

**§ 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