

(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.)

#### **Editorial Notes**

##### 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.

#### **Statutory Notes and Related Subsidiaries**

##### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title V, § 507(c)(2), Aug. 5, 1997, 111 Stat. 857, 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

Pub. L. 99-514, title XIV, § 1403(c), Oct. 22, 1986, 100 Stat. 2713, 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.)

#### **Editorial Notes**

##### 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.

#### **Statutory Notes and Related Subsidiaries**

##### EFFECTIVE DATE

Pub. L. 105-34, title XIII, § 1305(d), Aug. 5, 1997, 111 Stat. 1041, 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).<sup>1</sup>

**(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 includable 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 ac-

count 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 described 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 ad-

<sup>1</sup> See References in Text note below.