

transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99-514, set out as a note under section 673 of this title.

### § 677. Income for benefit of grantor

#### (a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

- (1) distributed to the grantor or the grantor's spouse;
- (2) held or accumulated for future distribution to the grantor or the grantor's spouse; or
- (3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

#### (b) Obligations of support

Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the grantor under section 662.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 91-172, title III, § 332(a), Dec. 30, 1969, 83 Stat. 599; Pub. L. 99-514, title XIV, § 1402(b)(3), Oct. 22, 1986, 100 Stat. 2712.)

#### AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted “the occurrence of an event” for “the expiration of a period” and “the occurrence of the event” for “the expiration of the period” in last sentence.

1969—Subsec. (a)(1) to (3). Pub. L. 91-172, § 332(a)(1), inserted “or the grantor's spouse” after “the grantor” in pars. (1), (2), and (3).

Subsec. (b). Pub. L. 91-172, § 332(a)(2), inserted “(other than the grantor's spouse)” after “beneficiary”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99-514, set out as a note under section 673 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title III, § 332(b), Dec. 30, 1969, 83 Stat. 599, provided that: “The amendments made by subsection (a) [amending this section] shall apply in respect of property transferred in trust after October 9, 1969.”

### § 678. Person other than grantor treated as substantial owner

#### (a) General rule

A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject to grantor of a trust to treatment as the owner thereof.

#### (b) Exception where grantor is taxable

Subsection (a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section.

#### (c) Obligations of support

Subsection (a) shall not apply to a power which enables such person, in the capacity of trustee or cotrustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the holder of the power under section 662.

#### (d) Effect of renunciation or disclaimer

Subsection (a) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

#### (e) Cross reference

**For provision under which beneficiary of trust is treated as owner of the portion of the trust which consists of stock in an S corporation, see section 1361(d).**

(Aug. 16, 1954, ch. 736, 68A Stat. 231; Pub. L. 94-455, title X, § 1013(b), Oct. 4, 1976, 90 Stat. 1615; Pub. L. 97-448, title I, § 102(i)(2), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 106-554, § 1(a)(7) [title III, § 319(8)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646.)

#### AMENDMENTS

2000—Subsec. (e). Pub. L. 106-554 substituted “an S corporation” for “an electing small business corporation”.

1983—Subsec. (e). Pub. L. 97-448 added subsec. (e).

1976—Subsec. (b). Pub. L. 94-455 substituted “if the grantor of the trust or a transferor (to whom section

679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section” for “if the grantor of the trust is otherwise treated as the owner under sections 671 to 677, inclusive”.

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

For effective date of amendment by Pub. L. 94-455, see section 1013(f)(1) of Pub. L. 94-455, set out as an Effective Date note under section 679 of this title.

**§ 679. Foreign trusts having one or more United States beneficiaries**

**(a) Transferor treated as owner**

**(1) In general**

A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust.

**(2) Exceptions**

Paragraph (1) shall not apply—

**(A) Transfers by reason of death**

To any transfer by reason of the death of the transferor.

**(B) Transfers at fair market value**

To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.

**(3) Certain obligations not taken into account under fair market value exception**

**(A) In general**

In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

**(B) Treatment of principal payments on obligation**

Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

**(C) Persons described**

The persons described in this subparagraph are—

(i) the trust,

(ii) any grantor, owner, or beneficiary of the trust, and

(iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner, or beneficiary of the trust.

**(4) Special rules applicable to foreign grantor who later becomes a United States person**

**(A) In general**

If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

**(B) Treatment of undistributed income**

For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

**(C) Residency starting date**

For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

**(5) Outbound trust migrations**

If—

(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.

**(b) Trusts acquiring United States beneficiaries**

If—

(1) subsection (a) applies to a trust for the transferor's taxable year, and

(2) subsection (a) would have applied to the trust for his immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having income for the taxable year (in addition to his other income for such year) equal to the undistributed net income (at the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).