

does not apply if the distribution is received by such beneficiary under circumstances indicating lack of intent on the part of the parties to circumvent the purposes for which section 7 of the Revenue Act of 1962 (76 Stat. 985) was enacted.

[T.D. 7204, 37 FR 17139 Aug. 25, 1972]

§ 1.665(d)-1A Taxes imposed on the trust.

(a) *In general.* (1) For purposes of subpart D, the term *taxes imposed on the trust* means the amount of Federal income taxes properly imposed for any taxable year on the trust that are attributable to the undistributed portions of distributable net income and gains in excess of losses from the sales or exchanges of capital assets. Except as provided in paragraph (c)(2) of this section, the minimum tax for tax preferences imposed by section 56 is not a tax attributable to the undistributed portions of distributable net income and gains in excess of losses from the sales or exchanges of capital assets. See section 56 and the regulations thereunder.

(2) In the case of a trust that has received an accumulation distribution from another trust, the term *taxes imposed on the trust* also includes the amount of taxes deemed distributed under §§ 1.666(b)-1A, 1.666(c)-1A, 1.669(d)-1A, and 1.669(e)-1A (whichever are applicable) as a result of such accumulation distribution, to the extent that they were taken into account under paragraphs (b)(2) or (c)(1)(vi) of § 1.668 (b)-1A and (b)(2) or (c)(1)(vi) of § 1.669(b)-1A in computing the partial tax on such accumulation distribution. For example, assume that trust A, a calendar year trust, makes an accumulation distribution in 1975 to trust B, also on the calendar year basis, in connection with which \$500 of taxes are deemed under § 1.666(b)-1A to be distributed to trust B. The partial tax on the accumulation distribution is computed under paragraph (b) of § 1.668(b)-1A (the exact method) to be \$600 and all of the \$500 is used under paragraph (b)(2) of § 1.668(b)-1A to reduce the partial tax to \$100. The taxes imposed on trust B for 1975 will, in addition to the \$100 partial tax, also include the \$500 used to reduce the partial tax.

(b) *Taxes imposed on the trust attributable to undistributed net income.* (1) For the purpose of subpart D, the term *taxes imposed on the trust attributable to the undistributed net income* means the amount of Federal income taxes for the taxable year properly allocable to the undistributed portion of the distributable net income for such taxable year. This amount is (i) an amount that bears the same relationship to the total taxes of the trust for the year (other than the minimum tax for tax preferences imposed by section 56), computed after the allowance of credits under section 642(a), as (a) the taxable income of the trust, other than the capital gains not included in distributable net income less their share of section 1202 deduction, bears to (b) the total taxable income of the trust for such year or, (ii) if the alternative tax computation under section 1201(b) is used and there are no net short-term gains, an amount equal to such total taxes less the amount of the alternative tax imposed on the trust and attributable to the capital gain. Thus, for the purposes of subpart D, in determining the amount of taxes imposed on the trust attributable to the undistributed net income, that portion of the taxes paid by the trust attributable to capital gain allocable to corpus is excluded. The rule stated in this subparagraph may be illustrated by the following example, which assumes that the alternative tax computation is not used:

Example. (1) Under the terms of a trust, which reports on the calendar year basis, the income may be accumulated or distributed to A in the discretion of the trustee and capital gains are allocable to corpus. During the taxable year 1974, the trust had income of \$20,000 from royalties, long-term capital gains of \$10,000, and expenses of \$2,000. The trustee in his discretion made a distribution of \$10,000 to A. The taxes imposed on the trust for such year attributable to the undistributed net income are \$2,319, determined as shown below.

(2) The distributable net income of the trust computed under section 643(a) is \$18,000 (royalties of \$20,000 less expenses of \$2,000). The total taxes paid by the trust are \$3,787, computed as follows:

Royalties	\$20,000
Capital gain allocable to corpus	10,000
Gross income	30,000

§ 1.665(d)-1A

Deductions:	
Expenses	\$2,000
Distributions to A	10,000
Capital gain deduction	5,000
Personal exemption	100
	17,100
Taxable income	12,900
Total income taxes	3,787

(3) Taxable income other than capital gains less the section 1202 deduction is \$7,900 (\$12,900 - (\$10,000 - \$5,000)). Therefore, the amount of taxes imposed on the trust attributable to the undistributed net income is \$2,319, computed as follows:

\$3,787 (total taxes) × \$7,900 (taxable income other than capital gains not included in d.n.i. less the 1202 deduction) divided by \$12,900 (taxable income)	\$2,319
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(2) If in any taxable year an accumulation distribution of undistributed net income is made by the trust which results in a throwback to a prior year, the taxes of the prior year imposed on the trust attributable to any remaining undistributed net income of such prior year are the taxes prescribed in subparagraph (1) of this paragraph reduced by the taxes of the prior year deemed distributed under section 666 (b) or (c). The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the same facts as in the example in subparagraph (1) of this paragraph. In 1975 the trust makes an accumulation distribution, of which an amount of undistributed net income is deemed distributed in 1974. Taxes imposed on the trust (in the amount of \$1,000) attributable to the undistributed net income are therefore deemed distributed in such year. Consequently, the taxes imposed on the trust subsequent to the 1975 distribution attributable to the remaining undistributed net income are \$1,319 (\$2,319 less \$1,000).

(c) *Taxes imposed on the trust attributable to undistributed capital gain—(1) Regular tax.* For the purpose of subpart D the term *taxes imposed on the trust attributable to undistributed capital gain* means the amount of Federal income taxes for the taxable year properly attributable to that portion of the excess of capital gains over capital losses of the trust that is allocable to corpus for such taxable year. Such amount is the total of:

(i) The amount computed under subparagraph (2) of this paragraph (the minimum tax), plus

(ii) The amount that bears the same relationship to the total taxes of the trust for the year (other than the minimum tax), computed after the allowance of credits under section 642(a), as (a) the excess of capital gains over capital losses for such year that are not included in distributable net income, computed after its share of the deduction under section 1202 (relating to the deduction for capital gains) has been taken into account, bears to the greater of (b) the total taxable income of the trust for such year, or (c) the amount of capital gains computed under (a) of this subdivision.

However, if the alternative tax computation under section 1201(b) is used and there are no net short-term gains, the amount is the amount of the alternative tax imposed on the trust and attributable to the capital gain. The application of this subparagraph may be illustrated by the following example, which assumes that the alternative tax computation is not used:

Example. Assume the same facts as in the example in paragraph (b)(1). The capital gains not included in d.n.i. are \$10,000, and the deduction under section 1202 is \$5,000. The amount of taxes imposed on the trust attributable to undistributed capital gain is \$1,468, computed as follows:

\$3,787 (total taxes) × \$5,000 (capital gains not included in d.n.i. less section 1202 deductions) divided by \$12,900 (taxable income)	\$1,468
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(2) *Minimum tax.* The term *taxes imposed on the trust attributable to the undistributed capital gain* also includes the minimum tax for tax preferences imposed on the trust by section 56 with respect to the undistributed capital gain. The amount of such minimum tax so included bears the same relation to the total amount of minimum tax imposed on the trust by section 56 for the taxable year as one-half the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977) (as defined in section 1222(11)) from such taxable year bears to the sum of the items of tax preference of the trust for such taxable year which are apportioned to the trust in accordance with § 1.58-3(a) (1).

(3) *Reduction for prior distribution.* If in any taxable year a capital gain distribution is made by the trust which results in a throwback to a prior year,

the taxes of the prior year imposed on the trust attributable to any remaining undistributed capital gain of the prior year are the taxes prescribed in subparagraph (1) of this paragraph reduced by the taxes of the prior year deemed distributed under section 669 (d) or (e). The provisions of this subparagraph may be illustrated by the following example:

Example. Assume the same facts as in the example in subparagraph (1) of this paragraph. In 1976, the trust makes a capital gain distribution, of which an amount of undistributed capital gain is deemed distributed in 1974. Taxes imposed on the trust (in the amount of \$500) attributable to the undistributed capital gain are therefore deemed distributed in such year. Consequently, the taxes imposed on the trust attributable to the remaining undistributed capital gain are \$968 (\$1,468 less \$500).

[T.D. 7204, 37 FR 17139, Aug. 25, 1972, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.665(e)-1A Preceding taxable year.

(a) *Definition*—(1) *Domestic trusts*—(i) *In general.* For purposes of subpart D, in the case of a trust other than a foreign trust created by a U.S. person, the term *preceding taxable year* serves to identify and limit the taxable years of a trust to which an accumulation distribution consisting of undistributed net income or undistributed capital gain may be allocated (or “thrown back”) under section 666(a) and 669(a). An accumulation distribution consisting of undistributed net income or undistributed capital gain may not be allocated or “thrown back” to a taxable year of a trust if such year is not a “preceding taxable year.”

(ii) *Accumulation distributions.* In the case of an accumulation distribution consisting of undistributed net income made in a taxable year beginning before January 1, 1974, any taxable year of the trust that precedes by more than 5 years the taxable year of the trust in which such accumulation distribution was made is not a “preceding taxable year.” Thus, for a domestic trust on a calendar year basis, calendar year 1967 is not a “preceding taxable year” with respect to an accumulation distribution made in calendar year 1973, whereas calendar year 1968 is a “preceding taxable year.” In the case of an accu-

mulation distribution made during a taxable year beginning after December 31, 1973, any taxable year of the trust that begins before January 1, 1969, is not a “preceding taxable year.” Thus, for a domestic trust on a calendar year basis, calendar year 1968 is not a “preceding taxable year” with respect to an accumulation distribution made in calendar year 1975, whereas calendar year 1969 is a “preceding taxable year.”

(iii) *Capital gain distributions.* In the case of an accumulation distribution that is a capital gain distribution, any taxable year of the trust that (a) begins before January 1, 1969, or (b) is prior to the first year in which income is accumulated, whichever occurs later, is not a “preceding taxable year.” Thus, for the purpose of capital gain distributions and section 669, only taxable years beginning after December 31, 1968, can be “preceding taxable years.” See § 1.688(a)-1A(c).

(2) *Foreign trusts created by U.S. persons.* For purposes of subpart D, in the case of a foreign trust created by a U.S. person, the term “preceding taxable year” does not include any taxable year to which part I of subchapter J does not apply. See section 683 and regulations thereunder. Accordingly, the provisions of subpart D may not, in the case of a foreign trust created by a U.S. person, be applied to any taxable year which begins before 1954 or ends before August 17, 1954. For example, if a foreign trust created by a U.S. person (reporting on the calendar year basis) makes a distribution during the calendar year 1970 of income accumulated during prior years, the earliest year of the trust to which the accumulation distribution may be allocated under such subpart D is 1954, but it may not be allocated to 1953 and prior years, since the Internal Revenue Code of 1939 applies to those years.

(b) *Simple trusts.* A taxable year of a trust during which the trust was a simple trust (that is, was subject to subpart B) for the entire year shall not be considered a “preceding taxable year” unless during such year the trust received “outside income” or unless the trustee did not distribute all of the income of the trust that was required to be distributed currently for such year.