

§ 1.645-1

26 CFR Ch. I (4-1-12 Edition)

ELECTION TO TREAT TRUST AS PART OF
AN ESTATE

§ 1.645-1 Election by certain revocable trusts to be treated as part of estate.

(a) *In general.* If an election is filed for a qualified revocable trust, as defined in paragraph (b)(1) of this section, in accordance with the rules set forth in paragraph (c) of this section, the qualified revocable trust is treated and taxed for purposes of subtitle A of the Internal Revenue Code as part of its related estate, as defined in paragraph (b)(5) of this section (and not as a separate trust) during the election period, as defined in paragraph (b)(6) of this section. Rules regarding the use of taxpayer identification numbers (TINs) and the filing of a Form 1041, "U.S. Income Tax Return for Estates and Trusts," for a qualified revocable trust are in paragraph (d) of this section. Rules regarding the tax treatment of an electing trust and related estate and the general filing requirements for the combined entity during the election period are in paragraph (e)(2) of this section. Rules regarding the tax treatment of an electing trust and its filing requirements during the election period if no executor, as defined in paragraph (b)(4) of this section, is appointed for a related estate are in paragraph (e)(3) of this section. Rules for determining the duration of the section 645 election period are in paragraph (f) of this section. Rules regarding the tax effects of the termination of the election are in paragraph (h) of this section. Rules regarding the tax consequences of the appointment of an executor after a trustee has made a section 645 election believing that an executor would not be appointed for a related estate are in paragraph (g) of this section.

(b) *Definitions.* For purposes of this section:

(1) *Qualified revocable trust.* A *qualified revocable trust* (QRT) is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). A trust that was treated as owned by the decedent under section

676 by reason of a power that was exercisable by the decedent only with the approval or consent of a nonadverse party or with the approval or consent of the decedent's spouse is a QRT. A trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party or by reason of a power held by the decedent's spouse is not a QRT.

(2) *Electing trust.* An *electing trust* is a QRT for which a valid section 645 election has been made. Once a section 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

(3) *Decedent.* The *decedent* is the individual who was treated as the owner of the QRT under section 676 on the date of that individual's death.

(4) *Executor.* An *executor* is an executor, personal representative, or administrator that has obtained letters of appointment to administer the decedent's estate through formal or informal appointment procedures. Solely for purposes of this paragraph (b)(4), an executor does not include a person that has actual or constructive possession of property of the decedent unless that person is also appointed or qualified as an executor, administrator, or personal representative of the decedent's estate. If more than one jurisdiction has appointed an executor, the executor appointed in the domiciliary or primary proceeding is the executor of the related estate for purposes of this paragraph (b)(4).

(5) *Related estate.* A *related estate* is the estate of the decedent who was treated as the owner of the QRT on the date of the decedent's death.

(6) *Election period.* The *election period* is the period of time during which an electing trust is treated and taxed as part of its related estate. The rules for determining the duration of the election period are in paragraph (f) of this section.

(c) *The election—*(1) *Filing the election if there is an executor—*(i) *Time and manner for filing the election.* If there is an executor of the related estate, the trustees of each QRT joining in the election and the executor of the related estate make an election under section 645 and this section to treat each QRT

joining in the election as part of the related estate for purposes of subtitle A of the Internal Revenue Code by filing a form provided by the IRS for making the election (election form) properly completed and signed under penalties of perjury, or in any other manner prescribed after December 24, 2002 by forms provided by the Internal Revenue Service (IRS), or by other published guidance for making the election. For the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the related estate (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the related estate, the election form will be timely filed if it is filed by the time prescribed for filing the Form 1041 including the extension granted with respect to the Form 1041.

(ii) *Conditions to election.* In addition to providing the information required by the election form, as a condition to a valid section 645 election, the trustee of each QRT joining in the election and the executor of the related estate agree, by signing the election form under penalties of perjury, that:

(A) With respect to a trustee—

(1) The trustee agrees to the election;

(2) The trustee is responsible for timely providing the executor of the related estate with all the trust information necessary to permit the executor to file a complete, accurate, and timely Form 1041 for the combined electing trust(s) and related estate for each taxable year during the election period;

(3) The trustee of each QRT joining the election and the executor of the related estate have agreed to allocate the tax burden of the combined electing trust(s) and related estate for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust and the related estate; and

(4) The trustee is responsible for insuring that the electing trust's share of the tax obligations of the combined electing trust(s) and related estate is timely paid to the Secretary.

(B) With respect to the executor—

(1) The executor agrees to the election;

(2) The executor is responsible for filing a complete, accurate, and timely Form 1041 for the combined electing trust(s) and related estate for each taxable year during the election period;

(3) The executor and the trustee of each QRT joining in the election have agreed to allocate the tax burden of the combined electing trust(s) and related estate for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust and the related estate;

(4) The executor is responsible for insuring that the related estate's share of the tax obligations of the combined electing trust(s) and related estate is timely paid to the Secretary.

(2) *Filing the election if there is no executor—*(i) *Time and manner for filing the election.* If there is no executor for a related estate, an election to treat one or more QRTs of the decedent as an estate for purposes of subtitle A of the Internal Revenue Code is made by the trustees of each QRT joining in the election, by filing a properly completed election form, or in any other manner prescribed after December 24, 2002 by forms provided by the IRS, or by other published guidance for making the election. For the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the trust, taking into account the trustee's election to treat the trust as an estate under section 645 (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the electing trust, the election form will be timely filed if it is filed by the time prescribed for filing the Form 1041 including the extension granted with respect to the filing of the Form 1041.

(ii) *Conditions to election.* In addition to providing the information required by the election form, as a condition to a valid section 645 election, the trustee of each QRT joining in the election agrees, by signing the election form under penalties of perjury, that—

(A) The trustee agrees to the election;

(B) If there is more than one QRT joining in the election, the trustees of each QRT joining in the election have appointed one trustee to be responsible for filing the Form 1041 for the combined electing trusts for each taxable year during the election period (filing trustee) and the filing trustee has agreed to accept that responsibility;

(C) If there is more than one QRT, the trustees of each QRT joining in the election have agreed to allocate the tax liability of the combined electing trusts for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust;

(D) The trustee agrees to:

(1) Timely file a Form 1041 for the electing trust(s) for each taxable year during the election period; or

(2) If there is more than one QRT and the trustee is not the filing trustee, timely provide the filing trustee with all of the electing trust's information necessary to permit the filing trustee to file a complete, accurate, and timely Form 1041 for the combined electing trusts for each taxable year during the election period;

(3) Insure that the electing trust's share of the tax burden is timely paid to the Secretary;

(E) There is no executor and, to the knowledge and belief of the trustee, one will not be appointed; and

(F) If an executor is appointed after the filing of the election form and the executor agrees to the section 645 election, the trustee will complete and file a revised election form with the executor.

(3) *Election for more than one QRT.* If there is more than one QRT, the election may be made for some or all of the QRTs. If there is no executor, one trustee must be appointed by the trustees of the electing trusts to file Forms 1041 for the combined electing trusts filing as an estate during the election period.

(d) *TIN and filing requirements for a QRT—(1) Obtaining a TIN.* Regardless of whether there is an executor for a related estate and regardless of whether a section 645 election will be made for the QRT, a TIN must be obtained for

the QRT following the death of the decedent. See §301.6109-1(a)(3) of this chapter. The trustee must furnish this TIN to the payors of the QRT. See §301.6109-1(a)(5) of this chapter for the definition of payor.

(2) *Filing a Form 1041 for a QRT—(i) Option not to file a Form 1041 for a QRT for which a section 645 election will be made.* If a section 645 election will be made for a QRT, the executor of the related estate, if any, and the trustee of the QRT may treat the QRT as an electing trust from the decedent's date of death until the due date for the section 645 election. Accordingly, the trustee of the QRT is not required to file a Form 1041 for the QRT for the short taxable year beginning with the decedent's date of death and ending December 31 of that year. However, if a QRT is treated as an electing trust under this paragraph from the decedent's date of death until the due date for the section 645 election but a valid section 645 election is not made for the QRT, the QRT will be subject to penalties and interest for failing to timely file a Form 1041 and pay the tax due thereon.

(ii) *Requirement to file a Form 1041 for a QRT if paragraph (d)(2)(i) of this section does not apply—(A) Requirement to file Form 1041.* If the trustee of the QRT and the executor of the related estate, if any, do not treat the QRT as an electing trust as provided under paragraph (d)(2)(i) of this section, or if the trustee of the electing trust and the executor, if any, are uncertain whether a section 645 election will be made for a QRT, the trustee of the QRT must file a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year (unless the QRT is not required to file a Form 1041 under section 6012 for this period).

(B) *Requirement to amend Form 1041 if a section 645 election is made—(1) If there is an executor.* If there is an executor and a valid section 645 election is made for a QRT after a Form 1041 has been filed for the QRT as a trust (see paragraph (d)(2)(ii)(A) of this section), the trustee must amend the Form 1041. The QRT's items of income, deduction, and credit must be excluded from the amended Form 1041 filed under this

paragraph and must be included on the Form 1041 filed for the first taxable year of the combined electing trust and related estate under paragraph (e)(2)(ii)(A) of this section.

(2) *If there is no executor.* If there is no executor and a valid section 645 election is made for a QRT after a Form 1041 has been filed for the QRT as a trust (see paragraph (d)(2)(ii)(A) of this section) for the short taxable year beginning with the decedent's death and ending December 31 of that year, the trustee must file an amended return for the QRT. The amended return must be filed consistent with paragraph (e)(3) of this section and must be filed by the due date of the Form 1041 for the QRT, taking into account the trustee's election under section 645.

(e) *Tax treatment and general filing requirements of electing trust and related estate during the election period—(1) Effect of election.* The section 645 election once made is irrevocable.

(2) *If there is an executor—(i) Tax treatment of the combined electing trust and related estate.* If there is an executor, the electing trust is treated, during the election period, as part of the related estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, the electing trust is treated as part of the related estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities in section 469(i)(4).

(ii) *Filing requirements—(A) Filing the Form 1041 for the combined electing trust and related estate during the election period.* If there is an executor, the executor files a single income tax return annually (assuming a return is required under section 6012) under the name and TIN of the related estate for the combined electing trust and the related estate. Information regarding the name and TIN of each electing trust must be provided on the Form 1041 as required by the instructions to that form. The period of limitations provided in section 6501 for assessments with respect to an electing trust and the related estate starts with the filing of the return required under this paragraph. Except as required under the separate share

rules of section 663(c), for purposes of filing the Form 1041 under this paragraph and computing the tax, the items of income, deduction, and credit of the electing trust and related estate are combined. One personal exemption in the amount of \$600 is permitted under section 642(b), and the tax is computed under section 1(e), taking into account section 1(h), for the combined taxable income.

(B) *Filing a Form 1041 for the electing trust is not required.* Except for any final Form 1041 required to be filed under paragraph (h)(2)(i)(B) of this section, if there is an executor, the trustee of the electing trust does not file a Form 1041 for the electing trust during the election period. Although the trustee is not required to file a Form 1041 for the electing trust, the trustee of the electing trust must timely provide the executor of the related estate with all the trust information necessary to permit the executor to file a complete, accurate and timely Form 1041 for the combined electing trust and related estate. The trustee must also insure that the electing trust's share of the tax obligations of the combined electing trust and related estate is timely paid to the Secretary. In certain situations, the trustee of a QRT may be required to file a Form 1041 for the QRT's short taxable year beginning with the date of the decedent's death and ending December 31 of that year. See paragraph (d)(2) of this section.

(iii) *Application of the separate share rules—(A) Distributions to beneficiaries (other than to a share (or shares) of the combined electing trust and related estate).* Under the separate share rules of section 663(c), the electing trust and related estate are treated as separate shares for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. Further, the electing trust share or the related estate share may each contain two or more shares. Thus, if during the taxable year, a distribution is made by the electing trust or the related estate, the DNI of the share making the distribution must be determined and the distribution provisions of sections 661 and 662 must be applied using the separately determined

DNI applicable to the distributing share.

(B) *Adjustments to the DNI of the separate shares for distributions between shares to which sections 661 and 662 would apply.* A distribution from one share to another share to which sections 661 and 662 would apply if made to a beneficiary other than another share of the combined electing trust and related estate affects the computation of the DNI of the share making the distribution and the share receiving the distribution. The share making the distribution reduces its DNI by the amount of the distribution deduction that it would be entitled to under section 661 (determined without regard to section 661(c)), had the distribution been made to another beneficiary, and, solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount. The distribution has the same character in the hands of the recipient share as in the hands of the distributing share. The following example illustrates the provisions of this paragraph (e)(2)(iii)(B):

Example. (i) A's will provides that, after the payment of debts, expenses, and taxes, the residue of A's estate is to be distributed to Trust, an electing trust. The sole beneficiary of Trust is C. The estate share has \$15,000 of gross income, \$5,000 of deductions, and \$10,000 of taxable income and DNI for the taxable year based on the assets held in A's estate. During the taxable year, A's estate distributes \$15,000 to Trust. The distribution reduces the DNI of the estate share by \$10,000.

(ii) For the same taxable year, the trust share has \$25,000 of gross income and \$5,000 of deductions. None of the modifications provided for under section 643(a) apply. In calculating the DNI for the trust share, the gross income of the trust share is increased by \$10,000, the amount of the reduction in the DNI of the estate share as a result of the distribution to Trust. Thus, solely for purposes of calculating DNI, the trust share has gross income of \$35,000, and taxable income of \$30,000. Therefore, the trust share has \$30,000 of DNI for the taxable year.

(iii) During the same taxable year, Trust distributes \$35,000 to C. The distribution deduction reported on the Form 1041 filed for A's estate and Trust is \$30,000. As a result of the distribution by Trust to C, C must include \$30,000 in gross income for the taxable year. The gross income reported on the Form 1041 filed for A's estate and Trust is \$40,000.

(iv) *Application of the governing instrument requirement of section 642(c).* A deduction is allowed in computing the taxable income of the combined electing trust and related estate to the extent permitted under section 642(c) for—

(A) Any amount of the gross income of the related estate that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the related estate for a purpose specified in section 170(c); and

(B) Any amount of gross income of the electing trust that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the electing trust for a purpose specified in section 170(c).

(3) *If there is no executor—(i) Tax treatment of the electing trust.* If there is no executor, the trustee treats the electing trust, during the election period, as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, an electing trust is treated as an estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities under section 469(i)(4). The trustee may also adopt a taxable year other than a calendar year.

(ii) *Filing the Form 1041 for the electing trust.* If there is no executor, the trustee of the electing trust must, during the election period, file a Form 1041, under the TIN obtained by the trustee under § 301.6109-1(a)(3) of this chapter upon the death of the decedent, treating the trust as an estate. If there is more than one electing trust, the Form 1041 must be filed by the filing trustee (see paragraph (c)(2)(ii)(B) of this section) under the name and TIN of the electing trust of the filing trustee. Information regarding the names and TINs of the other electing trusts must be provided on the Form 1041 as required by the instructions to that form. Any return filed in accordance with this paragraph shall be treated as a return filed for the electing trust (or trusts, if there is more than one electing trust) and not as a return filed for

any subsequently discovered related estate. Accordingly, the period of limitations provided in section 6501 for assessments with respect to a subsequently discovered related estate does not start until a return is filed with respect to the related estate. See paragraph (g) of this section.

(4) *Application of the section 6654(1)(2) to the electing trust.* Each electing trust and related estate (if any) is treated as a separate taxpayer for all purposes of subtitle F of the Internal Revenue Code, including, without limitation, the application of section 6654. The provisions of section 6654(1)(2)(A) relating to the two year exception to an estate's obligation to make estimated tax payments, however, will apply to each electing trust for which a section 645 election has been made.

(f) *Duration of election period—(1) In general.* The election period begins on the date of the decedent's death and terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all of their assets, or the day before the applicable date. The election does not apply to successor trusts (trusts that are distributees under the trust instrument).

(2) *Definition of applicable date—(i) Applicable date if no Form 706 “United States Estate (and Generation Skipping Transfer) Tax Return” is required to be filed.* If a Form 706 is not required to be filed as a result of the decedent's death, the applicable date is the day which is 2 years after the date of the decedent's death.

(ii) *Applicable date if a Form 706 is required to be filed.* If a Form 706 is required to be filed as a result of the decedent's death, the applicable date is the later of the day that is 2 years after the date of the decedent's death, or the day that is 6 months after the date of final determination of liability for estate tax. Solely for purposes of determining the applicable date under section 645, the date of final determination of liability is the earliest of the following—

(A) The date that is six months after the issuance by the Internal Revenue Service of an estate tax closing letter, unless a claim for refund with respect

to the estate tax is filed within twelve months after the issuance of the letter;

(B) The date of a final disposition of a claim for refund, as defined in paragraph (f)(2)(iii) of this section, that resolves the liability for the estate tax, unless suit is instituted within six months after a final disposition of the claim;

(C) The date of execution of a settlement agreement with the Internal Revenue Service that determines the liability for the estate tax;

(D) The date of issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax unless a notice of appeal or a petition for certiorari is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court; or

(E) The date of expiration of the period of limitations for assessment of the estate tax provided in section 6501.

(iii) *Definition of final disposition of claim for refund.* For purposes of paragraph (f)(2)(ii)(B) of this section, a claim for refund shall be deemed finally disposed of by the Secretary when all items have been either allowed or disallowed. If a waiver of notification with respect to disallowance is filed with respect to a claim for refund prior to disallowance of the claim, the claim for refund will be treated as disallowed on the date the waiver is filed.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. A died on October 20, 2002. The executor of A's estate and the trustee of Trust, an electing trust, made a section 645 election. A Form 706 is not required to be filed as a result of A's death. The applicable date is October 20, 2004, the day that is two years after A's date of death. The last day of the election period is October 19, 2004. Beginning October 20, 2004, Trust will no longer be treated and taxed as part of A's estate.

Example 2. Assume the same facts as *Example 1*, except that a Form 706 is required to be filed as the result of A's death. The Internal Revenue Service issues an estate tax closing letter accepting the Form 706 as filed on March 15, 2005. The estate does not file a claim for refund by March 15, 2006, the day that is twelve months after the date of issuance of the estate tax closing letter. The date of final determination of liability is September 15, 2005, and the applicable date is March 15, 2006. The last day of the election

period is March 14, 2006. Beginning March 15, 2006, Trust will no longer be treated and taxed as part of A's estate.

Example 3. Assume the same facts as *Example 1*, except that a Form 706 is required to be filed as the result of A's death. The Form 706 is audited, and a notice of deficiency authorized under section 6212 is mailed to the executor of A's estate as a result of the audit. The executor files a petition in Tax Court. The Tax Court issues a decision resolving the liability for estate tax on December 14, 2005, and neither party appeals within 90 days after the issuance of the decision. The date of final determination of liability is December 14, 2005. The applicable date is June 14, 2006, the day that is six months after the date of final determination of liability. The last day of the election period is June 13, 2006. Beginning June 14, 2006, Trust will no longer be treated and taxed as part of A's estate.

(g) *Executor appointed after the section 645 election is made*—(1) *Effect on the election.* If an executor for the related estate is not appointed until after the trustee has made a valid section 645 election, the executor must agree to the trustee's election, and the IRS must be notified of that agreement by the filing of a revised election form (completed as required by the instructions to that form) within 90 days of the appointment of the executor, for the election period to continue past the date of appointment of the executor. If the executor does not agree to the election or a revised election form is not timely filed as required by this paragraph, the election period terminates the day before the appointment of the executor. If the IRS issues other guidance after December 24, 2002 for notifying the IRS of the executor's agreement to the election, the IRS must be notified in the manner provided in that guidance for the election period to continue.

(2) *Continuation of election period*—(i) *Correction of returns filed before executor appointed.* If the election period continues under paragraph (g)(1) of this section, the executor of the related estate and the trustee of each electing trust must file amended Forms 1041 to correct the Forms 1041 filed by the trustee before the executor was appointed. The amended Forms 1041 must be filed under the name and TIN of the electing trust and must reflect the items of income, deduction, and credit

of the related estate and the electing trust. The name and TIN of the related estate must be provided on the amended Forms 1041 as required in the instructions to that Form. The amended return for the taxable year ending immediately before the executor was appointed must indicate that this Form 1041 is a final return. If the period of limitations for making assessments has expired with respect to the electing trust for any of the Forms 1041 filed by the trustee, the executor must file Forms 1041 for any items of income, deduction, and credit of the related estate that cannot be properly included on amended forms for the electing trust. The personal exemption under section 642(b) is not permitted to be taken on these Forms 1041 filed by the executor.

(ii) *Returns filed after the appointment of the executor.* All returns filed by the combined electing trust and related estate after the appointment of the executor are to be filed under the name and TIN of the related estate in accordance with paragraph (e)(2) of this section. Regardless of the change in the name and TIN under which the Forms 1041 for the combined electing trust and related estate are filed, the combined electing trust and related estate will be treated as the same entity before and after the executor is appointed.

(3) *Termination of the election period.* If the election period terminates under paragraph (g)(1) of this section, the executor must file Forms 1041 under the name and TIN of the estate for all taxable years of the related estate ending after the death of the decedent. The trustee of the electing trust is not required to amend any returns filed for the electing trust during the election period. Following termination of the election period, the trustee of the electing trust must obtain a new TIN. See § 301.6109-1(a)(4) of this chapter.

(h) *Treatment of an electing trust and related estate following termination of the election*—(1) *The share (or shares) comprising the electing trust is deemed to be distributed upon termination of the election period.* On the close of the last day of the election period, the combined electing trust and related estate, if there is an executor, or the electing

trust, if there is no executor, is deemed to distribute the share (or shares, as determined under section 663(c)) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. All items of income, including net capital gains, that are attributable to the share (or shares) comprising the electing trust are included in the calculation of the distributable net income of the electing trust and treated as distributed by the combined electing trust and related estate, if there is an executor, or by the electing trust, if there is no executor, to the new trust. The combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust shall include the amount of the deemed distribution in gross income to the extent required under section 662.

(2) *Filing of the Form 1041 upon the termination of the section 645 election*—(i) *If there is an executor*—(A) *Filing the Form 1041 for the year of termination.* If there is an executor, the Form 1041 filed under the name and TIN of the related estate for the taxable year in which the election terminates includes—

(1) The items of income, deduction, and credit of the electing trust attributable to the period beginning with the first day of the taxable year of the combined electing trust and related estate and ending with the last day of the election period;

(2) The items of income, deduction, and credit, if any, of the related estate for the entire taxable year; and

(3) A deduction for the deemed distribution of the share (or shares) comprising the electing trust to the new trust as provided for under paragraph (h)(1) of this section.

(B) *Requirement to file a final Form 1041 under the name and TIN of the electing trust.* If the electing trust terminates during the election period, the trustee of the electing trust must file a Form 1041 under the name and TIN of the electing trust and indicate that the return is a final return to notify the IRS that the electing trust is no longer

in existence. The items of income, deduction, and credit of the trust are not reported on this final Form 1041 but on the appropriate Form 1041 filed for the combined electing trust and related estate.

(ii) *If there is no executor.* If there is no executor, the taxable year of the electing trust closes on the last day of the election period. A Form 1041 is filed in the manner prescribed under paragraph (e)(3)(ii) of this section reporting the items of income, deduction, and credit of the electing trust for the short period ending with the last day of the election period. The Form 1041 filed under this paragraph includes a distribution deduction for the deemed distribution provided for under paragraph (h)(1) of this section. The Form 1041 must indicate that it is a final return.

(3) *Use of TINs following termination of the election*—(i) *If there is an executor.* Upon termination of the section 645 election, a former electing trust may need to obtain a new TIN. See § 301.6109-1(a)(4) of this chapter. If the related estate continues after the termination of the election period, the related estate must continue to use the TIN assigned to the estate during the election period.

(ii) *If there is no executor.* If there is no executor, the former electing trust must obtain a new TIN if the trust will continue after the termination of the election period. See § 301.6109-1(a)(4) of this chapter.

(4) *Taxable year of estate and trust upon termination of the election*—(i) *Estate*—Upon termination of the section 645 election period, the taxable year of the estate is the same taxable year used during the election period.

(ii) *Trust.* Upon termination of the section 645 election, the taxable year of the new trust is the calendar year. See section 644.

(i) [Reserved]

(j) *Effective date.* Paragraphs (a), (b), (c), (d), (f), and (g) of this section apply to trusts and estates of decedents dying on or after December 24, 2002. Paragraphs (e) and (h) of this section apply to taxable years ending on or after December 24, 2002.

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§ 1.651(a)-1

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TRUSTS WHICH DISTRIBUTE CURRENT
INCOME ONLY

§ 1.651(a)-1 Simple trusts; deduction for distributions; in general.

Section 651 is applicable only to a trust the governing instruments of which:

(a) Requires that the trust distribute all of its income currently for the taxable year, and

(b) Does not provide that any amounts may be paid, permanently set aside, or used in the taxable year for the charitable, etc., purposes specified in section 642(c),

and does not make any distribution other than of current income. A trust to which section 651 applies is referred to in this part as a "simple" trust. Trusts subject to section 661 are referred to as "complex" trusts. A trust may be a simple trust for one year and a complex trust for another year. It should be noted that under section 651 a trust qualifies as a simple trust in a taxable year in which it is required to distribute all its income currently and makes no other distributions, whether or not distributions of current income are in fact made. On the other hand a trust is not a complex trust by reason of distributions of amounts other than income unless such distributions are in fact made during the taxable year, whether or not they are required in that year.

§ 1.651(a)-2 Income required to be distributed currently.

(a) The determination of whether trust income is required to be distributed currently depends upon the terms of the trust instrument and the applicable local law. For this purpose, if the trust instrument provides that the trustee in determining the distributable income shall first retain a reserve for depreciation or otherwise make due allowance for keeping the trust corpus intact by retaining a reasonable amount of the current income for that purpose, the retention of current income for that purpose will not disqualify the trust from being a "simple" trust. The fiduciary must be under a duty to distribute the income currently even if, as a matter of practical necessity, the income is not distributed

until after the close of the trust's taxable year. For example: Under the terms of the trust instrument, all of the income is currently distributable to A. The trust reports on the calendar year basis and as a matter of practical necessity makes distribution to A of each quarter's income on the fifteenth day of the month following the close of the quarter. The distribution made by the trust on January 15, 1955, of the income for the fourth quarter of 1954 does not disqualify the trust from treatment in 1955 under section 651, since the income is required to be distributed currently. However, if the terms of a trust require that none of the income be distributed until after the year of its receipt by the trust, the income of the trust is not required to be distributed currently and the trust is not a simple trust. For definition of the term "income" see section 643(b) and § 1.643(b)-1.

(b) It is immaterial, for purposes of determining whether all the income is required to be distributed currently, that the amount of income allocated to a particular beneficiary is not specified in the instrument. For example, if the fiduciary is required to distribute all the income currently, but has discretion to "sprinkle" the income among a class of beneficiaries, or among named beneficiaries, in such amount as he may see fit, all the income is required to be distributed currently, even though the amount distributable to a particular beneficiary is unknown until the fiduciary has exercised his discretion.

(c) If in one taxable year of a trust its income for that year is required or permitted to be accumulated, and in another taxable year its income for the year is required to be distributed currently (and no other amounts are distributed), the trust is a simple trust for the latter year. For example, a trust under which income may be accumulated until a beneficiary is 21 years old, and thereafter must be distributed currently, is a simple trust for taxable years beginning after the beneficiary reaches the age of 21 years in which no other amounts are distributed.