

EFFECTIVE DATE

Section 1014(d) of Pub. L. 94-455 provided that: "The amendments made by this section [enacting this section and amending section 667 of this title] shall apply to taxable years beginning after December 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

[§ 669. Repealed. Pub. L. 94-455, title VII, § 701(d)(1), Oct. 4, 1976, 90 Stat. 1578]

Section, acts Oct. 16, 1962, Pub. L. 87-834, § 7(e), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91-172, title III, § 331(a), 83 Stat. 596, related to the treatment of capital gain deemed distributed in preceding years.

EFFECTIVE DATE OF REPEAL

Repeal applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 667 of this title.

SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

Sec.	
671.	Trust income, deductions, and credits attributable to grantors and others as substantial owners.
672.	Definitions and rules.
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AMENDMENTS

1976—Pub. L. 94-455, title X, § 1013(e)(1), Oct. 4, 1976, 90 Stat. 1616, added item 679.

§ 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart.

(Aug. 16, 1954, ch. 736, 68A Stat. 226.)

CERTAIN ENTITIES NOT TREATED AS CORPORATIONS

Pub. L. 99-514, title VI, § 646, Oct. 22, 1986, 100 Stat. 2292, as amended by Pub. L. 100-647, title I, § 1006(k), Nov. 10, 1988, 102 Stat. 3411, provided that:

"(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

"(b) ENTITY.—An entity is described in this subsection if—

"(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota,

"(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and

"(3) income interests in such entity are publicly traded as of October 22, 1986, on a national stock exchange.

"(c) ELECTION.—

"(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

"(A) shall be made by the board of trustees of the entity before January 1, 1991, and

"(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

"(2) AGREEMENT.—

"(A) IN GENERAL.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

"(B) PERMISSIBLE ACQUISITIONS.—Property is described in this paragraph if it is—

"(i) surface rights to property the acquisition of which—

"(I) is necessary to mine mineral rights held on October 22, 1986, and

"(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

"(ii) surface rights to property which are not described in clause (i) and which—

"(I) are acquired in an exchange to which section 1031 [probably means section 1031 of this title] applies, and

"(II) are necessary to mine mineral rights held on October 22, 1986,

"(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

"(iv) part of any required reserves of the entity.

"(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986] and following the taxable year in which the election is made.

"(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

"(d) SPECIAL RULES FOR TAXATION OF TRUST.—

"(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

"(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) applies, and

"(B) for purposes of section 333 of such Code (as so in effect)—

"(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

“(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title [subtitle D (§§ 631–634) of title VI of Pub. L. 99–514, see Tables for classification] and section 1804 of this Act [see Tables for classification] shall not apply to any liquidation under this paragraph.

“(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years.

“(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

“(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

“(1) a reversionary interest shall not be taken into account until it comes into possession, and

“(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation.”

§ 672. Definitions and rules

(a) Adverse party

For purposes of this subpart, the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b) Nonadverse party

For purposes of this subpart, the term “nonadverse party” means any person who is not an adverse party.

(c) Related or subordinate party

For purposes of this subpart, the term “related or subordinate party” means any nonadverse party who is—

(1) the grantor’s spouse if living with the grantor;

(2) any one of the following: The grantor’s father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(d) Rule where power is subject to condition precedent

A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving

of notice or takes effect only on the expiration of a certain period after the exercise of the power.

(e) Grantor treated as holding any power or interest of grantor’s spouse

(1) In general

For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

(2) Marital status

For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(f) Subpart not to result in foreign ownership

(1) In general

Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) Exceptions

(A) Certain revocable and irrevocable trusts

Paragraph (1) shall not apply to any portion of a trust if—

(i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) Compensatory trusts

Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

(3) Special rules

Except as otherwise provided in regulations prescribed by the Secretary—

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1297.

(4) Recharacterization of purported gifts

In the case of any transfer directly or indirectly from a partnership or foreign corpora-