

SUBPART A—GENERAL RULES FOR TAXATION OF
ESTATES AND TRUSTS

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641.	Imposition of tax.
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AMENDMENTS

2001—Pub. L. 107-16, title VI, § 671(c)(1), June 7, 2001, 115 Stat. 147, added item 646.

1998—Pub. L. 105-206, title VI, § 6013(a)(2), July 22, 1998, 112 Stat. 819, renumbered item 646 as 645.

1997—Pub. L. 105-34, title V, § 507(b)(3), title XIII, § 1305(c), Aug. 5, 1997, 111 Stat. 857, 1041, added items 644 and 646 and struck out former items 644 “Special rule for gain on property transferred to trust at less than fair market value” and 645 “Taxable year of trusts”.

1986—Pub. L. 99-514, title XIV, § 1403(b), Oct. 22, 1986, 100 Stat. 2713, added item 645.

1976—Pub. L. 94-455, title VII, § 701(g)(2), Oct. 4, 1976, 90 Stat. 1580, added item 644.

§ 641. Imposition of tax

(a) Application of tax

The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a non-resident alien individual who is not present in the United States at any time.

(c) Special rules for taxation of electing small business trusts

(1) In general

For purposes of this chapter—

(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

(2) Modifications

For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

(B) The exemption amount under section 55(d) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section 1366.

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

(3) Treatment of remainder of trust and distributions

For purposes of determining—

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

(4) Treatment of unused deductions where termination of separate trust

If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

(5) Electing small business trust

For purposes of this subsection, the term “electing small business trust” has the meaning given such term by section 1361(e)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 91-172, title VIII, § 803(d)(3), Dec. 30, 1969, 83 Stat. 684; Pub. L. 94-455, title VII, § 701(e)(2), Oct. 4, 1976, 90 Stat. 1579; Pub. L. 95-30, title I, § 101(d)(8), May 23, 1977, 91 Stat. 134; Pub. L. 104-188, title I, § 1302(d), Aug. 20, 1996, 110 Stat. 1778; Pub. L. 105-34, title XVI, § 1601(i)(3)(B), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105-206, title VI, § 6007(f)(2), July 22, 1998, 112 Stat. 810; Pub. L. 110-28, title VIII, § 8236(a), May 25, 2007, 121 Stat. 199.)

AMENDMENTS

2007—Subsec. (c)(2)(C)(iv). Pub. L. 110-28 added cl. (iv).
 1998—Subsecs. (c), (d). Pub. L. 105-206 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

“(1) GENERAL RULE.—For purposes of this part, the taxable income of a trust does not include the amount of any includible gain as defined in section 644(b) reduced by any deductions properly allocable thereto.

“(2) CROSS REFERENCE.—

“For the taxation of any includible gain, see section 644.”

1997—Subsec. (b). Pub. L. 105-34 inserted at end “For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.”

1996—Subsec. (d). Pub. L. 104-188 added subsec. (d).

1977—Subsec. (a). Pub. L. 95-30 substituted “section 1(e)” for “section 1(d)” in introductory provisions.

1976—Subsec. (c). Pub. L. 94-455 added subsec. (c).

1969—Subsec. (a). Pub. L. 91-172 substituted “The tax imposed by section 1(d)” for “The taxes imposed by this chapter on individuals”.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-28, title VIII, §8236(b), May 25, 2007, 121 Stat. 199, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1317(a) of title I of Pub. L. 104-188 provided that: “Except as otherwise provided in this subtitle [subtitle C (§§1301-1317) of title I of Pub. L. 104-188], the amendments made by this subtitle [amending this section and sections 170, 404, 512, 1042, 1237, 1361, 1362, 1366 to 1368, 1371, 1375, 1377, 1504, 6037, and 6233 of this title and repealing sections 6241 to 6245 of this title] shall apply to taxable years beginning after December 31, 1996.”

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to transfers in trust made after May 21, 1976, see section 701(h) of Pub. L. 94-455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91-172, set out as a note under section 1 of this title.

§ 642. Special rules for credits and deductions

(a) Foreign tax credit allowed

An estate or trust shall be allowed the credit against tax for taxes imposed by foreign coun-

tries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(b) Deduction for personal exemption

(1) Estates

An estate shall be allowed a deduction of \$600.

(2) Trusts

(A) In general

Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of \$100.

(B) Trusts distributing income currently

A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$300.

(C) Disability trusts

(i) In general

A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust

For purposes of clause (i), the term “qualified disability trust” means any trust if—

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(3) Deductions in lieu of personal exemption

The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

(1) General rule

In the case of an estate or trust (other than¹ a trust meeting the specifications of subpart B), there shall be allowed as a deduction in

¹ So in original. Probably should be “than”.