which the estate was allowed a deduction under section 661(a). The application of this paragraph may be illustrated by the following examples:

Example 1. By his will D creates a trust for his widow W. The terms of the trust require that the income be distributed currently (i.e., it is a simple trust), and authorize the trustee to make discretionary payments of corpus to W. Upon W's death the trust corpus is to be distributed to D's then living issue. The executor of D's will makes a $10,000 distribution of corpus to the trust that carries out estate income consisting of dividends and interest to the trust under section 662(a)(2). The trust reports this income as its only income on its income tax return for its taxable year in which ends the taxable year of the estate in which the $10,000 distribution was made, and pays a tax thereon of $2,106. Thus, the trust has undistributed net income of $7,894 ($10,000 − $2,106). Several years later the trustee makes a discretionary corpus payment of $15,000 to W. This payment is an accumulation distribution under section 665(b). However, since the trust had no ''outside income'' in the year of the estate distribution, such year is not a preceding taxable year. Thus, W is not treated as receiving undistributed net income of $7,894 and taxes thereon of $2,106 for the purpose of including the same in her gross income under section 668. The result would be the same if the invasion power were not exercised and the accumulation distribution occurred as a result of the distribution of the corpus to D's issue upon the death of W.

Example 2. Trust A, a simple trust on the calendar year basis, received in 1972 extraordinary dividends or taxable stock dividends that the trustee in good faith allocated to corpus, but that are determined in 1974 to have been currently distributable to the beneficiary. See section 643(a)(4) and § 1.643(a)–4. Trust A would qualify for treatment under subpart C for 1974, the year of distribution of the extraordinary dividends or taxable stock dividends, because the distribution is not out of income of the current taxable year and is treated as another amount properly paid or credited or required to be distributed for such taxable year within the meaning of section 661(a) (2). Also, the distribution in 1974 qualifies as an accumulation distribution for the purposes of subpart D. For purposes only of such subpart D, trust A would be treated as subject to the provisions of such subpart C for 1972, the preceding taxable year in which the extraordinary or taxable stock dividends were received, and, in computing undistributed net income for 1972, the extraordinary or taxable stock dividends would be included in distributable net income under section 643(a). The rule stated in the preceding sentence would also apply if the distribution in 1974 was made out of corpus without regard to a determination that the extraordinary dividends or taxable stock dividends in question were currently distributable to the beneficiary.

[T.D. 7204, 37 FR 17141, Aug. 25, 1972]

§ 1.665(f)–1A Undistributed capital gain.

(a) *Domestic trusts.* (1) The term *undistributed capital gain* means (in the case of a trust other than a foreign trust created by a U.S. person), for any taxable year of the trust beginning after December 31, 1968, the gains in excess of losses for that year from the sale or exchange of capital assets of the trust less:

(i) The amount of such gains that are included in distributable net income under section 643(a)(3) and § 1.643(a)–3.

(ii) The amount of taxes imposed on the trust for such year attributable to such gains, as defined in § 1.665(d)–1A, and

(iii) In the case of a trust that does not use the alternative method for computing taxes on capital gains of the taxable year, the excess of deductions (other than deductions allowed under section 642(b) relating to personal exemption or section 642(c) relating to charitable contributions) over distributable net income for such year to the extent such excess deductions are properly allowable in determining taxable income for such year.

For purposes of computing the amount of capital gain under this paragraph, no deduction under section 1202, relating to deduction for excess of capital gains over capital losses, shall be taken into account. The application of this subparagraph may be illustrated by the following example:

Example. Under the terms of the trust, the trustee must distribute all income currently and has discretion to distribute capital gain to A or to allocate it to corpus. During the taxable year 1971 the trust recognized capital gain in the amount of $15,000, and capital losses of $5,000, and had interest income (after expenses) of $6,000. The trustee distributed $8,000 to A, consisting of $6,000 of interest and $2,000 of capital gain. The $2,000 of gain distributed to A is included in the computation of distributable net income under § 1.643(a)–3. The balance of the capital gain is not included in distributable net income since it is allocated to corpus and not paid, credited, or required to be distributed to any beneficiary. The trust paid taxes of $671, all

of which are attributable under § 1.665(d)–1A to the undistributed capital gain. The amount of undistributed capital gain of the trust for 1971 is therefore $7,329, computed as follows:

Total capital gains	$15,000
Less: Capital losses	5,000
Gains in excess of losses	10,000
Less:	
Amount of capital gain included in distributable net income	2,000
Taxes imposed on the trust attributable to the undistributed capital gain (see § 1.665(d)–1A)	671
	2,671
Undistributed capital gain	7,329

(2) For purposes of subparagraph (1) of this paragraph, the term *losses for that year* includes losses of the trusts from the sale or exchange of capital assets in preceding taxable years not included in the computation of distributable net income of any year, reduced by such losses taken into account in a subsequent preceding taxable year in computing undistributed capital gain but not reduced by such losses taken into account in determining the deduction under section 1211. See section 1212(b)(2) and the regulations thereunder. For example, assume that a trust had a net long-term capital loss in 1970 of $5,000. During the years 1971 through 1975, the trust had no capital gains or capital losses. In 1976, it has a long-term capital gain of $8,000, which it allocates to corpus and does not distribute to a beneficiary, but has no taxes attributable to such gain. The undistributed capital gain for 1976 is $8,000 − $5,000, or $3,000, even though all or a part of the $5,000 loss was claimed under section 1211 as a deduction in years 1970 through 1975.

(b) *Foreign trusts*. Distributable net income for a taxable year of a foreign trust created by a U.S. person includes capital gains in excess of capital losses for such year (see § 1.643(a)–6(a)(3)). Thus, a foreign trust created by a U.S. person can never have any undistributed capital gain.

[T.D. 7204, 37 FR 17142, Aug. 25, 1972]

§ 1.665(g)–1A Capital gain distribution.

For any taxable year of a trust, the term *capital gain distribution* means, to the extent of the undistributed capital gain of the trust, that portion of an accumulation distribution that exceeds the amount of such accumulation distribution deemed under section 666(a) to be undistributed net income of the trust for all preceding taxable years. See § 1.665(b)–1A for the definition of ''accumulation distribution''. For any such taxable year the undistributed capital gain includes the total undistributed capital gain for all years of the trust beginning with the first taxable year beginning after December 31, 1968, in which income (as determined under section 643(b)) is accumulated, and ending before such taxable year. See § 1.665(g)–2A for application of the separate share rule. The application of this section may be illustrated by the following example:

Example. A trust on the calendar year basis made the following accumulations. For purposes of this example, the undistributed net income is the same as income under applicable local law. No income was accumulated prior to 1970.

Year	Undistributed net income	Undistributed capital gain
1969	None	$10,000
1970	$1,000	3,000
1971	None	4,000

The trust has distributable net income in 1972 of $2,000 and recognizes capital gains of $4,500 that are allocable to corpus. On December 31, 1972, the trustee makes a distribution of $20,000 to the beneficiary. There is an accumulation distribution of $18,000 $20,000 distribution less $2,000 d.n.i.) that consists of undistributed net income of $1,000 (see § 1.666(a)–1A) and a capital gain distribution of $7,000. The capital gain distribution is computed as follows:

Accumulation distribution	$18,000
Less: Undistributed net income	1,000
Balance	17,000
Capital gain distribution (undistributed capital gain of the trust for 1972 ($3,000 from 1970 and $4,000 from 1971))	7,000
Balance (corpus)	10,000

No undistributed capital gain is deemed distributed from 1969 because 1969 is a year prior to the first year in which income is accumulated (1970). The accumulation distribution is not deemed to consist of any part of the capital gains recognized in 1972.

[T.D. 7204, 37 FR 17142, Aug. 25, 1972]