

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.)

Statutory Notes and Related Subsidiaries

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 sig-

nificant 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 vest 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 corporation 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.)

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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

Pub. L. 101-508, title XI, §11343(b), Nov. 5, 1990, 104 Stat. 1388-472, 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

Pub. L. 99-514, title XIV, §1401(b), Oct. 22, 1986, 100 Stat. 2711, 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 terminating 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 includable 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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

Pub. L. 99-514, title XIV, §1402(c), Oct. 22, 1986, 100 Stat. 2712, 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.