts deemed distributed in preceding years”, and struck out item 669 “Treatment of capital gain deemed distributed in preceding years”.

1969—Pub. L. 91-172, title III, §331(a), Dec. 30, 1969, 83 Stat. 592, struck out “5” after “allocated to” in item 666, inserted “authorization of credit to beneficiaries” in item 667, and substituted “Treatment of capital gain deemed distributed in preceding years” for “Special rules applicable to certain foreign trusts” in item 669.

1962—Pub. L. 87-834, §7(i)(1), Oct. 16, 1962, 76 Stat. 988, added item 669.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §424(b), Dec. 20, 2006, 120 Stat. 2974, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

Pub. L. 109-280, title VIII, §868(b), Aug. 17, 2006, 120 Stat. 1025, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107-16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1089(a)(2) of Pub. L. 105-34 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers in trust after June 18, 1997.”

Section 1089(b)(6) of Pub. L. 105-34 provided that: “(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 2055 of this title] shall apply to transfers in trust after July 28, 1997.

“(B) SPECIAL RULE FOR CERTAIN DECEDENTS.—The amendments made by this subsection shall not apply to transfers in trust under the terms of a will (or other testamentary instrument) executed on or before July 28, 1997, if the decedent—

“(i) dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or

“(ii) was on July 28, 1997, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.”

Amendment by section 1530(a), (b), (c)(5) of Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369, applicable to transfers after Dec. 31, 1978, see section 1022(e)(2) of Pub. L. 98-369, set out as a note under section 2055 of this title.

EFFECTIVE DATE

Section applicable to transfers in trust made after July 31, 1969, see section 201(g)(5), set out as an Effective Date of 1969 Amendment note under section 170 of this title.

SUBPART D—TREATMENT OF EXCESS DISTRIBUTIONS BY TRUSTS

Sec. 665. Definitions applicable to subpart D.

§ 665. Definitions applicable to subpart D

(a) Undistributed net income

For purposes of this subpart, the term “undistributed net income” for any taxable year means the amount by which distributable net income of the trust for such taxable year exceeds the sum of—

(1) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a), and

(2) the amount of taxes imposed on the trust attributable to such distributable net income.

(b) Accumulation distribution

For purposes of this subpart, except as provided in subsection (c), the term “accumulation distribution” means, for any taxable year of the trust, the amount by which—

(1) the amounts specified in paragraph (2) of section 661(a) for such taxable year, exceed

(2) distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a).

For purposes of section 667 (other than subsection (c) thereof, relating to multiple trusts), the amounts specified in paragraph (2) of section 661(a) shall not include amounts properly paid, credited, or required to be distributed to a beneficiary from a trust (other than a foreign trust) as income accumulated before the birth of such beneficiary or before such beneficiary attains the age of 21. If the amounts properly paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there shall be no accumulation distribution for such year.

(c) Exception for accumulation distributions from certain domestic trusts

For purposes of this subpart—

(1) In general

In the case of a qualified trust, any distribution in any taxable year beginning after the date of the enactment of this subsection shall

be computed without regard to any undistributed net income.

(2) Qualified trust

For purposes of this subsection, the term “qualified trust” means any trust other than—

(A) a foreign trust (or, except as provided in regulations, a domestic trust which at any time was a foreign trust), or

(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust.

(d) Taxes imposed on the trust

For purposes of this subpart—

(1) In general

The term “taxes imposed on the trust” means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666(b) and (c) to any beneficiary.

(2) Foreign trusts

In the case of any foreign trust, the term “taxes imposed on the trust” includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term “taxes imposed on the trust” includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(e) Preceding taxable year

For purposes of this subpart—

(1) In the case of a foreign trust created by a United States person, the term “preceding taxable year” does not include any taxable year of the trust to which this part does not apply.

(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 223; Pub. L. 87-834, §7(b), Oct. 16, 1962, 76 Stat. 985; Pub. L.

91-172, title III, §331(a), Dec. 30, 1969, 83 Stat. 592; Pub. L. 92-178, title III, §306(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94-455, title VII, §§701(b), (c), (d)(2), (3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1577, 1578, 1834; Pub. L. 95-600, title VII, §701(q)(1)(A), Nov. 6, 1978, 92 Stat. 2909; Pub. L. 99-514, title XVIII, §1847(b)(16), Oct. 22, 1986, 100 Stat. 2857; Pub. L. 101-508, title XI, §11802(f)(2), Nov. 5, 1990, 104 Stat. 1388-530; Pub. L. 104-188, title I, §1904(b)(1), (c)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105-34, title V, §507(a), title XVI, §1604(g)(2), Aug. 5, 1997, 111 Stat. 856, 1099.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-34, §507(a)(2), inserted “except as provided in subsection (c),” after “subpart,” in introductory provisions.

Subsec. (c). Pub. L. 105-34, §507(a)(1), added subsec. (c).

Subsec. (d)(1). Pub. L. 105-34, §1604(g)(2), struck out “or 669(d) and (e)” after “666(b) and (c)”.

1996—Subsec. (c). Pub. L. 104-188, §1904(c)(2), struck out subsec. (c) which read as follows: “SPECIAL RULE APPLICABLE TO DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS.—For purposes of this subpart, any amount paid to a United States person which is from a payor who is not a United States person and which is derived directly or indirectly from a foreign trust created by a United States person shall be deemed in the year of payment to have been directly paid by the foreign trust.”

Subsec. (d)(2). Pub. L. 104-188, §1904(b)(1), inserted at end “Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term ‘taxes imposed on the trust’ includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.”

1990—Subsec. (e). Pub. L. 101-508 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “For purposes of this subpart—

“(1) in the case of a trust (other than a foreign trust created by a United States person), the term ‘preceding taxable year’ does not include any taxable year of the trust—

“(A) which precedes by more than 5 years the taxable year of the trust in which an accumulation distribution is made, if it is made in a taxable year beginning before January 1, 1974, or

“(B) which begins before January 1, 1969, in the case of an accumulation distribution made during a taxable year beginning after December 31, 1973, and

“(2) in the case of a foreign trust created by a United States person, such term does not include any taxable year of the trust to which this part does not apply.

In the case of a preceding taxable year with respect to which a trust qualifies (without regard to this subpart) under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.”

1986—Subsec. (d)(1). Pub. L. 99-514 substituted “part IV” for “subpart A of part IV”.

1978—Subsec. (d). Pub. L. 95-600 designated existing provisions as par. (1), defined “taxes imposed on the trust” to mean imposition of taxes without regard to subpart A of part IV of subchapter (A), and added par. (2).

1976—Subsec. (b). Pub. L. 94-455, §701(b), (c), inserted provisions that for purposes of sec. 667 the amounts specified in par. (2) of sec. 661(a) not include amounts paid, credited, or required to be distributed to a beneficiary from a trust as income accumulated before the birth of such beneficiary or before such beneficiary reaches 21, and that if the amounts paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there be no accumulation distribution for such year.

Subsecs. (d), (e). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e)(1). Pub. L. 94-455, §701(d)(2), struck out provision that preceding taxable year does not include any taxable year of the trust which begins before Jan. 1, 1969, in the case of a capital gain distribution made during a taxable year beginning after Dec. 31, 1968.

Subsecs. (f), (g). Pub. L. 94-455, §701(d)(3), struck out subsec. (f) which related to undistributed capital gains, and subsec. (g) which related to capital gain distribution.

1971—Subsec. (g). Pub. L. 92-178 struck out “for such taxable year” after “undistributed capital gain” in introductory text.

1969—Subsec. (a)(2). Pub. L. 91-172 inserted “attributable to such distributable net income” after “on the trust”.

Subsec. (b). Pub. L. 91-172 substituted “Accumulation distribution” for “Accumulation distributions of trusts other than certain foreign trusts” in heading, combined existing provisions of subsecs. (b) and (c) defining “accumulation distribution” in the case of a trust (other than a foreign trust created by a United States person) and of a foreign trust created by a United States person, respectively, in provisions now designated as pars. (1) and (2), deleting “the amount (if in excess of \$2,000)” before “by which” in introductory text and inserting “(but not below zero)” in par. (2), and deleted second sentence providing that for purposes of this subsection, the amount specified in par. (2) of section 661(a) shall be determined without regard to section 666 and excepting from “accumulation distributions”: accumulations before birth or attainment of age 21; distributions for emergency needs; distributions, where beneficiary attained specified age or ages and there were not more than 4 distributions, at intervals of 4 or more years; and final distribution of trust was made more than 9 years after date of last transfer to the trust.

Subsec. (c). Pub. L. 91-172 substituted “Special rule applicable to distributions by certain foreign trusts” for “Accumulation distribution of certain foreign trusts” in heading, inserted introductory phrase “For purposes of this subpart”, reenacted provisions of former third sentence as the subsection, struck out first sentence which defined in the case of a foreign trust created by a United States person the term “accumulation distribution”, (see subsec. (b) of this section), and deleted second sentence which stated that “For purposes of this subsection, the amount specified in paragraph (2) of section 661(a) shall be determined without regard to section 666.”

Subsec. (d). Pub. L. 91-172 substituted “taxable year of the trust” for “taxable year on the trust”, “allocable to the undistributed portions of distributable net income and gains to excess of losses from sales or exchanges of capital assets” for “allocable to the undistributed portion of the distributable net income”, and “reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary” for “reduced by any amount of such taxes allowed, under sections 667 and 668, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year”.

Subsec. (e). Pub. L. 91-172 substituted provisions of first sentence contained in pars. 1(A) to (C) and (2) for prior first sentence which read “For purposes of this subpart, the term ‘preceding taxable year’ does not include any taxable year of the trust to which this part does not apply” and reenacted provisions of second sentence.

Subsecs. (f), (g). Pub. L. 91-172 added subsecs. (f) and (g).

1962—Subsec. (b). Pub. L. 87-834, §7(b)(1), substituted “Accumulation distributions of trusts other than certain foreign trusts” for “Accumulation distribution” in heading, and inserted “in the case of a trust (other than a foreign trust created by a United States person),” after “purposes of this subpart.”.

Subsecs. (c) to (e). Pub. L. 87-834, §7(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 507(c)(1) of Pub. L. 105-34 provided that: “The amendments made by subsection (a) [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104-188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(q)(3)(A) of Pub. L. 95-600 provided that: “The amendments made by paragraph (1) [amending this section and section 667 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 701(b), (c), (d)(2), (3) of Pub. L. 94-455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h), set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 306(a) of Pub. L. 92-178 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1968.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 331(d) of Pub. L. 91-172, as amended by Pub. L. 92-178, title III, §306(b), Dec. 10, 1971, 85 Stat. 524; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) GENERAL RULE.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 663, 666 to 669, and 6401 of this title] shall apply to taxable years beginning after December 31, 1968.

“(2) EXCEPTIONS.—

“(A) Amounts paid, credited, or required to be distributed by a trust (other than a foreign trust created by a United States person) on or before the last day of a taxable year of the trust beginning before January 1, 1974, shall not be deemed to be accumulation distributions to the extent that such amounts were accumulated by a trust in taxable years of such trust beginning before January 1, 1969, and would have been excepted from the definition of an accumulation distribution by reason of paragraph (1), (2), (3), or (4) of section 665(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as in effect on December 31, 1968, if they had been distributed on the last day of the last taxable year of the trust beginning before January 1, 1969.

“(B) For taxable years of a trust beginning before January 1, 1970, the first sentence of section 666(a) of

the Internal Revenue Code of 1986 (as amended by this section) shall not apply, and the amount of the accumulation distribution of the trust for such taxable years shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years to the extent that such amount exceeds the total of any undistributed net income for any taxable years intervening between the taxable year with respect of which the accumulation distribution is determined and such preceding taxable year.

“(C) In the case of a trust which was in existence on December 31, 1969, section 669 of the Internal Revenue Code of 1986, as amended by this section, shall not apply to capital gain distributions made to a beneficiary before January 1, 1973. If the beneficiary receives capital gain distributions from more than one such trust before January 1, 1973, the preceding sentence shall apply to capital gain distributions from only one such trust, such one to be designated by the taxpayer in accordance with regulations prescribed by the Secretary or his delegate. For purposes of the preceding sentence, capital gain distributions received from a trust qualifying under section 2056(b)(5) of the Internal Revenue Code of 1986 by a surviving spouse (who is the beneficiary of only one such trust) shall be disregarded.”

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87-834, set out as a note under section 643 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 666. Accumulation distribution allocated to preceding years

(a) Amount allocated

In the case of a trust which is subject to subpart C, the amount of the accumulation distribution of such trust for a taxable year shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years, commencing with the earliest of such years, to the extent that such amount exceeds the total of any undistributed net income for all earlier preceding taxable years. The amount deemed to be distributed in any such preceding taxable year under the preceding sentence shall not exceed the undistributed net income for such preceding taxable year. For purposes of this subsection, undistributed net income for each of such preceding taxable years shall be computed without regard to such accumulation distribution and without regard to any accumu-

lation distribution determined for any succeeding taxable year.

(b) Total taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year, and such portion of such distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such preceding taxable year attributable to the undistributed net income. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(c) Pro rata portion of taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year and such portion of the accumulation distribution is less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such taxable year attributable to the undistributed net income multiplied by the ratio of the portion of the accumulation distribution to the undistributed net income of the trust for such year. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to the accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(d) Rule when information is not available

If adequate records are not available to determine the proper application of this subpart to an amount distributed by a trust, such amount shall be deemed to be an accumulation distribution consisting of undistributed net income earned during the earliest preceding taxable year of the trust in which it can be established that the trust was in existence.

(e) Denial of refund to trusts and beneficiaries

No refund or credit shall be allowed to a trust or a beneficiary of such trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 224; Pub. L. 87-834, § 7(c), Oct. 16, 1962, 76 Stat. 986; Pub. L. 91-172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 593; Pub. L. 94-455, title VII, § 701(a)(2), Oct. 4, 1976, 90 Stat. 1577; Pub. L. 95-600, title IV, § 421(d), Nov. 6, 1978, 92 Stat. 2875; Pub. L. 96-222, title I, § 104(a)(4)(H)(vi), Apr. 1, 1980, 94 Stat. 218.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-222 inserted “(other than the tax imposed by section 55)” after “equal to the taxes”.

1978—Subsec. (b). Pub. L. 95-600 inserted “(other than the tax imposed by section 55)” after “equal to the taxes”.

1976—Subsec. (e). Pub. L. 94-455 added subsec. (e).

1969—Subsec. (a). Pub. L. 91-172 substituted in first sentence “In the case of a trust which is subject to subpart (C)” for “In the case of a trust (other than a foreign trust created by a United States person) which for a taxable year beginning after December 31, 1953, is subject to subpart (C)”; “for a taxable year” for “for such taxable year”, and “undistributed net income for all earlier preceding taxable years” for “undistributed net incomes for any taxable years intervening between the taxable year with respect to which the accumulation distribution is determined and such preceding taxable year” and in second sentence “for such” for “of such”, inserted in first sentence “, commencing with the earliest of such years,” after “preceding taxable years”, struck out “5” before “preceding taxable years” in first and third sentences and last sentence which read as follows: “In the case of a foreign trust created by a United States person, this subsection shall apply to the preceding taxable years of the trust without regard to any provision of the preceding sentences which would (but for this sentence) limit its application to the 5 preceding taxable years.”

Subsec. (b). Pub. L. 91-172 inserted “attributable to the undistributed net income” after “taxable year” in second sentence and “attributable to such undistributed net income” before “shall be computed” in third sentence.

Subsec. (c). Pub. L. 91-172 inserted “attributable to the undistributed net income” before “multiplied by the ratio” in second sentence and “attributable to such undistributed net income” before “shall be computed” in third sentence.

Subsec. (d). Pub. L. 91-172 added subsec. (d).

1962—Subsec. (a). Pub. L. 87-834 inserted “(other than a foreign trust created by a United States person)” after “In the case of a trust”, and inserted sentence making this subsection applicable, in the case of a foreign trust created by a United States person, to the preceding taxable years of the trust without regard to any provision of the preceding sentences of this subsection which would (but for this sentence) limit its application to the 5 preceding taxable years.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94-455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1968, except that for taxable years of a trust beginning before Jan. 1, 1970, first sentence of subsec. (a) not applicable and amount of accumulation distribution stated, see section 331(d)(1), (2)(B) of Pub. L. 91-172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87-834, set out as a note under section 643 of this title.

§ 667. Treatment of amounts deemed distributed by trust in preceding years

(a) General rule

The total of the amounts which are treated under section 666 as having been distributed by a trust in a preceding taxable year shall be included in the income of a beneficiary of the trust when paid, credited, or required to be distributed to the extent that such total would have been included in the income of such beneficiary under section 662(a)(2) (and, with respect to any tax-exempt interest to which section 103 applies, under section 662(b)) if such total had been paid to such beneficiary on the last day of such preceding taxable year. The tax imposed by this subtitle on a beneficiary for a taxable year in which any such amount is included in his income shall be determined only as provided in this section and shall consist of the sum of—

(1) a partial tax computed on the taxable income reduced by an amount equal to the total of such amounts, at the rate and in the manner as if this section had not been enacted,

(2) a partial tax determined as provided in subsection (b) of this section, and

(3) in the case of a foreign trust, the interest charge determined as provided in section 668.

(b) Tax on distribution

(1) In general

The partial tax imposed by subsection (a)(2) shall be determined.

(A) by determining the number of preceding taxable years of the trust on the last day of which an amount is deemed under section 666(a) to have been distributed,

(B) by taking from the 5 taxable years immediately preceding the year of the accumulation distribution the 1 taxable year for which the beneficiary's taxable income was the highest and the 1 taxable year for which his taxable income was the lowest,

(C) by adding to the beneficiary's taxable income for each of the 3 taxable years remaining after the application of subparagraph (B) an amount determined by dividing the amount deemed distributed under section 666 and required to be included in income under subsection (a) by the number of preceding taxable years determined under subparagraph (A), and

(D) by determining the average increase in tax for the 3 taxable years referred to in subparagraph (C) resulting from the application of such subparagraph.

The partial tax imposed by subsection (a)(2) shall be the excess (if any) of the average in-

crease in tax determined under subparagraph (D), multiplied by the number of preceding taxable years determined under subparagraph (A), over the amount of taxes (other than the amount of taxes described in section 665(d)(2)) deemed distributed to the beneficiary under sections 666(b) and (c).

(2) Treatment of loss years

For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than zero.

(3) Certain preceding taxable years not taken into account

For purposes of paragraph (1), if the amount of the undistributed net income deemed distributed in any preceding taxable year of the trust is less than 25 percent of the amount of the accumulation distribution divided by the number of preceding taxable years to which the accumulation distribution is allocated under section 666(a), the number of preceding taxable years of the trust with respect to which an amount is deemed distributed to a beneficiary under section 666(a) shall be determined without regard to such year.

(4) Effect of other accumulation distributions

In computing the partial tax under paragraph (1) for any beneficiary, the income of such beneficiary for each of his prior taxable years shall include amounts previously deemed distributed to such beneficiary in such year under section 666 as a result of prior accumulation distributions (whether from the same or another trust).

(5) Multiple distributions in the same taxable year

In the case of accumulation distributions made from more than one trust which are includible in the income of a beneficiary in the same taxable year, the distributions shall be deemed to have been made consecutively in whichever order the beneficiary shall determine.

(6) Adjustment in partial tax for estate and generation-skipping transfer taxes attributable to partial tax

(A) In general

The partial tax shall be reduced by an amount which is equal to the pre-death portion of the partial tax multiplied by a fraction—

(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

(B) Partial tax determined without regard to this paragraph

For purposes of this paragraph, the term “partial tax” means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

(C) Pre-death portion

For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution.

(c) Special rule for multiple trusts

(1) In general

If, in the same prior taxable year of the beneficiary in which any part of the accumulation distribution from a trust (hereinafter in this paragraph referred to as “third trust”) is deemed under section 666(a) to have been distributed to such beneficiary, some part of prior distributions by each of 2 or more other trusts is deemed under section 666(a) to have been distributed to such beneficiary, then subsections (b) and (c) of section 666 shall not apply with respect to such part of the accumulation distribution from such third trust.

(2) Accumulation distributions from trust not taken into account unless they equal or exceed \$1,000

For purposes of paragraph (1), an accumulation distribution from a trust to a beneficiary shall be taken into account only if such distribution, when added to any prior accumulation distributions from such trust which are deemed under section 666(a) to have been distributed to such beneficiary for the same prior taxable year of the beneficiary, equals or exceeds \$1,000.

(d) Special rules for foreign trust

(1) Foreign tax deemed paid by beneficiary

(A) In general

In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665(d)(2) which are deemed distributed under section 666(b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

(B) Deduction in lieu of credit

If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary’s taxable income under subsection (b)(1)(C) for the computation year.

(C) Limitation on credit; retention of character

(i) Limitation on credit

For purposes of determining under subparagraph (A) the amount treated as a

credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

(ii) Retention of character

The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

(D) Computation year

For purposes of this paragraph, the term "computation year" means any of the three taxable years remaining after application of subsection (b)(1)(B).

(e) Retention of character of amounts distributed from accumulation trust to nonresident aliens and foreign corporations

In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempt interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 225; Pub. L. 91-172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 594; Pub. L. 94-455, title VII, § 701(a)(1), title X, § 1014(a), Oct. 4, 1976, 90 Stat. 1575, 1617; Pub. L. 95-30, title I, § 102(b)(8), May 23, 1977, 91 Stat. 138; Pub. L. 95-600, title VII, §§ 701(q)(1)(B), (C), (r)(1), 702(o)(1), Nov. 6, 1978, 92 Stat. 2909, 2910, 2936; Pub. L. 99-514, title I, § 104(b)(10), Oct. 22, 1986, 100 Stat. 2105.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99-514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than—

"(A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or

"(B) in the case of a beneficiary who is a corporation, zero."

1978—Subsec. (b)(1). Pub. L. 95-600, § 701(q)(1)(C), inserted in last sentence "(other than the amount of taxes described in section 665(d)(2))" after "taxes".

Subsec. (b)(6). Pub. L. 95-600, § 702(o)(1), added par. (6). Subsec. (d). Pub. L. 95-600, § 701(q)(1)(B), added subsec. (d).

Subsec. (e). Pub. L. 95-600, § 701(r)(1), added subsec. (e).

1977—Subsec. (b)(2). Pub. L. 95-30 substituted "not less than (A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or (B) in the case of a beneficiary who is a corporation, zero" for "not less than zero".

1976—Pub. L. 94-455, §§ 701(a)(1), 1014(a), substituted provisions relating to the treatment of amounts deemed distributed by trust in preceding years for provisions that no refund or credit be allowed to a trust

for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under section 666 or 669 and that there be allowed as a credit against the tax imposed by this subtitle on the beneficiary an amount equal to the amount of the taxes deemed distributed to such beneficiary by the trust under sections 666(b) and (c) and 669(d) and (e) during preceding taxable years of the trust on the last day of which the beneficiary was in being, reduced by the amount of the taxes deemed distributed to such beneficiary for such preceding taxable years to the extent that such taxes are taken into account under sections 668(b)(1) and 669(b) in determining the amount of the tax imposed by section 668. See section 666(e) of this title.

1969—Subsec. (a). Pub. L. 91-172 incorporated existing provisions of first sentence in provisions designated as subsec. (a), included distributions made under section 669 of this title, and struck out provisions for credit of taxes imposed on the trust against tax of beneficiary. See subsec. (b) of this section.

Subsec. (b). Pub. L. 91-172 incorporated provision of first sentence for credit of taxes imposed on the trust against tax of beneficiary, and provided for interest free credit and method of computation of its amount. The second sentence had provided that the amount of taxes which may not be refunded or credited to the trust shall be an amount equal to the excess of (1) the taxes imposed on the trust for any preceding taxable year (computed without regard to the accumulation distribution for the taxable year) over (2) the amount of taxes for such preceding taxable year imposed on the undistributed portion of distributable net income of the trust for such preceding taxable year after the application of this subpart on account of the accumulation distribution determined for such taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(q)(1)(B), (C) of Pub. L. 95-600 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(q)(3)(A) of Pub. L. 95-600, set out as a note under section 665 of this title.

Section 702(o)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply—

"(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 2001 et seq. of this title], to the estates of decedents dying after December 31, 1979, and

"(B) in the case of the tax imposed by chapter 13 [section 2601 et seq. of this title], to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976."

Section 701(r)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 701(h) of Pub. L. 94-455 provided that: "The amendments made by subsections (a), (b), (c), (d), and (f) of this section [amending this section and sections 665, 666, 1302, and 6401 of this title and repealing sections 668 and 669 of this title] shall apply to distributions made in taxable years beginning after December

31, 1975. The amendments made by subsection (e) of this section [enacting section 644 of this title and amending section 641 of this title] shall apply to transfers in trust made after May 21, 1976.”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1968, see section 331(d) of Pub. L. 91-172, set out as a note under section 665 of this title.

§ 668. Interest charge on accumulation distributions from foreign trusts

(a) General rule

For purposes of the tax determined under section 667(a)—

(1) Interest determined using underpayment rates

The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

(2) Period

For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

(3) Applicable number of years

For purposes of paragraph (2)—

(A) In general

The applicable number of years with respect to a distribution is the number determined by dividing—

- (i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by
- (ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

(B) Product described

For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

- (i) the undistributed net income for such year, and
- (ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

(4) Undistributed income year

For purposes of this subsection, the term “undistributed income year” means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

(5) Determination of undistributed net income

Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

(6) Periods before 1996

Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

- (A) by using an interest rate of 6 percent, and
- (B) without compounding until January 1, 1996.

(b) Limitation

The total amount of the interest charge shall not, when added to the total partial tax computed under section 667(b), exceed the amount of the accumulation distribution (other than the amount of tax deemed distributed by section 666(b) or (c)) in respect of which such partial tax was determined.

(c) Interest charge not deductible

The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title.

(Added Pub. L. 94-455, title X, §1014(b), Oct. 4, 1976, 90 Stat. 1617; amended Pub. L. 101-508, title XI, §11802(f)(3), Nov. 5, 1990, 104 Stat. 1388-530; Pub. L. 104-188, title I, §1906(a), Aug. 20, 1996, 110 Stat. 1914.)

PRIOR PROVISIONS

A prior section 668, acts Aug. 16, 1954, ch. 736, 68A Stat. 225; Oct. 16, 1962, Pub. L. 87-834, §7(d), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91-172, title III, §331(a), 83 Stat. 594, related to treatment of amounts deemed distributed in preceding years, prior to repeal by Pub. L. 94-455, title VII, §701(a)(3), Oct. 4, 1976, 90 Stat. 1577. See section 667 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of the tax determined under section 667(a), the interest charge is an amount equal to 6 percent of the partial tax computed under section 667(b) multiplied by a fraction—

“(1) the numerator of which is the sum of the number of taxable years between each taxable year to which the distribution is allocated under section 666(a) and the taxable year of the distribution (counting in each case the taxable year to which the distribution is allocated but not counting the taxable year of the distribution), and

“(2) the denominator of which is the number of taxable years to which the distribution is allocated under section 666(a).”

1990—Subsec. (c). Pub. L. 101-508 substituted heading for one which read “Special rules” and amended text generally, restating provisions of former par. (1) as entire subsection and striking out former par. (2) which provided that for purposes of this section, undistributed net income existing in a trust as of January 1, 1977, would be treated as allocated under section 666(a) to the first taxable year beginning after December 31, 1976.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1906(d)(1) of Pub. L. 104-188 provided that: “The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Nov. 20, 1996].”

EFFECTIVE DATE

Section 1014(d) of Pub. L. 94-455 provided that: "The amendments made by this section [enacting this section and amending section 667 of this title] shall apply to taxable years beginning after December 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

[§ 669. Repealed. Pub. L. 94-455, title VII, § 701(d)(1), Oct. 4, 1976, 90 Stat. 1578]

Section, acts Oct. 16, 1962, Pub. L. 87-834, § 7(e), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91-172, title III, § 331(a), 83 Stat. 596, related to the treatment of capital gain deemed distributed in preceding years.

EFFECTIVE DATE OF REPEAL

Repeal applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 667 of this title.

SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

Sec.	
671.	Trust income, deductions, and credits attributable to grantors and others as substantial owners.
672.	Definitions and rules.
673.	Reversionary interests.
674.	Power to control beneficial enjoyment.
675.	Administrative powers.
676.	Power to revoke.
677.	Income for benefit of grantor.
678.	Person other than grantor treated as substantial owner.
679.	Foreign trusts having one or more United States beneficiaries.

AMENDMENTS

1976—Pub. L. 94-455, title X, § 1013(e)(1), Oct. 4, 1976, 90 Stat. 1616, added item 679.

§ 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart.

(Aug. 16, 1954, ch. 736, 68A Stat. 226.)

CERTAIN ENTITIES NOT TREATED AS CORPORATIONS

Pub. L. 99-514, title VI, § 646, Oct. 22, 1986, 100 Stat. 2292, as amended by Pub. L. 100-647, title I, § 1006(k), Nov. 10, 1988, 102 Stat. 3411, provided that:

"(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

"(b) ENTITY.—An entity is described in this subsection if—

"(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota,

"(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and

"(3) income interests in such entity are publicly traded as of October 22, 1986, on a national stock exchange.

"(c) ELECTION.—

"(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

"(A) shall be made by the board of trustees of the entity before January 1, 1991, and

"(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

"(2) AGREEMENT.—

"(A) IN GENERAL.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

"(B) PERMISSIBLE ACQUISITIONS.—Property is described in this paragraph if it is—

"(i) surface rights to property the acquisition of which—

"(I) is necessary to mine mineral rights held on October 22, 1986, and

"(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

"(ii) surface rights to property which are not described in clause (i) and which—

"(I) are acquired in an exchange to which section 1031 [probably means section 1031 of this title] applies, and

"(II) are necessary to mine mineral rights held on October 22, 1986,

"(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

"(iv) part of any required reserves of the entity.

"(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986] and following the taxable year in which the election is made.

"(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

"(d) SPECIAL RULES FOR TAXATION OF TRUST.—

"(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

"(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) applies, and

"(B) for purposes of section 333 of such Code (as so in effect)—

"(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

“(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title [subtitle D (§§ 631–634) of title VI of Pub. L. 99–514, see Tables for classification] and section 1804 of this Act [see Tables for classification] shall not apply to any liquidation under this paragraph.

“(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years.

“(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

“(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

“(1) a reversionary interest shall not be taken into account until it comes into possession, and

“(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation.”

§ 672. Definitions and rules

(a) Adverse party

For purposes of this subpart, the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b) Nonadverse party

For purposes of this subpart, the term “nonadverse party” means any person who is not an adverse party.

(c) Related or subordinate party

For purposes of this subpart, the term “related or subordinate party” means any nonadverse party who is—

(1) the grantor’s spouse if living with the grantor;

(2) any one of the following: The grantor’s father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(d) Rule where power is subject to condition precedent

A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving

of notice or takes effect only on the expiration of a certain period after the exercise of the power.

(e) Grantor treated as holding any power or interest of grantor’s spouse

(1) In general

For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

(2) Marital status

For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(f) Subpart not to result in foreign ownership

(1) In general

Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) Exceptions

(A) Certain revocable and irrevocable trusts

Paragraph (1) shall not apply to any portion of a trust if—

(i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) Compensatory trusts

Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

(3) Special rules

Except as otherwise provided in regulations prescribed by the Secretary—

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1297.

(4) Recharacterization of purported gifts

In the case of any transfer directly or indirectly from a partnership or foreign corpora-

tion which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

(5) Special rule where grantor is foreign person

If—

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made (directly or indirectly) transfers of property (other than in a sale for full and adequate consideration) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.

(Aug. 16, 1954, ch. 736, 68A Stat. 226; Pub. L. 99-514, title XIV, §1401(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100-647, title I, §1014(a)(1), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 101-508, title XI, §11343(a), Nov. 5, 1990, 104 Stat. 1388-472; Pub. L. 104-188, title I, §1904(a), Aug. 20, 1996, 110 Stat. 1910; Pub. L. 105-206, title VI, §6011(c)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Subsec. (f)(3)(B). Pub. L. 105-206 substituted “section 1297” for “section 1296”.

1996—Subsec. (c). Pub. L. 104-188, §1904(a)(2), inserted “subsection (f) and” before “sections 674” in closing provisions.

Subsec. (f). Pub. L. 104-188, §1904(a)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

“(1) IN GENERAL.—If—

“(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

“(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

“(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.”

1990—Subsec. (f). Pub. L. 101-508 added subsec. (f).

1988—Subsec. (e). Pub. L. 100-647 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “For purposes of this subpart, if a grantor’s spouse is living with the grantor at the time of the creation of any power or interest held by such spouse, the grantor shall be treated as holding such power or interest.”

1986—Subsec. (e). Pub. L. 99-514 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104-188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11343(b) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section] shall apply to—

“(1) any trust created after the date of the enactment of this Act [Nov. 5, 1990], and

“(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1401(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending this section] shall apply with respect to transfers in trust made after March 1, 1986.”

§ 673. Reversionary interests

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

(b) Reversionary interest taking effect at death of minor lineal descendant beneficiary

In the case of any beneficiary who—

(1) is a lineal descendant of the grantor, and

(2) holds all of the present interests in any portion of a trust,

the grantor shall not be treated under subsection (a) as the owner of such portion solely by reason of a reversionary interest in such portion which takes effect upon the death of such beneficiary before such beneficiary attains age 21.

(c) Special rule for determining value of reversionary interest

For purposes of subsection (a), the value of the grantor’s reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

(d) Postponement of date specified for reacquisition

Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and termi-

nating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 91-172, title II, §201(c), Dec. 30, 1969, 83 Stat. 560; Pub. L. 99-514, title XIV, §1402(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100-647, title I, §1014(b), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100-647 added subsecs. (c) and (d).

1986—Pub. L. 99-514 amended section generally, substituting “the value of such interest exceeds 5 percent of the value of such portion” for “the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust” in subsec. (a), adding subsec. (b), striking out subsec. (c) which provided that the grantor not be treated under subsec. (a) as the owner of any portion of a trust where his reversionary interest in such portion was not to take effect in possession or enjoyment until the death of the persons to whom the income therefrom was payable, and subsec. (d) which provided that any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest be treated as a new transfer in trust commencing with the date on which the postponement was effected and terminating with the date prescribed by the postponement.

1969—Subsec. (b). Pub. L. 91-172 struck out provisions relating to trusts where the income was payable to a charitable beneficiary for at least a two-year period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1402(c) of Pub. L. 99-514 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 674, 676, and 677 of this title] shall apply with respect to transfers in trust made after March 1, 1986.

“(2) TRANSFERS PURSUANT TO PROPERTY SETTLEMENT AGREEMENT.—The amendments made by this section shall not apply to any transfer in trust made after March 1, 1986, pursuant to a binding property settlement agreement entered into on or before March 1, 1986, which required the taxpayer to establish a grantor trust and for the transfer of a specified sum of money or property to the trust by the taxpayer. This paragraph shall apply only to the extent of the amount required to be transferred under the agreement described in the preceding sentence.”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to transfers in trust made after April 22, 1969, see section 201(g)(3) of Pub. L. 91-172, set out as a note under section 170 of this title.

§ 674. Power to control beneficial enjoyment

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the in-

come therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(b) Exceptions for certain powers

Subsection (a) shall not apply to the following powers regardless of by whom held:

(1) Power to apply income to support of a dependent

A power described in section 677(b) to the extent that the grantor would not be subject to tax under that section.

(2) Power affecting beneficial enjoyment only after occurrence of event

A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(3) Power exercisable only by will

A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(4) Power to allocate among charitable beneficiaries

A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions) or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(5) Power to distribute corpus

A power to distribute corpus either—

(A) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(B) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(6) Power to withhold income temporarily

A power to distribute or apply income to or for any current income beneficiary or to accu-

mulate the income for him, provided that any accumulated income must ultimately be payable—

(A) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or

(B) on termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(7) Power to withhold income during disability of a beneficiary

A power exercisable only during—

(A) the existence of a legal disability of any current income beneficiary, or

(B) the period during which any income beneficiary shall be under the age of 21 years,

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(8) Power to allocate between corpus and income

A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(c) Exception for certain powers of independent trustees

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor—

(1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.

(d) Power to allocate income if limited by a standard

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (6) or (7) of subsection (b) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 99-514, title XIV, §1402(b)(1), Oct. 22, 1986, 100 Stat. 2712; Pub. L. 100-647, title I, §1014(a)(3), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 105-34, title XV, §1530(c)(6), Aug. 5, 1997, 111 Stat. 1078.)

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105-34 inserted before period “or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1))”.

1988—Subsec. (c). Pub. L. 100-647 inserted at end “For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.”

1986—Subsec. (b)(2). Pub. L. 99-514 substituted “occurrence of event” for “expiration of 10-year period” in heading and in text substituted “the occurrence of an event” for “the expiration of a period” and “the occurrence of the event” for “the expiration of the period”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for

transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99-514, set out as a note under section 673 of this title.

§ 675. Administrative powers

The grantor shall be treated as the owner of any portion of a trust in respect of which—

(1) Power to deal for less than adequate and full consideration

A power exercisable by the grantor or a non-adverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.

(2) Power to borrow without adequate interest or security

A power exercisable by the grantor or a non-adverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

(3) Borrowing of the trust funds

The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.

(4) General powers of administration

A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term "power of administration" means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

(Aug. 16, 1954, ch. 736, 68A Stat. 229; Pub. L. 100-647, title I, §1014(a)(2), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Par. (3). Pub. L. 100-647 inserted at end "For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

§ 676. Power to revoke

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.

(b) Power affecting beneficial enjoyment only after occurrence of event

Subsection (a) shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest. But the grantor may be treated as the owner after the occurrence of such event unless the power is relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 99-514, title XIV, §1402(b)(2), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99-514 substituted "occurrence of event" for "expiration of 10-year period" in heading and in text substituted "the occurrence of an event" for "the expiration of a period" and "the occurrence of such event" for "the expiration of such period".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99-514, set out as a note under section 673 of this title.

§ 677. Income for benefit of grantor

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

(1) distributed to the grantor or the grantor's spouse;

(2) held or accumulated for future distribution to the grantor or the grantor's spouse; or

(3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(b) Obligations of support

Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the grantor under section 662.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 91-172, title III, § 332(a), Dec. 30, 1969, 83 Stat. 599; Pub. L. 99-514, title XIV, § 1402(b)(3), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted “the occurrence of an event” for “the expiration of a period” and “the occurrence of the event” for “the expiration of the period” in last sentence.

1969—Subsec. (a)(1) to (3). Pub. L. 91-172, § 332(a)(1), inserted “or the grantor's spouse” after “the grantor” in pars. (1), (2), and (3).

Subsec. (b). Pub. L. 91-172, § 332(a)(2), inserted “(other than the grantor's spouse)” after “beneficiary”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99-514, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 332(b) of Pub. L. 91-172 provided that: “The amendments made by subsection (a) [amending this section] shall apply in respect of property transferred in trust after October 9, 1969.”

§ 678. Person other than grantor treated as substantial owner

(a) General rule

A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject to grantor of a trust to treatment as the owner thereof.

(b) Exception where grantor is taxable

Subsection (a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section.

(c) Obligations of support

Subsection (a) shall not apply to a power which enables such person, in the capacity of trustee or cotrustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the holder of the power under section 662.

(d) Effect of renunciation or disclaimer

Subsection (a) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

(e) Cross reference

For provision under which beneficiary of trust is treated as owner of the portion of the trust which consists of stock in an S corporation, see section 1361(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 231; Pub. L. 94-455, title X, § 1013(b), Oct. 4, 1976, 90 Stat. 1615; Pub. L. 97-448, title I, § 102(i)(2), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 106-554, § 1(a)(7) [title III, § 319(8)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-554 substituted “an S corporation” for “an electing small business corporation”.

1983—Subsec. (e). Pub. L. 97-448 added subsec. (e).

1976—Subsec. (b). Pub. L. 94-455 substituted “if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section” for “if the grantor of the trust is otherwise treated as the owner under sections 671 to 677, inclusive”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by Pub. L. 94-455, see section 1013(f)(1) of Pub. L. 94-455, set out as an Effective Date note under section 679 of this title.

§ 679. Foreign trusts having one or more United States beneficiaries

(a) Transferor treated as owner

(1) In general

A United States person who directly or indirectly transfers property to a foreign trust

(other than a trust described in section 6048(a)(3)(B)(ii)) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust.

(2) Exceptions

Paragraph (1) shall not apply—

(A) Transfers by reason of death

To any transfer by reason of the death of the transferor.

(B) Transfers at fair market value

To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.

(3) Certain obligations not taken into account under fair market value exception

(A) In general

In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

(B) Treatment of principal payments on obligation

Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(C) Persons described

The persons described in this subparagraph are—

- (i) the trust,
- (ii) any grantor, owner, or beneficiary of the trust, and
- (iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner, or beneficiary of the trust.

(4) Special rules applicable to foreign grantor who later becomes a United States person

(A) In general

If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

(B) Treatment of undistributed income

For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken

into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

(C) Residency starting date

For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

(5) Outbound trust migrations

If—

(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.

(b) Trusts acquiring United States beneficiaries

If—

(1) subsection (a) applies to a trust for the transferor's taxable year, and

(2) subsection (a) would have applied to the trust for his immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having income for the taxable year (in addition to his other income for such year) equal to the undistributed net income (at the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

(c) Trusts treated as having a United States beneficiary

(1) In general

For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

(2) Attribution of ownership

For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)),

(B) in the case of a foreign partnership, a United States person is a partner of such partnership, or

(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

(3) Certain United States beneficiaries disregarded

A beneficiary shall not be treated as a United States person in applying this section with respect to any transfer of property to foreign trust if such beneficiary first became a United States person more than 5 years after the date of such transfer.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 94-455, title X, §1013(a), Oct. 4, 1976, 90 Stat. 1614; amended Pub. L. 96-603, §2(b), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 104-188, title I, §1903(a)-(f), Aug. 20, 1996, 110 Stat. 1909, 1910; Pub. L. 105-34, title XVI, §1601(i)(2), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105-206, title VI, §6018(g), July 22, 1998, 112 Stat. 823.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-206 provided that the amendment made by section 1903(b) of Pub. L. 104-188 shall be applied as if “or” in the material proposed to be stricken were capitalized. See 1996 Amendment note below.

1997—Subsec. (a)(3)(C)(ii), (iii). Pub. L. 105-34 inserted “, owner,” after “grantor”.

1996—Subsec. (a)(1). Pub. L. 104-188, §1903(b), which directed that subsec. (a) of this section be amended by substituting “section 6048(a)(3)(B)(ii)” for “section 404(a)(4) or 404A”, was executed to par. (1) by making the substitution for “section 404(a)(4) Or section 404A” to reflect the probable intent of Congress. See 1998 Amendment note above.

Subsec. (a)(2)(B). Pub. L. 104-188, §1903(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “TRANSFERS WHERE GAIN IS RECOGNIZED TO TRANSFEROR.—To any sale or exchange of the property at its fair market value in a transaction in which all of the gain to the transferor is realized at the time of the transfer and is recognized either at such time or is returned as provided in section 453.”

Subsec. (a)(3). Pub. L. 104-188, §1903(a)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 104-188, §1903(c), added pars. (4) and (5).

Subsec. (c)(2)(A). Pub. L. 104-188, §1903(e), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation is owned (within the meaning of section 958(a)) or is considered to be owned (within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)).”

Subsec. (c)(3). Pub. L. 104-188, §1903(d), added par. (3).

Subsec. (d). Pub. L. 104-188, §1903(f), added subsec. (d).

1980—Subsec. (a)(1). Pub. L. 96-603 inserted “Or section 404A” after “section 404(a)(4)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105-206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which such amendment relates, see section 6018(h) of Pub. L. 105-206, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1903(g) of Pub. L. 104-188 provided that: “The amendments made by this section [amending this section] shall apply to transfers of property after February 6, 1995.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96-603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE

Section 1013(f)(1) of Pub. L. 94-455 provided that: “The amendments made by this section (other than subsection (c)) [enacting this section and amending sections 643, 678, 6048, and 6678 of this title] shall apply to taxable years ending after December 31, 1975, but only in the case of—

“(A) foreign trusts created after May 21, 1974, and

“(B) transfers of property to foreign trusts after May 21, 1974.”

SUBPART F—MISCELLANEOUS

Sec.

- 681. Limitation on charitable deduction.
- 682. Income of an estate or trust in case of divorce, etc.
- 683. Use of trust as an exchange fund.
- 684. Recognition of gain on certain transfers to certain foreign trusts and estates and non-resident aliens.
- 685. Treatment of funeral trusts.

AMENDMENT OF ANALYSIS

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2001—Pub. L. 107-16, title V, §542(e)(1)(D), title IX, §901, June 7, 2001, 115 Stat. 85, 150, temporarily inserted “and nonresident aliens” after “estates” in item 684.

1997—Pub. L. 105-34, title XI, §1131(c)(6), title XIII, §1309(b), Aug. 5, 1997, 111 Stat. 980, 1043, added items 684 and 685.

1976—Pub. L. 94-455, title XXI, §2131(e)(2), Oct. 4, 1976, 90 Stat. 1924, substituted “Use of trust as an exchange fund” for “Applicability of provisions” in item 683.

§ 681. Limitation on charitable deduction

(a) Trade or business income

In computing the deduction allowable under section 642(c) to a trust, no amount otherwise allowable under section 642(c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term “unrelated business income” means an amount equal to the amount which, if such trust were exempt from tax under section 501(a) by reason of section 501(c)(3), would be computed as its un-

related business taxable income under section 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

(b) Cross reference

For disallowance of certain charitable, etc., deductions otherwise allowable under section 642(c), see sections 508(d) and 4948(c)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 232; Pub. L. 90-630, § 6(b), Oct. 22, 1968, 82 Stat. 1330; Pub. L. 91-172, title I, §§ 101(j)(18), (19), 121(d)(2)(B), Dec. 30, 1969, 83 Stat. 528, 547.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91-172, § 121(d)(2)(B), substituted reference to certain property acquired with borrowed funds for reference to certain leases.

Subsec. (b). Pub. L. 91-172, § 101(j)(18), (19), redesignated subsec. (d) as (b) and substituted “sections 518(d) and 4948(c)(4)” for “section 503(e)”. Former subsec. (b), dealing generally with the operation of trusts, was struck out.

Subsec. (c). Pub. L. 91-172, § 101(j)(18), struck out subsec. (c) dealing with accumulated income.

Subsec. (d). Pub. L. 91-172, § 101(j)(19), redesignated subsec. (d) as (b).

1968—Subsec. (c). Pub. L. 90-630 inserted provision that par. (1) does not apply to income attributable to property transferred to a trust before January 1, 1951, by the creator thereof if the trust was irrevocable on such date and if the income is required to be accumulated pursuant to the mandatory terms of the instrument creating the trust.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(18), (19) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(B) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91-172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6(c) of Pub. L. 90-630 provided that: “The amendments made by subsection (a) [amending section 504 of this title] and (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. For purposes of sections 3814 and 162(g)(4) of the Internal Revenue Code of 1939, provisions having the same effect as such amendments shall be treated as included in such sections effective with respect to taxable years beginning after December 31, 1950.”

§ 682. Income of an estate or trust in case of divorce, etc.

(a) Inclusion in gross income of wife

There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money

or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) Wife considered a beneficiary

For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) applies, such wife shall be considered as the beneficiary specified in this part.

(c) Cross reference

For definitions of “husband” and “wife”, as used in this section, see section 7701(a)(17).

(Aug. 16, 1954, ch. 736, 68A Stat. 234; Pub. L. 98-369, div. A, title IV, § 422(d)(2), July 18, 1984, 98 Stat. 798.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out “or section 71” after “subsection (a)” and struck out provision that a periodic payment under section 71 to any portion of which this part applied shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98-369, set out as a note under section 71 of this title.

§ 683. Use of trust as an exchange fund

(a) General rule

Except as provided in subsection (b), if property is transferred to a trust in exchange for an interest in other trust property and if the trust would be an investment company (within the meaning of section 351) if it were a corporation, then gain shall be recognized to the transferor.

(b) Exception for pooled income funds

Subsection (a) shall not apply to any transfer to a pooled income fund (within the meaning of section 642(c)(5)).

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 94-455, title XXI, § 2131(e)(1), Oct. 4, 1976, 90 Stat. 1924.)

AMENDMENTS

1976—Pub. L. 94-455 substituted provisions relating to use of trust as an exchange fund for provisions setting forth rule that this part applies only to taxable years beginning after Dec. 31, 1953, and ending after the date of the enactment of this title and exceptions thereto.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of section by Pub. L. 94-455 effective on Apr. 8, 1976, in taxable years ending on or after such date, see section 2131(f)(6) of Pub. L. 94-455, set out as a note under section 584 of this title.

§ 684. Recognition of gain on certain transfers to certain foreign trusts and estates and non-resident aliens

(a) In general

Except as provided in regulations, in the case of any transfer of property by a United States person to a foreign estate or trust or to a non-resident alien, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

- (1) the fair market value of the property so transferred, over
- (2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(b) Exceptions

(1) Transfers to certain trusts

Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any United States person is treated as the owner of such trust under section 671.

(2) Lifetime transfers to nonresident aliens

Subsection (a) shall not apply to a lifetime transfer to a nonresident alien.

(c) Treatment of trusts which become foreign trusts

If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.

(Added Pub. L. 105-34, title XI, §1131(b), Aug. 5, 1997, 111 Stat. 978; amended Pub. L. 107-16, title V, §542(e)(1)(A)–(C), June 7, 2001, 115 Stat. 84, 85.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

CODIFICATION

Another section 1131(b) of Pub. L. 105-34 amended sections 367, 721, and 1035 of this title.

AMENDMENTS

2001—Pub. L. 107-16, §§542(e)(1)(A)–(C), 901, temporarily amended section by inserting “and nonresident aliens” after “estates” in section catchline and “or to a nonresident alien” after “or trust” in introductory provisions of subsec. (a) and amending subsec. (b) generally. Prior to amendment, text of subsec. (b) read as follows: “Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.” See Effective and Termination Dates of 2001 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 2001
AMENDMENT

Amendment by Pub. L. 107-16 applicable to transfers after Dec. 31, 2009, see section 542(f)(2) of Pub. L. 107-16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

§ 685. Treatment of funeral trusts

(a) In general

In the case of a qualified funeral trust—

- (1) subparts B, C, D, and E shall not apply, and
- (2) no deduction shall be allowed by section 642(b).

(b) Qualified funeral trust

For purposes of this subsection, the term “qualified funeral trust” means any trust (other than a foreign trust) if—

- (1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,
- (2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,
- (3) the only beneficiaries of such trust are individuals with respect to whom such services or property are to be provided at their death under contracts described in paragraph (1),
- (4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,
- (5) the trustee elects the application of this subsection, and
- (6) the trust would (but for the election described in paragraph (5)) be treated as owned under subpart E by the purchasers of the contracts described in paragraph (1).

A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death.

(c) Application of rate schedule

Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

(d) Treatment of amounts refunded to purchaser on cancellation

No gain or loss shall be recognized to a purchaser of a contract described in subsection (b)(1) by reason of any payment from such trust to such purchaser by reason of cancellation of such contract. If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such purchaser shall be the same as the trust's basis in such property immediately before the payment.

(e) Simplified reporting

The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee and of trusts terminated during the year.

(Added Pub. L. 105-34, title XIII, §1309(a), Aug. 5, 1997, 111 Stat. 1042; amended Pub. L. 105-206, title VI, §6013(b), July 22, 1998, 112 Stat. 820; Pub. L. 110-317, §9(a), (b), Aug. 29, 2008, 122 Stat. 3530.)

AMENDMENTS

2008—Subsecs. (c) to (f). Pub. L. 110-317 redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck

out former subsec. (c), which related to dollar limitation on contributions to qualified funeral trusts.

1998—Subsec. (b). Pub. L. 105-206, §6013(b)(1), inserted concluding provisions.

Subsec. (f). Pub. L. 105-206, §6013(b)(2), inserted “and of trusts terminated during the year” before period at end.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-317, §9(c), Aug. 29, 2008, 122 Stat. 3530, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 29, 2008].”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1309(c) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].”

PART II—INCOME IN RESPECT OF DECEDENTS

Sec.

691. Recipients of income in respect of decedents.
692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death.

AMENDMENTS

2003—Pub. L. 108-121, title I, §110(a)(3)(B), Nov. 11, 2003, 117 Stat. 1342, inserted “, astronauts,” after “Forces” in item 692.

2002—Pub. L. 107-134, title I, §101(c)(2), Jan. 23, 2002, 115 Stat. 2429, substituted “Income taxes of members of Armed Forces and victims of certain terrorist attacks on death” for “Income taxes of members of Armed Forces on death” in item 692.

§ 691. Recipients of income in respect of decedents

(a) Inclusion in gross income

(1) General rule

The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) Income in case of sale, etc.

If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term “transfer” includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) Character of income determined by reference to decedent

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) Installment obligations acquired from decedent

In the case of an installment obligation reportable by the decedent on the installment method under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

(A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453B).

(5) Other rules relating to installment obligations

(A) In general

In the case of an installment obligation reportable by the decedent on the installment

method under section 453, for purposes of paragraph (2)—

(i) the second sentence of paragraph (2) shall be applied by inserting “(other than the obligor)” after “or a transfer to a person”;

(ii) any cancellation of such an obligation shall be treated as a transfer, and

(iii) any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(B) Face amount treated as fair market value in certain cases

In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

(C) Cancellation includes becoming unenforceable

For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

(b) Allowance of deductions and credit

The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes

In the case of a deduction specified in sections 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion

In the case of the deduction specified in section 611, to the person described in subsection (a)(1)(A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) Deduction for estate tax

(1) Allowance of deduction

(A) General rule

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduc-

tion an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a)(1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a)(1).

(B) Estates and trusts

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a)(1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

(2) Method of computing deduction

For purposes of paragraph (1)—

(A) The term “estate tax” means the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a)(1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

(3) Special rule for generation-skipping transfers

In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination.

(4) Coordination with capital gain provisions

For purposes of sections 1(h), 1201, 1202, and 1211, the amount taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

(d) Amounts received by surviving annuitant under joint and survivor annuity contract

(1) Deduction for estate tax

For purposes of computing the deduction under subsection (c)(1)(A), amounts received by a surviving annuitant—

(A) as an annuity under a joint and survivor annuity contract where the decedent annuitant died after December 31, 1953, and after the annuity starting date (as defined in section 72(c)(4)), and

(B) during the surviving annuitant's life expectancy period, shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

(2) Net value for estate tax purposes

In determining the net value for estate tax purposes under subsection (c)(2)(B) for purposes of this subsection, the value for estate tax purposes of the items described in paragraph (1) of this subsection shall be computed—

(A) by determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under section 72 during the surviving annuitant's life expectancy period, and

(B) by multiplying the figure so obtained by the ratio which the value of the annuity for estate tax purposes bears to the value of the annuity at the date of the death of the deceased.

(3) Definitions

For purposes of this subsection—

(A) The term "life expectancy period" means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(B) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(e) Cross reference

For application of this section to income in respect of a deceased partner, see section 753.

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 88-272, title II, §221(c)(2), Feb. 26, 1964, 78 Stat. 75; Pub. L. 88-570, §1, Sept. 2, 1964, 78 Stat. 854; Pub. L. 94-455, title XIX, §§1901(a)(91), 1906(b)(13)(A), 1951(b)(10)(A), title XX, §§2005(a)(4), 2006(b)(3), Oct. 4, 1976, 90 Stat. 1779, 1834, 1839, 1876, 1889; Pub. L. 95-600, title VII, §702(b)(1), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96-222, title I, §101(a)(8)(A), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96-471, §§2(b)(5), 3, Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97-34, title IV, §403(a)(2)(C), Aug. 13, 1981, 95 Stat. 301; Pub. L. 98-369, div. A, title IV, §474(r)(18), July 18, 1984, 98 Stat. 843; Pub. L. 99-514, title III, §301(b)(8), title XIV, §1432(a)(3), Oct. 22, 1986, 100 Stat. 2217, 2729; Pub. L. 100-203, title X, §10202(c)(3), Dec. 22,

1987, 101 Stat. 1330-392; Pub. L. 100-647, title I, §1011A(g)(10), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 101-239, title VII, §7841(d)(3), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101-508, title XI, §11101(d)(4), Nov. 5, 1990, 104 Stat. 1388-405; Pub. L. 102-318, title V, §521(b)(27), July 3, 1992, 106 Stat. 312; Pub. L. 103-66, title XIII, §13113(d)(4), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104-188, title I, §§1401(b)(9), 1704(t)(73), Aug. 20, 1996, 110 Stat. 1789, 1891; Pub. L. 105-34, title X, §1073(b)(1), Aug. 5, 1997, 111 Stat. 948; Pub. L. 108-311, title IV, §402(a)(4), Oct. 4, 2004, 118 Stat. 1184.)

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108-311 struck out "of any gain" before "taken into account".

1997—Subsec. (c)(1)(C). Pub. L. 105-34 struck out heading and text of subpar. (C). Text read as follows: "For purposes of this subsection, no deduction shall be allowed for the portion of the estate tax attributable to the increase in such tax under section 4980A(d)."

1996—Subsec. (c)(5). Pub. L. 104-188, §1704(t)(73), provided that section 521(b)(27) of Pub. L. 102-318 shall be applied as if "Section 691(c)(5)" appeared instead of "Section 691(c)". See 1992 Amendment note below.

Pub. L. 104-188, §1401(b)(9), struck out par. (5) which read as follows:

"(5) COORDINATION WITH SECTION 402(d).—For purposes of section 402(d) (other than paragraph (1)(C) thereof), the total taxable amount of any lump sum distribution shall be reduced by the amount of the deduction allowable under paragraph (1) of this subsection which is attributable to the total taxable amount (determined without regard to this paragraph)."

1993—Subsec. (c)(4). Pub. L. 103-66 inserted "1202," after "1201,".

1992—Subsec. (c)(5). Pub. L. 102-318, which directed that section 691(c) be amended "in the text and heading" by substituting "402(d)" for "402(e)", was executed by making the substitution in subsec. (c)(5). See 1996 Amendment note above.

1990—Subsec. (c)(4). Pub. L. 101-508 substituted "1(h)" for "1(j)".

1989—Subsec. (c)(5). Pub. L. 101-239 substituted "paragraph (1)(C)" for "paragraph (1)(D)".

1988—Subsec. (c)(1)(C). Pub. L. 100-647 added subpar. (C).

1987—Subsec. (a)(4), (5)(A). Pub. L. 100-203 struck out "or 453A" after "section 453".

1986—Subsec. (c)(3). Pub. L. 99-514, §1432(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of this section—

"(A) the tax imposed by section 2601 or any State inheritance tax described in section 2602(c)(5)(B) on any generation-skipping transfer shall be treated as a tax imposed by section 2001 on the estate of the deemed transferor (as defined in section 2612(a));

"(B) any property transferred in such a transfer shall be treated as if it were included in the gross estate of the deemed transferor at the value of such property taken into account for purposes of the tax imposed by section 2601; and

"(C) under regulations prescribed by the Secretary, any item of gross income subject to the tax imposed under section 2601 shall be treated as income described in subsection (a) if such item is not properly includible in the gross income of the trust on or before the date of the generation-skipping transfer (within the meaning of section 2611(a)) and if such transfer occurs at or after the death of the deemed transferor (as so defined)."

Subsec. (c)(4). Pub. L. 99-514, §301(b)(8), substituted "capital gain provisions" for "capital gain deduction, etc." in heading and in text substituted "1(j), 1201, and 1211" for "1201, 1202, and 1211, and for purposes of section 57(a)(9)".

1984—Subsec. (b). Pub. L. 98-369 substituted "section 27" for "section 33" in provisions preceding par. (1) and in provisions of par. (1) preceding subpar. (A).

1981—Subsec. (c)(3)(A). Pub. L. 97-34 substituted “section 2602(c)(5)(B)” for “section 2602(c)(5)(C)”.

1980—Subsec. (a)(4). Pub. L. 96-471, §2(b)(5), substituted “reportable by the decedent on the installment method under section 453 or 453A” for “received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 453” in text preceding subpar. (A) and “section 453B” for “section 453(d)” in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 96-471, §3, added par. (5).

Subsec. (c)(2)(A), (C). Pub. L. 96-223 repealed the amendments made by Pub. L. 94-455, §2005(a)(4). See 1976 Amendment notes below.

Subsec. (c)(5). Pub. L. 96-222 added par. (5).

1978—Subsec. (c)(4). Pub. L. 95-600 added par. (4).

1976—Subsec. (c)(1)(B). Pub. L. 94-455, §1901(a)(91), struck out provision that this subparagraph applies to same taxable years, and to same extent, as is provided in section 683 of this title.

Subsec. (c)(2)(A). Pub. L. 94-455, §2005(a)(4)(A), substituted “Federal and State estate taxes (within the meaning of section 1023(f)(3))” for “the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax”. See Repeals note below.

Subsec. (c)(2)(C). Pub. L. 94-455, §2005(a)(4)(B), substituted “which bears the same ratio to the estate tax as such net value bears to the value of the gross estate” for “equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value”. See Repeals note below.

Subsec. (c)(3). Pub. L. 94-455, §2006(b)(3), added par. (3).

Subsec. (d)(3)(A), (B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsecs. (e), (f). Pub. L. 94-455, §1951(b)(10)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to certain installment obligations transmitted at death.

1964—Subsec. (c)(2)(B). Pub. L. 88-272 substituted “421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies” for “421(d)(6)(B), relating to the deduction for estate tax with respect to restricted stock options”.

Subsecs. (e), (f). Pub. L. 88-570 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108-27, see section 402(b) of Pub. L. 108-311, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105-34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(9) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104-188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e)

of Pub. L. 101-508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100-203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(8) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 1432(a)(3) of Pub. L. 99-514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

For effective date of amendment by section 2(b)(5) of Pub. L. 96-471, see section 6(a)(1) of Pub. L. 96-471, set out as an Effective Date note under section 453 of this title.

Section 6(b) of Pub. L. 96-471 provided: “The amendment made by section 3 [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Oct. 19, 1980].”

Amendment by Pub. L. 96-223 (repealing section 2005(a)(4) of Pub. L. 94-455 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96-223, set out as a note under section 1023 of this title.

Section 101(b)(1)(D) of Pub. L. 96-222 provided that: “The amendment made by subsection (a)(7) [probably means subsection (a)(8), which amended this section and section 2039 of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Apr. 1, 1980].”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(b)(2) of Pub. L. 95-600 provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to decedents dying after the date of the enactment of this Act [Nov. 6, 1978].”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(91) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976,

see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(10)(A) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

Amendment by section 2005(a)(4)(A), (B) of Pub. L. 94-455 applicable in respect of decedents dying after Dec. 31, 1979, see section 2005(f)(1) of Pub. L. 94-455, set out as a note under section 1015 of this title.

For effective date of amendment by section 2006(b)(3) of Pub. L. 94-455, see section 2006(c) of Pub. L. 94-455, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88-272, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94-455, §2005(a)(4), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96-223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(4). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

SAVINGS PROVISION

Section 1951(b)(10)(B) of Pub. L. 94-455 provided that: "Notwithstanding subparagraph (A) [amending this section], any election made under section 691(e) to have subsection (a)(4) of such section apply in the case of an installment obligation shall continue to be effective with respect to taxable years beginning after December 31, 1976. Section 691(c) shall not apply in respect of any amount included in gross income by reason of the preceding sentence. The liability under bond filed under section 44(d) of the Internal Revenue Code of 1939 (or corresponding provisions of prior law) in respect of which such an election applies is hereby released with respect to taxable years to which such election applies."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

§ 692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death

(a) General rule

In the case of any individual who dies while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in

which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) Individuals in missing status

For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 556 of title 37 of the United States Code. Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone.

(c) Certain military or civilian employees of the United States dying as a result of injuries

(1) In general

In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred in a terroristic or military action, any tax imposed by this subtitle shall not apply—

(A) with respect to the taxable year in which falls the date of his death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) Terroristic or military action

For purposes of paragraph (1), the term "terroristic or military action" means—

(A) any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and

(B) any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof).

For purposes of the preceding sentence, the term "military action" does not include training exercises.

(3) Treatment of multinational forces

For purposes of paragraph (2), any multinational force in which the United States is participating shall be treated as an ally of the United States.

(d) Individuals dying as a result of certain attacks**(1) In general**

In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

(A) with respect to the taxable year in which falls the date of death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (3) were incurred.

(2) \$10,000 minimum benefit

If, but for this paragraph, the amount of tax not imposed by paragraph (1) with respect to a specified terrorist victim is less than \$10,000, then such victim shall be treated as having made a payment against the tax imposed by this chapter for such victim's last taxable year in an amount equal to the excess of \$10,000 over the amount of tax not so imposed.

(3) Taxation of certain benefits

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts attributable to—

(A) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or

(B) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001.

(4) Specified terrorist victim

For purposes of this subsection, the term "specified terrorist victim" means any decedent—

(A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.

(5) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.

(Aug. 16, 1954, ch. 736, 68A Stat. 238; Pub. L. 93-597, §4(a), Jan. 2, 1975, 88 Stat. 1952; Pub. L. 94-455, title XIX, §1901(a)(92), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 94-569, §3(c), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 97-448, title III, §307(b), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98-259, §1(a), Apr. 10, 1984, 98 Stat. 142; Pub. L. 98-369, div. A, title

VII, §722(g)(2), (3), July 18, 1984, 98 Stat. 974; Pub. L. 99-514, title XVII, §1708(a)(2), Oct. 22, 1986, 100 Stat. 2782; Pub. L. 107-134, title I, §§101(a), (c)(1), 113(b), Jan. 23, 2002, 115 Stat. 2428, 2435; Pub. L. 108-121, title I, §110(a)(1), (3)(A), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Pub. L. 108-121, §110(a)(3)(A), inserted "astronauts," after "Forces" in section catchline.

Subsec. (d)(5). Pub. L. 108-121, §110(a)(1), added par. (5).

2002—Pub. L. 107-134, §101(c)(1), amended section catchline generally. Prior to amendment, catchline read as follows: "Income taxes on members of Armed Forces on death".

Subsec. (c). Pub. L. 107-134, §113(b)(2), struck out "sustained overseas" after "injuries" in heading.

Subsec. (c)(1). Pub. L. 107-134, §113(b)(1), struck out "outside the United States" before "in a terroristic or military action" in introductory provisions.

Subsec. (d). Pub. L. 107-134, §101(a), added subsec. (d).

1986—Subsec. (b). Pub. L. 99-514 amended last sentence generally. Prior to amendment, sentence read as follows: "The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning—

"(1) after December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

"(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1)."

1984—Subsec. (c). Pub. L. 98-259 added subsec. (c).

Subsec. (c)(1). Pub. L. 98-369, §722(g)(2), which directed amendment of par. (1) of this section by substituting "as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred" for "as a result of wounds or injury incurred" was executed to par. (1) of subsec. (c) to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 98-369, §722(g)(3), inserted "which a preponderance of the evidence indicates was".

1983—Subsec. (b)(1). Pub. L. 97-448 substituted "December 31, 1982" for "January 2, 1978".

1976—Subsec. (b). Pub. L. 94-569 substituted "to apply for any taxable year beginning" for "to apply for any taxable year beginning more than 2 years after" in provisions preceding par. (1), substituted "after January 2, 1978" for "the date of enactment of this subsection" in par. (1), and substituted "more than 2 years after the date designated" for "the date designated" in par. (2).

Pub. L. 94-455 substituted "of members" for "on members" in heading.

1975—Subsec. (a). Pub. L. 93-597, §4(a)(1), (2), designated existing provisions as subsec. (a), added heading, and in subsec. (a) as so designated, struck out "during an induction period (as defined in section 112(c)(5))", respectively.

Subsec. (b). Pub. L. 93-597, §4(a)(3), added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-121 applicable with respect to any astronaut whose death occurs after Dec. 31, 2002, see section 110(a)(4) of Pub. L. 108-121, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-134, title I, §101(d), Jan. 23, 2002, 115 Stat. 2429, provided that:

"(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 5 and 6013 of this title] shall apply to taxable years ending before, on, or after September 11, 2001.

"(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amend-

ments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.”

Amendment by section 113(b) of Pub. L. 107-134 applicable to taxable years ending on or after Sept. 11, 2001, see section 113(c) of Pub. L. 107-134, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99-514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 722(g)(5) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) IN GENERAL.—The amendments made by this subsection [amending this section and enacting and amending provisions set out below] shall take effect as if they were included in the amendments made by section 1 of Public Law 98-259 [amending this section and enacting provisions set out below].

“(B) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984].”

Section 1(b) of Pub. L. 98-259 as amended by Pub. L. 98-369, div. A, title VII, § 722(g)(1), July 18, 1984, 98 Stat. 974; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years (whether beginning before, on, or after the date of enactment of this Act [Apr. 10, 1984]) of individuals dying after November 17, 1978, as a result of wounds or injuries incurred after such date.

“(2) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4(b) of Pub. L. 93-597 provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years ending on or after February 28, 1961.”

REFUNDS AND CREDITS OF OVERPAYMENTS FOR TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 28, 1961, RESULTING FROM APPLICATION OF PROVISIONS

Section 4(c) of Pub. L. 93-597, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act [Jan. 2, 1975] by the operation of any law or rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of

his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.”

TREATMENT OF DIRECTOR GENERAL OF MULTINATIONAL FORCE IN SINAI

Section 722(g)(4) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “For purposes of section 692(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General.”

Subchapter K—Partners and Partnerships

Part

- I. Determination of tax liability.
- II. Contributions, distributions, and transfers.
- III. Definitions.
- IV. Special rules for electing large partnerships.

AMENDMENTS

1997—Pub. L. 105-34, title XII, § 1221(b), Aug. 5, 1997, 111 Stat. 1008, added item for part IV.

PART I—DETERMINATION OF TAX LIABILITY

Sec.

- 701. Partners, not partnership, subject to tax.
- 702. Income and credits of partner.
- 703. Partnership computations.
- 704. Partner's distributive share.
- 705. Determination of basis of partner's interest.
- 706. Taxable years of partner and partnership.
- 707. Transactions between partner and partnership.
- 708. Continuation of partnership.
- 709. Treatment of organization and syndication fees.

AMENDMENTS

1976—Pub. L. 94-455, title II, § 213(b)(2), title XIX, § 1901(b)(23), Oct. 4, 1976, 90 Stat. 1547, 1798, struck out part IV “Effective date for subchapter” in table of parts of subchapter K of chapter 1 and added item 709.

§ 701. Partners, not partnership, subject to tax

A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

(Aug. 16, 1954, ch. 736, 68A Stat. 239.)

§ 702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

- (1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,
- (2) gains and losses from sales or exchanges of capital assets held for more than 1 year,
- (3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),
- (4) charitable contributions (as defined in section 170(c)),
- (5) dividends with respect to which section 1(h)(11) or part VIII of subchapter B applies,