

(\$10,200 gain less \$5,000 loss). Only the \$5,200 net gain is recharacterized as ordinary income under section 1258(a) even though the applicable imputed income amount is \$7,000. For federal tax purposes other than section 1258(a), A has recognized a \$10,200 gain on the disposition of the forward contract (\$5,200 of which is treated as ordinary income) and realized a separate \$5,000 loss on the sale of the XYZ stock.

Example 2. Identified netting transaction with built-in loss. (i) The facts are the same as in *Example 1*, except that A had purchased the XYZ stock for \$104,000 on May 15, 1995. The XYZ stock had a fair market value of \$100,000 on December 1, 1995, the date it became part of a conversion transaction.

(ii) The results are the same as in *Example 1*, except that A has built-in loss (in addition to the \$5,000 loss that arose economically during the period of the conversion transaction), as defined in section 1258(d)(3)(B), of \$4,000 on the XYZ stock. That \$4,000 built-in loss is not netted against the \$10,200 gain on the forward contract for purposes of section 1258(a). Thus, the net gain from the conversion transaction for purposes of section 1258(a) is \$5,200, the same as in *Example 1*. The \$4,000 built-in loss is recognized and has a character determined without regard to section 1258.

(e) *Effective date and transition rule—*(1) *In general.* These regulations are effective for conversion transactions that are outstanding on or after December 21, 1995.

(2) *Transition rule for identification requirements.* In the case of a conversion transaction entered into before February 20, 1996, paragraph (b)(2) of this section is treated as satisfied if the identification is made before the close of business on February 20, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by adding the entry "1.1258-1 * * *.1545-1452" in numerical order to the table.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Parts 1, 25, 301, and 602

[TD 8633]

RIN 1545-AS37

Grantor Trust Reporting Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the method of reporting for trusts that are treated as owned by grantors or other persons under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. These regulations are intended to reduce the current filing burden on trustees, to provide necessary information to grantors or other persons treated as the owners of trusts, to reduce any cases of duplicate filing, and to provide more meaningful information to the IRS. These regulations affect grantors and trustees of trusts that are treated as owned by grantors or other persons, as well as persons who are required to file information returns with respect to payments to these trusts.

DATES: These regulations are effective January 1, 1996. For dates of applicability of these regulations, see § 1.671-4(h).

FOR FURTHER INFORMATION CONTACT: Steven Schneider, (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1442. This information is required by the IRS to insure the proper reporting of income and proceeds paid to a trust any portion of which is treated as owned by the grantor or another person.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is 30 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the

Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 22, 1994, the IRS published in the Federal Register a notice of proposed rulemaking and notice of public hearing (59 FR 37450) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 671 of the Internal Revenue Code (Code) and to the Procedure and Administration Regulations (26 CFR part 301) under sections 6012 and 6109 of the Code.

Written comments responding to the notice were received. A public hearing was held on September 21, 1994, pursuant to the notice published in the Federal Register on July 22, 1994. After consideration of all written and oral comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions and Significant Changes in the Final Regulations

Subject to certain new limitations under § 1.671-4(b)(6) and (7), discussed below, § 1.671-4(b) of the final regulations retains the optional alternative methods of reporting contained in the proposed regulations published on July 22, 1994.

Several comments were submitted requesting confirmation that the alternative methods of reporting described in the proposed regulations are optional and not mandatory. Section 1.671-4(b) of the final regulations clarifies that the trustee of a trust all of which is treated as owned by one or more grantors or other persons may, but is not required to, report pursuant to one of the alternative methods.

Certain commentators were unsure of which persons are considered payors for purposes of the alternative filing methods. The final regulations define the term payor as including any person who is required by any provision of the Code and the regulations thereunder to make any type of information return with respect to the trust for the taxable year.

With respect to the alternative methods of reporting, several commentators were unsure of the items

and the amounts of income that must be reported on any Forms 1099 required to be filed by the trustee. Section 1.671-4(b)(5) of the final regulations clarifies that the amounts that must be included on any Forms 1099 required to be filed by the trustee do not include any amounts that are reportable by the payor on an information return other than Form 1099.

For example, in the case of a trustee who furnishes the name, TIN, and address of the trust to all payors pursuant to § 1.671-4(b)(2)(i)(B) of the final regulations, the trustee does not include items of income attributable to an interest in a partnership on any Forms 1099 filed by the trustee because those items are reportable by the partnership on Schedule K-1 of Form 1065 (reporting distributive shares to members of a partnership). While the statement furnished to the grantor or other person treated as the owner of the trust by the trustee will show all items of income, deduction, and credit attributable to the partnership interest, those items will not be reported to the IRS by the trustee on any type of form.

Several commentators were unsure of the dates by which a trustee must file any required Forms 1099 and must furnish any required statements to grantors or other persons treated as owners of the trust. Section 1.671-4(c) of the final regulations provides that the due date for any Forms 1099 required to be filed with the IRS by a trustee is the due date otherwise in effect for filing Forms 1099. Currently, the due date is February 28 of the following year.

Section 1.671-4(d) of the final regulations provides that the due date for the statement required to be furnished by a trustee to the grantor or other person treated as an owner of the trust is the date specified by section 6034A(a). Currently, the due date is April 15 of the following year.

Comments were received requesting clarification of the trustee's obligation, under the first of the alternative reporting methods, to furnish the name and TIN of the grantor to all payors. The final regulations provide that: (1) A trustee may not report under the first alternative reporting method unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W-9 or other acceptable substitute form; (2) a trustee reporting under the first alternative reporting method acts as the agent of the grantor or other person treated as the owner of the trust for purposes of furnishing backup withholding information to a payor; and (3) the payor may rely on the name and TIN provided to the payor by the trustee. If the Form

W-9 indicates that the grantor or other person is subject to backup withholding, then the trustee must notify all payors of reportable interest and dividend payments of the requirement to backup withhold.

Comments were received requesting clarification of the annuity and unitrust payment dates under § 25.2702-3 of the Gift Tax Regulations for trusts electing one of the alternative methods of reporting. The final regulations contain conforming amendments to § 25.2702-3(b)(1)(i) and § 25.2702-3(c)(1)(i).

One commentator noted the need for more guidance concerning the reporting requirements for widely held fixed investment trusts. Because that guidance is outside the scope of this regulation, the final regulations do not provide special rules for these trusts. However IRS and Treasury anticipate providing guidance for these trusts in a separate project and would welcome comments from interested taxpayers and practitioners regarding such guidance.

Several of the comments received with respect to the proposed regulations emphasized the necessity of making the trustee's choice to report under one of the alternative methods revocable. The final regulations provide that a trustee who has reported pursuant to one of the alternative methods may report pursuant to the general rule requiring the trustee to file a Form 1041 for any subsequent taxable years of the trust, provided that certain conditions are met.

The final regulations provide that the trustee of a trust all of which is treated as owned by one grantor or one other person that is an exempt recipient for information reporting purposes may not report under an alternative method. However, if the trust is treated as owned by two or more grantors or other persons, the trustee may report pursuant to the alternative method for multiple grantors if (1) at least one grantor or one other person who is treated as an owner of the trust is a person who is not an exempt recipient for information reporting purposes and (2) the trustee reports without regard to whether any of the grantors or other persons treated as owners of the trust are exempt recipients for information reporting purposes.

The final regulations also provide that the trustee of a trust all of which is treated as owned by one grantor or other person whose taxable year is a fiscal year may not report under an alternative method. However, the trustee of a trust that is treated as owned by two or more grantors or other persons may report pursuant to the alternative method for multiple grantors even though one or

more of the grantors or other persons treated as an owner of the trust has a taxable year that is the fiscal year.

In addition, the final regulations provide that a trustee of a trust that is a qualified subchapter S trust as defined in section 1361(d)(3) may not report under an alternative method.

The final regulations also provide that the trustee of a trust may not report under an alternative method if any person who is treated as an owner of the trust is not a United States person.

Effective Date and Transition Rule

The final regulations are effective for taxable years beginning on or after January 1, 1996, subject to a requirement that certain trustees file a final Form 1041 before adopting one of the alternative methods of reporting. The final regulations retain the transition rule contained in the proposed regulations providing that, for taxable years beginning prior to January 1, 1996, the IRS will not challenge the manner of reporting by trustees of certain trusts.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert Rio, formerly of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.671-4 is revised to read as follows:

§ 1.671-4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, but are shown on a separate statement to be attached to that form.

(b) *A trust all of which is treated as owned by one or more grantors or other persons—*(1) *In general.* In the case of a trust all of which is treated as owned by one or more grantors or other persons, and which is not described in paragraph (b)(6) or (7) of this section, the trustee may, but is not required to, report by one of the methods described in this paragraph (b) rather than by the method described in paragraph (a) of this section. A trustee may not report, however, pursuant to paragraph (b)(2)(i)(A) of this section unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W-9 or acceptable substitute Form W-9 signed under penalties of perjury. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W-9, depending upon the type of reportable payments made.

(2) *A trust all of which is treated as owned by one grantor or by one other person—*(i) *In general.* In the case of a trust all of which is treated as owned by one grantor or one other person, the trustee reporting under this paragraph (b) must either—

(A) Furnish the name and taxpayer identification number (TIN) of the

grantor or other person treated as the owner of the trust, and the address of the trust, to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(ii) of this section; or

(B) Furnish the name, TIN, and address of the trust to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(iii) of this section.

(ii) *Additional obligations of the trustee when name and TIN of the grantor or other person treated as the owner of the trust and the address of the trust are furnished to payors.* (A) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must furnish the grantor or other person treated as the owner of the trust with a statement that—

(1) Shows all items of income, deduction, and credit of the trust for the taxable year;

(2) Identifies the payor of each item of income;

(3) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(4) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(B) The trustee is not required to file any type of return with the Internal Revenue Service.

(iii) *Additional obligations of the trustee when name, TIN, and address of the trust are furnished to payors—*(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year, and showing the trust as the payor and the grantor or other person treated as the owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.*

(1) Unless the grantor or other person treated as the owner of the trust is the

trustee or a co-trustee of the trust, the trustee must also furnish to the grantor or other person treated as the owner of the trust a statement that—

(i) Shows all items of income, deduction, and credit of the trust for the taxable year;

(ii) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(iii) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(2) By furnishing the statement, the trustee satisfies the obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(iv) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. G, a United States citizen, creates an irrevocable trust which provides that the ordinary income is to be payable to him for life and that on his death the corpus shall be distributed to B, an unrelated person. Except for the right to receive income, G retains no right or power which would cause him to be treated as an owner under sections 671 through 679. Under the applicable local law, capital gains must be added to corpus. Since G has a right to receive income, he is treated as an owner of a portion of the trust under section 677. The tax consequences of any items of capital gain of the trust are governed by the provisions of subparts A, B, C, and D (section 641 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code. Because not all of the trust is treated as owned by the grantor or another person, the trustee may not report by the methods described in paragraph (b)(2) of this section.

Example 2. (i)(A) On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. During the 1996 taxable year the trust has the following items of income and gross proceeds:

Interest.....	\$2,500
Dividends.....	3,205
Proceeds from sale of B stock.....	2,000

(B) The trust has no items of deduction or credit.

(ii)(A) The payors of the interest paid to the trust are X (\$2,000), Y (\$300), and Z (\$200). The payors of the dividends paid to the trust are A (\$3,200), and D (\$5). The payor of the gross proceeds paid to the trust is D, a brokerage firm, which held the B stock as the nominee for the trust. The B stock was purchased by T for \$1,500 on January 3, 1996, and sold by T on November 29, 1996. T chooses to report pursuant to paragraph

(b)(2)(i)(B) of this section, and therefore furnishes the name, TIN, and address of the trust to X, Y, Z, A, and D. X, Y, and Z each furnish T with a Form 1099-INT showing the trust as the payee. A furnishes T with a Form 1099-DIV showing the trust as the payee. D does not furnish T with a Form 1099-DIV because D paid a dividend of less than \$10 to T. D furnishes T with a Form 1099-B showing the trust as the payee.

(B) On or before February 28, 1997, T files a Form 1099-INT with the Internal Revenue Service on which T reports interest attributable to G, as the owner of the trust, of \$2,500; a Form 1099-DIV on which T reports dividends attributable to G, as the owner of the trust, of \$3,205; and a Form 1099-B on which T reports gross proceeds from the sale of B stock attributable to G, as the owner of the trust, of \$2,000. On or before April 15, 1997, T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest.....	\$2,500
Dividends.....	3,205
Gain from sale of B stock.....	500
Information regarding sale of B stock:	
Proceeds.....	\$2,000
Basis.....	1,500
Date acquired.....	1/03/96
Date sold.....	11/29/96

(C) T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(D) T has complied with T's obligations under this section.

(iii)(A) Same facts as paragraphs (i) and (ii) of this *Example 2*, except that G contributed the B stock to the trust on January 2, 1996. On or before April 15, 1997, T furnishes a statement to G which lists the following items of income and information necessary for G to take the items into account in computing G's taxable income:

Interest.....	\$2,500
Dividends.....	3,205
Information regarding sale of B stock:	
Proceeds.....	\$2,000
Date sold.....	11/29/96

(B) T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(C) T has complied with T's obligations under this section.

Example 3. On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. The only asset of the trust is an interest in C, a common trust fund under section 584(a). T chooses to report pursuant to paragraph (b)(2)(i)(B) of this section and therefore furnishes the name, TIN, and address of the trust to C. C files a Form 1065 and a Schedule K-1 (Partner's Share of Income, Credits, Deductions, etc.) showing the name, TIN, and address of the trust with the Internal Revenue Service and furnishes a

copy to T. Because the trust did not receive any amounts described in paragraph (b)(5) of this section, T does not file any type of return with the Internal Revenue Service. On or before April 15, 1997, T furnishes G with a statement that shows all items of income, deduction, and credit of the trust for the 1996 taxable year. In addition, T informs G that any items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person. T has complied with T's obligations under this section.

(3) *A trust all of which is treated as owned by two or more grantors or other persons—(i) In general.* In the case of a trust all of which is treated as owned by two or more grantors or other persons, the trustee must furnish the name, TIN, and address of the trust to all payors for the taxable year, and comply with the additional requirements described in paragraph (b)(3)(ii) of this section.

(ii) *Additional obligations of trustee—(A) Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the items of income paid to the trust by all payors during the taxable year attributable to the portion of the trust treated as owned by each grantor or other person, and showing the trust as the payor and each grantor or other person treated as an owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.* (1) The trustee must also furnish to each grantor or other person treated as an owner of the trust a statement that—

(i) Shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor or other person;

(ii) Provides the grantor or other person treated as an owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(iii) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on

the income tax return of the grantor or other person.

(2) Except for the requirements pursuant to section 3406 and the regulations thereunder, by furnishing the statement, the trustee satisfies the obligation to furnish statements to recipients with respect to the Forms 1099 filed by the trustee.

(4) *Persons treated as payors—(i) In general.* For purposes of this section, the term payor means any person who is required by any provision of the Internal Revenue Code and the regulations thereunder to make any type of information return (including Form 1099 or Schedule K-1) with respect to the trust for the taxable year, including persons who make payments to the trust or who collect (or otherwise act as middlemen with respect to) payments on behalf of the trust.

(ii) *Application to brokers and customers.* For purposes of this section, a broker, within the meaning of section 6045, is considered a payor. A customer, within the meaning of section 6045, is considered a payee.

(5) *Amounts required to be included on Forms 1099 filed by the trustee—(i) In general.* The amounts that must be included on any Forms 1099 required to be filed by the trustee pursuant to this section do not include any amounts that are reportable by the payor on an information return other than Form 1099. For example, in the case of a trust which owns an interest in a partnership, the trust's distributive share of the income and gain of the partnership is not includible on any Forms 1099 filed by the trustee pursuant to this section because the distributive share is reportable by the partnership on Schedule K-1.

(ii) *Example.* The following example illustrates the provisions of this paragraph (b)(5):

Example. (i)(A) On January 2, 1996, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. The assets of the trust during the 1996 taxable year are shares of stock in X, an S corporation, a limited partnership interest in P, shares of stock in M, and shares of stock in N. T chooses to report pursuant to paragraph (b)(2)(i)(B) of this section and therefore furnishes the name, TIN, and address of the trust to X, P, M, and N. M furnishes T with a Form 1099-DIV showing the trust as the payee. N does not furnish T with a Form 1099-DIV because N paid a dividend of less than \$10 to T. X and P furnish T with Schedule K-1 (Shareholder's Share of Income, Credits, Deductions, etc.) and Schedule K-1 (Partner's Share of Income, Credits, Deductions, etc.), respectively, showing the trust's name, TIN, and address.

(B) For the 1996 taxable year the trust has the following items of income and deduction:

Dividends paid by M	
. . . . \$12	
Dividends paid by N	
. . . . 6	
Administrative expense	
. . . . \$20	
Items reported by X on Schedule K-1	
attributable to trust's shares of stock in X:	
Interest	\$20
Dividends	35
Items reported by P on Schedule K-1	
attributable to trust's limited partnership	
interest in P:	
Ordinary income	
\$300	

(ii)(A) On or before February 28, 1997, T files with the Internal Revenue Service a Form 1099-DIV on which T reports dividends attributable to G as the owner of the trust in the amount of \$18. T does not file any other returns.

(B) T has complied with T's obligation under paragraph (b)(2)(iii)(A) of this section to file the appropriate Forms 1099.

(6) *Trusts that cannot report under this paragraph (b).* The following trusts cannot use the methods of reporting described in this paragraph (b)—

(i) A common trust fund as defined in section 584(a);

(ii) A trust that has its situs or any of its assets located outside the United States;

(iii) A trust that is a qualified subchapter S trust as defined in section 1361(d)(3);

(iv) A trust all of which is treated as owned by one grantor or one other person whose taxable year is a fiscal year;

(v) A trust all of which is treated as owned by one grantor or one other person who is not a United States person; or

(vi) A trust all of which is treated as owned by two or more grantors or other persons, one of whom is not a United States person.

(7) *Grantors or other persons who are treated as owners of the trust and are exempt recipients for information reporting purposes—*(i) *Trust treated as owned by one grantor or one other person.* The trustee of a trust all of which is treated as owned by one grantor or one other person may not report pursuant to this paragraph (b) if the grantor or other person is an exempt recipient for information reporting purposes.

(ii) *Trust treated as owned by two or more grantors or other persons.* The trustee of a trust, all of which is treated as owned by two or more grantors or other persons, may not report pursuant to this paragraph (b) if one or more grantors or other persons treated as owners are exempt recipients for information reporting purposes unless—

(A) At least one grantor or one other person who is treated as an owner of the trust is a person who is not an exempt recipient for information reporting purposes; and

(B) The trustee reports without regard to whether any of the grantors or other persons treated as owners of the trust are exempt recipients for information reporting purposes.

(8) *Husband and wife who make a single return jointly.* A trust all of which is treated as owned by a husband and wife who make a single return jointly of income taxes for the taxable year under section 6013 is considered to be owned by one grantor for purposes of this paragraph (b).

(c) *Due date for Forms 1099 required to be filed by trustee.* The due date for any Forms 1099 required to be filed with the Internal Revenue Service by a trustee pursuant to this section is the due date otherwise in effect for filing Forms 1099.

(d) *Due date and other requirements with respect to statement required to be furnished by trustee.* The due date for the statement required to be furnished by a trustee to the grantor or other person treated as an owner of the trust pursuant to this section is the date specified by section 6034A(a). The trustee must maintain in its records a copy of the statement furnished to the grantor or other person treated as an owner of the trust for a period of three years from the due date for furnishing such statement specified in this paragraph (d).

(e) *Backup withholding requirements—*(1) *Trustee reporting under paragraph (b)(2)(i)(A) of this section.* In order for the trustee to be able to report pursuant to paragraph (b)(2)(i)(A) of this section and to furnish to all payors the name and TIN of the grantor or other person treated as the owner of the trust, the grantor or other person must provide a complete Form W-9 to the trustee in the manner provided in paragraph (b)(1) of this section, and the trustee must give the name and TIN shown on that Form W-9 to all payors. In addition, if the Form W-9 indicates that the grantor or other person is subject to backup withholding, the trustee must notify all payors of reportable interest and dividend payments of the requirement to backup withhold. If the Form W-9 indicates that the grantor or other person is not subject to backup withholding, the trustee does not have to notify the payors that backup withholding is not required. The trustee should not give the Form W-9, or a copy thereof, to a payor because the Form W-9 contains the address of the grantor or other

person and paragraph (b)(2)(i)(A) of this section requires the trustee to furnish the address of the trust to all payors and not the address of the grantor or other person. The trustee acts as the agent of the grantor or other person for purposes of furnishing to the payors the information required by this paragraph (e)(1). Thus, a payor may rely on the name and TIN provided to the payor by the trustee, and, if given, on the trustee's statement that the grantor is subject to backup withholding.

(2) *Other backup withholding requirements.* Whether a trustee is treated as a payor for purposes of backup withholding is determined pursuant to section 3406 and the regulations thereunder.

(f) *Penalties for failure to file a correct Form 1099 or furnish a correct statement.* A trustee who fails to file a correct Form 1099 or to furnish a correct statement to a grantor or other person treated as an owner of the trust as required by paragraph (b) of this section is subject to the penalties provided by sections 6721 and 6722 and the regulations thereunder.

(g) *Changing reporting methods—*(1) *Changing from reporting by filing Form 1041 to a method described in paragraph (b) of this section.* If the trustee has filed a Form 1041 for any taxable year ending before January 1, 1996 (and has not filed a final Form 1041 pursuant to § 1.671-4(b)(3) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995)), or files a Form 1041 for any taxable year thereafter, the trustee must file a final Form 1041 for the taxable year which ends after January 1, 1995, and which immediately precedes the first taxable year for which the trustee reports pursuant to paragraph (b) of this section, on the front of which form the trustee must write: "Pursuant to § 1.671-4(g), this is the final Form 1041 for this grantor trust."

(2) *Changing from reporting by a method described in paragraph (b) of this section to the filing of a Form 1041.* The trustee of a trust who reported pursuant to paragraph (b) of this section for a taxable year may report pursuant to paragraph (a) of this section for subsequent taxable years. If the trustee reported pursuant to paragraph (b)(2)(i)(A) of this section, and therefore furnished the name and TIN of the grantor to all payors, the trustee must furnish the name, TIN, and address of the trust to all payors for such subsequent taxable years. If the trustee reported pursuant to paragraph (b)(2)(i)(B) or (b)(3)(i) of this section, and therefore furnished the name and TIN of the trust to all payors, the trustee

must indicate on each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) that it files (or appropriately on magnetic media) for the final taxable year for which the trustee so reports that it is the final return of the trust.

(3) *Changing between methods described in paragraph (b) of this section—(i) Changing from furnishing the TIN of the grantor to furnishing the TIN of the trust.* The trustee of a trust who reported pursuant to paragraph (b)(2)(i)(A) of this section for a taxable year, and therefore furnished the name and TIN of the grantor to all payors, may report pursuant to paragraph (b)(2)(i)(B) of this section, and furnish the name and TIN of the trust to all payors, for subsequent taxable years.

(ii) *Changing from furnishing the TIN of the trust to furnishing the TIN of the grantor.* The trustee of a trust who reported pursuant to paragraph (b)(2)(i)(B) of this section for a taxable year, and therefore furnished the name and TIN of the trust to all payors, may report pursuant to paragraph (b)(2)(i)(A) of this section, and furnish the name and TIN of the grantor to all payors, for subsequent taxable years. The trustee, however, must indicate on each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) that it files (or appropriately on magnetic media) for the final taxable year for which the trustee reports pursuant to paragraph (b)(2)(i)(B) of this section that it is the final return of the trust.

(4) *Example.* The following example illustrates the provisions of paragraph (g) of this section:

Example. (i) On January 3, 1994, G, a United States citizen, creates a trust all of which is treated as owned by G. The trustee of the trust is T. On or before April 17, 1995, T files with the Internal Revenue Service a Form 1041 with an attached statement for the 1994 taxable year showing the items of income, deduction, and credit of the trust. On or before April 15, 1996, T files with the Internal Revenue Service a Form 1041 with an attached statement for the 1995 taxable year showing the items of income, deduction, and credit of the trust. On the Form 1041, T states that "pursuant to § 1.671-4(g), this is the final Form 1041 for this grantor trust." T may report pursuant to paragraph (b) of this section for the 1996 taxable year.

(ii) T reports pursuant to paragraph (b)(2)(i)(B) of this section, and therefore furnishes the name, TIN, and address of the trust to all payors, for the 1996 and 1997 taxable years. T chooses to report pursuant to paragraph (a) of this section for the 1998 taxable year. On each Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) which T files for the 1997 taxable year (or appropriately on magnetic media), T indicates that it is the trust's final return. On or before April 15,

1999, T files with the Internal Revenue Service a Form 1041 with an attached statement showing the items of income, deduction, and credit of the trust. On the Form 1041, T uses the same TIN which T used on the Forms 1041 and Forms 1099 it filed for previous taxable years. T has complied with T's obligations under paragraph (g)(2) of this section.

(h) *Effective date and transition rule—(1) Effective date.* The trustee of a trust any portion of which is treated as owned by one or more grantors or other persons must report pursuant to this section for taxable years beginning on or after January 1, 1996.

(2) *Transition rule.* For taxable years beginning prior to January 1, 1996, the Internal Revenue Service will not challenge the manner of reporting of—
(i) A trustee of a trust all of which is treated as owned by one or more grantors or other persons who did not report in accordance with § 1.671-4(a) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) as in effect for taxable years beginning prior to January 1, 1996, but did report in a manner substantially similar to one of the reporting methods described in paragraph (b) of this section; or

(ii) A trustee of two or more trusts all of which are treated as owned by one or more grantors or other persons who filed a single Form 1041 for all of the trusts, rather than a separate Form 1041 for each trust, provided that the items of income, deduction, and credit of each trust were shown on a statement attached to the single Form 1041.

(i) *Cross-reference.* For rules relating to employer identification numbers, and to the obligation of a payor of income or proceeds to the trust to furnish to the payee a statement to recipient, see § 301.6109-1(a)(2) of this chapter.

Par. 3. Section 1.6012-3 is amended by revising paragraph (a)(9) to read as follows:

§ 1.6012-3 Returns by fiduciaries.

(a) * * *
(9) *A trust any portion of which is treated as owned by the grantor or another person pursuant to sections 671 through 678.* In the case of a trust any portion of which is treated as owned by the grantor or another person under the provisions of subpart E (section 671 and following) part I, subchapter J, chapter 1 of the Internal Revenue Code see § 1.671-4.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 4. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 25.2702-3 is amended by adding a sentence to the end of paragraphs (b)(1)(i) and (c)(1)(i), respectively, to read as follows:

§ 25.2702-3 Qualified interests.

* * * * *

(b) * * *
(1) * * * (i) * * * If the trustee reports for the taxable year pursuant to § 1.671-4(b) of this chapter, the annuity payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671-4(a) of this chapter.

* * * * *

(c) * * *
(1) * * * (i) * * * If the trustee reports for the taxable year pursuant to § 1.671-4(b) of this chapter, the unitrust payment must be made no later than the date by which the trustee would have been required to file the Federal income tax return of the trust for the taxable year (without regard to extensions) had the trustee reported pursuant to § 1.671-4(a) of this chapter.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 7. Section 301.6109-1 is amended by revising paragraph (a)(2) to read as follows:

§ 301.6109-1 Identifying numbers.

(a) * * *
(2) *A trust all of which is treated as owned by the grantor or another person pursuant to sections 671 through 678—(i) Obtaining a taxpayer identification number.* If a trust does not have a taxpayer identification number and the trustee furnishes the name and taxpayer identification number of the grantor or other person treated as the owner of the trust and the address of the trust to all payors pursuant to § 1.671-4(b)(2)(i)(A) of this chapter, the trustee need not obtain a taxpayer identification number for the trust until either the first taxable year of the trust in which all of the trust is no longer owned by the grantor or another person, or until the first taxable year of the trust for which the trustee no longer reports pursuant to § 1.671-4(b)(2)(i)(A) of this chapter. If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust as provided in paragraph (d)(2) of this

section in order to report pursuant to § 1.671-4(a), (b)(2)(i)(B), or (b)(3)(i) of this chapter.

(ii) *Obligations of persons who make payments to certain trusts.* Any payor that is required to file an information return with respect to payments of income or proceeds to a trust must show the name and taxpayer identification number that the trustee has furnished to the payor on the return. Regardless of whether the trustee furnishes to the payor the name and taxpayer identification number of the grantor or other person treated as an owner of the trust, or the name and taxpayer identification number of the trust, the payor must furnish a statement to recipients to the trustee of the trust, rather than to the grantor or other person treated as the owner of the trust. Under these circumstances, the payor satisfies the obligation to show the name and taxpayer identification number of the payee on the information return and to furnish a statement to recipients to the person whose taxpayer identification number is required to be shown on the form.

(iii) *Persons treated as payors.* For purposes of this paragraph (a)(2), the term payor means a person described in § 1.671-4(b)(4) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (c) is amended in the table by revising the entry for 1.671-4 to read "1.671-4 . . . 1545-1442".

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 5, 1995:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95-30682 Filed 12-20-95; 8:45 am]

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26 CFR Parts 1, 301 and 602

[TD 8641]

RIN 1545-AN71

Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Federal financial assistance, as defined in section 597(c) of the Internal Revenue Code, that is received by a financially troubled bank or thrift institution, and to acquisitions of financially troubled bank or thrift institutions in which Federal financial assistance is provided. This document also contains final regulations under section 7507. These regulations provide guidance concerning the proper tax treatment of various transactions involving the receipt of Federal financial assistance.

DATES: These regulations are effective December 21, 1995.

For dates of applicability, see the "§ 1.597-7 Effective date" section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions (§ 1.597-7) of this document.

FOR FURTHER INFORMATION CONTACT:

Steven M. Flanagan at 202-622-7790, Vicki J. Hycbe at 202-622-7530, William D. Alexander at 202-622-7710, or Steven R. Glickstein at 202-622-4439 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1300. Responses to these collections of information are required to track deferred income and its subsequent recapture, elect to disaffiliate earlier than would otherwise be permitted, elect to apply the provisions of the regulation retroactively, and report uncollected income tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 1 hour to 11 hours, depending on individual circumstances, with an estimated average of 4.4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73) (FIRREA). The regulations provide guidance for banks and domestic building and loan associations (Institutions) and their affiliates in connection with receipt of Federal financial assistance (FFA), as defined in section 597(c).

Section 597(a) delegates to the Secretary of the Treasury authority to prescribe regulations concerning "any transaction in which Federal financial assistance is provided." These regulations are issued under the authority of section 597(a).

This document also amends the regulations under section 7507 to reflect the treatment of FFA under FIRREA.

The IRS published proposed regulations under sections 597 and 7507 on April 22, 1992 (57 FR 14794, FI-46-89, 1992-1 C.B. 1037).

Public Comments and the Final Regulations

The IRS received comments on the proposed regulations, and a public hearing was held on July 17, 1992. After consideration of the comments and the statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision. The principal comments and revisions are discussed below.

Section 1.597-2 Taxation of FFA

Section 1.597-2 contains rules concerning accounting for FFA as income. The final regulations retain the proposed rule that, generally, FFA is income to the failed Institution when it is received or accrued in accordance with the Institution's method of accounting. Section 1.597-2(c) contains rules permitting certain Institutions to defer the inclusion of FFA.

Deferral formula without Continuing Equity. Under the proposed regulations, unresolved Institutions without Continuing Equity were permitted to defer inclusion of FFA in excess of amounts determined under a formula. The proposed formula required current inclusion equal to the sum of liabilities less aggregate adjusted basis at the