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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9032]

RIN 1545-AW24

Election to Treat Trust as Part of an Estate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations

SUMMARY: This document contains final regulations under section 645 relating to an election for certain revocable trusts to be treated and taxed as part of an estate. The final regulations provide the procedures and requirements for making the election, rules regarding the tax treatment of the trust and the estate while the election is in effect, and rules regarding the termination of the election. This document also contains final regulations clarifying the reporting rules for a trust, or portion of a trust, that is treated as owned by the grantor, or another person under the provisions of subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, for the taxable year ending with the death of the grantor or other person.

DATES: Effective Date: These regulations are effective December 24, 2002.

Applicability Date: For dates of applicability of these regulations, see §§1.645-1(j), 1.671-4(i)(3), 1.6072-1(a)(2)(ii), 301.6109-1(a)(6).

FOR FURTHER INFORMATION CONTACT: Faith Colson, (202) 622-3060 not a toll-free

number).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1578. This final rule makes no substantive change in the previously approved collection of information.

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

Books or records relating to a collection of information must be retained as long as their contents might 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 December 18, 2000, the IRS and the Treasury Department published a notice of proposed rulemaking (REG-106542-98; 2001-1 CB 473) in the **Federal Register** (65 FR 79015) under section 645 relating to an election for certain revocable trusts to be treated and taxed as part of an estate. This notice also contained proposed amendments to the regulations under section 671 relating to reporting rules for a trust, or portion of a trust, that

is treated as owned by the grantor or another person under the provisions of subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (Code), for the taxable year ending with the death of the grantor or other person. Written comments responding to the notice of proposed rulemaking were received. A public hearing on the notice of proposed rulemaking was scheduled for April 11, 2001, but was canceled when no one requested to speak at the hearing. After consideration of all comments, the proposed regulations, with certain changes in response to the comments, are adopted as final regulations by this Treasury decision.

### **Summary of Comments and Explanation of Revisions**

#### **A. Comments and Changes to §1.645-1(b): Definitions**

Under section 645, if both the executor (if any) of an estate and the trustee of a qualified revocable trust (QRT) elect the treatment provided in section 645, the trust shall be treated and taxed for income tax purposes as part of the estate (and not as a separate trust) during the election period. The proposed regulations define a QRT as any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). In accordance with the legislative history accompanying section 645, the proposed regulations provide that a trust, in which the power is held solely by a nonadverse party, is not a QRT. See H.R. Conf. Rep. No. 220, 105<sup>th</sup> Cong., 1<sup>st</sup> Sess. at 711 (1997). In addition, the proposed regulations provide that a trust, in which the power was exercisable by the decedent only with the approval or consent of another

person, is not a QRT.

Some commentators suggested that, if the decedent's power to revoke the trust was exercisable only with the approval or consent of a nonadverse party, the trust should qualify as a QRT. Many persons use revocable trusts as property management tools and, to protect the grantor from improvident decisions or undue influence, their trust agreements may provide that any revocation of the trust by the grantor will be effective only if consented to by a nonadverse party. The commentators noted that the prohibition described in the legislative history addresses trusts in which only a nonadverse party has a power to revoke.

In response to these comments, the final regulations provide that a trust that was treated as owned by the decedent under section 676 by reason of a power that was exercisable by the decedent with the consent or approval of a nonadverse party is a QRT. The final regulations also clarify that while a trust, in which the power to revoke is held only by the decedent's spouse and not by the decedent, is not a QRT, a trust, in which the power to revoke is exercisable by the decedent with the approval or consent of the decedent's spouse, is a QRT.

Clarification has also been requested regarding whether a trust qualifies as a QRT if the grantor's power to revoke the trust lapses prior to the grantor's death as a result of the grantor's incapacity. Some trust documents for revocable trusts provide that the trustee is to disregard the instructions of the grantor to revoke the trust if the grantor is incapacitated. The IRS and the Treasury Department believe that, if an agent or legal

representative of the grantor can revoke the trust under state law during the grantor's incapacity, the trust will qualify as a QRT, even if the grantor is incapacitated on the date of the grantor's death.

The proposed regulations also provide that a QRT must be a domestic trust under section 7701(a)(30)(E) and that a section 645 election for a QRT must result in a domestic estate under section 7701(a)(30)(D). Several commentators suggested that the section 645 election should also be available in situations in which either the QRT or the related estate, or both, are foreign. According to the commentators, U.S. citizens living abroad frequently use revocable trusts to avoid jurisdictional disputes concerning the decedent's assets, as well as the cumbersome probate and forced heirship rules of several foreign countries. Many of the trusts will be foreign trusts upon the grantor's death and, if a section 645 election is permitted to be made, will become part of a foreign estate. The commentators questioned the authority for the domestic restriction provided in the proposed regulations given that the statute and the legislative history do not explicitly limit the applicability of a section 645 election to domestic trusts and domestic estates. Upon consideration of these comments, the requirements that a QRT be a domestic trust and that the election result in a domestic estate are removed from the final regulations. The IRS and the Treasury Department note, however, that a trust for which a section 645 election is made is treated as an estate for purposes of Subtitle A of the Code, but not for purposes of Subtitle F. Accordingly, information reporting under section 6048 will continue to apply with respect to a foreign trust even though a section 645 election has been made

to allow the foreign trust to be taxed as part of an estate for purposes of Subtitle A of the Code.

The proposed regulations used the term personal representative to denote the fiduciary (or fiduciaries) of the decedent's estate. One commentator requested that the definition of personal representative in the proposed regulations be expanded to include a personal representative, as well as an executor and an administrator. To be consistent with the language of the statute, the final regulations use the term executor, instead of personal representative, to denote the fiduciary of the decedent's estate. With the exception of including a personal representative in the definition of an executor as requested by the comment, the definition of executor in the final regulations is generally the same as the definition of a personal representative in the proposed regulations. The definition of executor used in these final regulations, however, is not identical to the definition of an executor under section 2203 of the Code: under these final regulations, a person who has actual or constructive possession of property of the decedent is not an executor unless that person is also appointed, or qualified as an executor, administrator, or personal representative of the decedent's estate.

**B. Comments and Changes to §1.645-1(c): The Election**

The section 645 election may be made whether or not an executor is appointed for the decedent's estate. Under the final regulations, if an executor is appointed for the decedent's estate, the executor and the trustee of the QRT make the section 645 election by filing a form provided by the IRS for the purpose of making the section 645 election

(election form). If an executor is not appointed for the decedent's estate, the trustee makes the section 645 election by filing the election form. Form 8855, "Election to Treat a Qualified Revocable Trust as Part of an Estate," will be available for making the section 645 election within six months after the publication of these final regulations.

Guidance has also been requested regarding when the section 645 election must be made if a Form 1041 "U.S. Income Tax Return for Estates and Trusts," is not required to be filed for the first taxable year of the combined electing trust and related estate, if there is an executor, or of the electing trust if there is no executor, because the combined electing trust and related estate, or electing trust, as the case may be, does not have sufficient income to require the filing of a return. A commentator also suggested permitting the section 645 election to be made at any time during the three year period after the due date for the Form 1041 for the estate's first taxable year. The final regulations do not adopt this suggestion and clarify that, for the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the combined electing trust and related estate, if there is an executor, or of the first taxable year of the electing trust, if there is no executor (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, the election form will be timely filed if it is filed by the time prescribed under section 6072 for filing the Form 1041 including the extension granted with respect to the Form 1041.

A commentator noted that, under the proposed regulations, an executor will have direct liability for the tax due on Forms 1041 filed for the combined electing trust and related estate. Accordingly, the executor can be personally liable for tax on the income from assets that are not under the executor's control. Further, the executor may not have sufficient assets in the estate to meet the income tax responsibilities of the combined electing trust and related estate. A commentator also noted that the requirement in the proposed regulations that the trustee agree to cooperate to insure that the Forms 1041 for the combined related estate and electing trust are timely filed and the tax due timely paid places the trustee in an untenable position because the executor controls the filing of the return and the payment of the tax.

The IRS and the Treasury Department note that under section 645, the electing trust is not treated as part of the related estate for purposes of Subtitle F of the Code. Accordingly, although the final regulations permit an electing trust and related estate to file a single, combined Form 1041, the electing trust and related estate continue to be separate taxpayers for purposes of Subtitle F, and the fiduciaries of the electing trust and the fiduciaries of the related estate each continue to have a responsibility for filing returns and paying the tax due for their respective entities even though a section 645 election has been made. Under the final regulations, the executor must file a complete, accurate, and timely Form 1041 for the combined related estate and electing trust for each taxable year during the election period. The trustee of the electing trust must timely provide the executor of the related estate with all the trust information necessary to permit the executor to file a

complete, accurate, and timely Form 1041 for the combined electing trust and related estate for each taxable year during the election period. The trustee and the executor must allocate the tax burden of the combined electing trust and related estate in a manner that reasonably reflects the respective tax obligations of the electing trust and related estate. If the tax burden is not reasonably allocated, gifts may be deemed to have been made. The trustee is responsible for insuring that the electing trust's share of the tax burden is paid to the Secretary, and the executor is responsible for insuring that the related estate's share of the tax burden is timely paid to the Secretary.

C. Comments and Changes to § 1.645-1(d): TIN and filing requirements for a QRT

The proposed regulations provide that, in general, a grantor trust must obtain a taxpayer identification number (TIN) upon the death of the grantor regardless of whether or not the trust had a TIN prior to the death of the grantor. See proposed regulation §301.6109-1(a)(3). The proposed regulations provide an exception to this general rule. The proposed regulations provide that, if there is an executor and a section 645 election has been made, a TIN must be obtained for the related estate but a TIN is not required to be obtained for the electing trust or for a QRT for which a section 645 election will be made. Further, under the proposed regulations, the payors (as defined in §301.6109-1(a)(5) of these final regulations) of the electing trust or a QRT for which the section 645 election will be made are to be furnished with the TIN of the estate on Form W-9, "Request for Taxpayer Identification Number and Certification." The proposed regulations were designed to simplify and lessen the reporting burdens imposed on trustees and executors

by the interim guidance in Rev. Proc. 98-13 (1998-1 C.B. 370) by removing the requirement to obtain a TIN for electing trusts and certain QRTs.

Several commentators reported, however, that many trustees automatically obtain a TIN for the QRT immediately after the decedent's death and furnish that TIN to payors. Under the proposed regulations, if a trustee obtains a TIN for a QRT, the trustee must file a completed Form 1041 for the QRT for the short taxable year of the QRT beginning with the decedent's date of death and ending December 31 of that year. If a valid section 645 election is made for the QRT, an amended Form 1041 must be filed for the QRT and the payors of the QRT must be furnished with a revised Form W-9 containing the related estate's TIN. As a result, for trustees that obtain a TIN for a QRT, the procedures in the proposed regulations are more burdensome than the procedures in Rev. Proc. 98-13. In response, the final regulations remove the provision in the proposed regulations that excepted an electing trust and a QRT for which a section 645 election will be made from the general requirement that a grantor trust must obtain a TIN upon the death of the grantor. Under the final regulations, the trustee of an electing trust or a QRT for which a section 645 election will be made obtains a TIN upon the death of the decedent as required by §301.6109-1(a)(3) of these final regulations and furnishes this TIN to the payors of the trust. Under the final regulations, if a section 645 election will be made for a QRT, the trustee is not required to file a Form 1041 for the short taxable year of the QRT beginning with the decedent's date of death and ending December 31 of that year.

The final regulations also simplify the procedures for obtaining a TIN, furnishing that

TIN to the payors, and filing a Form 1041 for a QRT if there is no executor. The proposed regulations provide that, if there is no executor, the trustee must obtain a TIN for the electing trust to file as an estate during the section 645 election period. The payors of the electing trust must be furnished with the TIN obtained by the trust to file as an estate. Under the proposed regulations, if a section 645 election will be made for a QRT, the trustee of the QRT may choose to obtain a TIN for the QRT to file as an estate under section 645 and avoid obtaining a TIN for the QRT to file as a trust. If the trustee of the QRT obtains a TIN to file as a trust (and not as an estate), the trustee is required to file a completed Form 1041 as a trust for the short taxable year of the QRT beginning with the decedent's date of death and ending December 31 of that year. If a section 645 election to treat the QRT as an estate is made after the Form 1041 is filed for the QRT treating the QRT as a trust, the trustee of the QRT is required to file an amended Form 1041 as a trust (excluding the items of income, deduction, and credits that are to be reported on a return filed as an estate), obtain another TIN to file as an estate, provide revised Forms W-9 with the new TIN to the payors of the QRT, and file a Form 1041 as an estate. Under the final regulations, if there is no executor, the trustee of an electing trust or a QRT for which a section 645 election will be made obtains a TIN upon the death of the decedent as required by §301.6109-1(a)(3) of these final regulations and furnishes this TIN to the payors of the trust. The trustee uses this TIN to file Forms 1041 as an estate during the election period. If a section 645 election will be made for a QRT, the trustee of the QRT is not required to file a Form 1041 for the short taxable year beginning with the decedent's

date of death and ending December 31 of that year.

Regardless of whether or not there is an executor, the final regulations retain the requirement that a Form 1041 (including the items of income, deduction, and credit of the QRT) must be filed for the short taxable year of the QRT beginning with the decedent's date of death if a section 645 election will not be made for the trust, or if the trustee and the executor are uncertain whether a section 645 election will be made for the QRT by the due date of the Form 1041 for the short taxable year of the QRT beginning after the decedent's death and ending December 31 of that year.

D. Comments and Changes to § 1.645-1(e): Tax Treatment and General Filing Requirements of the Electing Trust and Related Estate During the Election Period

The proposed regulations provide that, during the election period, if there is an executor, one Form 1041 is filed annually for the combined electing trust and related estate under the name and TIN of the related estate. Information regarding the electing trust is also reported on the Form 1041 as required by the instructions to the Form 1041.

The proposed regulations provide that the electing trust and related estate are treated as separate shares under section 663(c) for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. The proposed regulations also provide rules for adjusting the DNI of the separate shares with respect to distributions made from one share to another share of the combined electing trust and related estate to which sections 661 and 662 would apply had the distribution been made to a beneficiary other than another share. Under the proposed regulations, the share making the distribution reduces its DNI by the amount of the distribution deduction

that it would have been entitled to under section 661 had the distribution been made to a beneficiary other than another share of the combined related estate and electing trust, and, solely for purposes of calculating its DNI, the share receiving the distribution increases its gross income by this amount. One commentator noted that, if the amount distributed from one share to another share includes an item of DNI that is not included in the gross income of the combined electing trust and related estate, this provision in the proposed regulations does not produce an appropriate result because of the operation of section 661(c). Accordingly, the final regulations are revised to provide that the share making the distribution reduces its DNI by the amount of the distribution deduction it would be entitled to under section 661 (determined without regard to section 661(c)), and solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount.

Commentators requested clarification regarding whether an electing trust will be treated as an estate or a trust for purposes of the rules under section 401(a)(9). Final regulations (TD 8987) under sections 401, 403, and 408 were published in the **Federal Register** (67 FR 18988) on April 17, 2002. The preamble to those final regulations provides that an electing trust will not fail to be a trust for purposes of section 401(a)(9) merely because the trust elects to be treated as an estate under section 645, as long as the trust continues to be a trust under state law.

Another commentator asked for clarification regarding whether the exception for estates under section 6654(l)(2) with respect to the payment of estimated income tax

applies to an electing trust. The final regulations clarify that each electing trust and related estate, if any, is treated as a separate taxpayer for all purposes of Subtitle F of the Code, including, without limitation, the application of section 6654. The final regulations provide, however, that the provisions of section 6654(l)(2)(A) relating to the 2 year exception to an estate's obligation to make estimated tax payments will apply to each electing trust for which a section 645 election has been made.

E. Comments and Changes to § 1.645-1(f): Duration of the Election Period

The proposed regulations provide that the election period terminates on the day before the applicable date. One commentator suggested that section 645(a) should be interpreted as terminating the election period on the last day of the taxable year ending before the applicable date. Another commentator commended the interpretation taken by the proposed regulations because, if the estate is required to file a Form 706, "United States Estate (and Generation Skipping Transfer) Tax Return," and the election terminates on the last day of the taxable year ending before the applicable date, the election period could terminate prior to the date of final determination of liability for the estate tax, rather than six months after that date. The final regulations continue to provide that the election terminates the day before the applicable date.

If a Form 706 is required to be filed, the proposed regulations provide that the applicable date is the day that is 6 months after the date of final determination of liability for the estate tax. In response to comments, the final regulations provide that the applicable date is the day that is the later of 2 years after the date of the decedent's death or 6

months after the date of final determination of liability for estate tax.

The proposed regulations provide that the date of final determination of liability for the estate tax is the day on which the first of a series of events has occurred. One of the events is the issuance of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within six months after the issuance of the letter. Two commentators requested that the issuance of a closing letter be removed from the list of events that can be considered the date of final determination of liability. These commentators contended that the closing letter is not a final determination of liability because the IRS may impose additional estate tax after a closing letter has been issued.

The IRS and the Treasury Department note that the circumstances in which the IRS may impose additional estate tax after a closing letter is issued are very limited. See Rev. Proc. 94-68 (1994-2 C.B. 803). In many cases, the issuance of a closing letter is sufficient to permit the closing of the probate estate and to complete any administration of the electing trust that was necessitated by the decedent's death. The IRS and the Treasury Department believe that eliminating the closing letter from the list of events that are considered a final determination of liability may encourage unduly prolonging the administration of the electing trust and related estate in order to prolong the section 645 election period. While the final regulations retain the issuance of the closing letter as one of the triggers for the date of the final determination of liability, the final regulations have been changed to provide a minimum election period of two years for all electing trusts and related estates, as well as to provide that if the issuance of the closing letter triggers the

date of the final determination of liability, the date of the final determination of liability is the date that is 6 months after the date the closing letter is issued, rather than the date the closing letter is issued as provided in the proposed regulations.

Proposed §1.641(b)-3 provides that, if an estate has joined in making a valid section 645 election, the estate shall not terminate for federal tax purposes prior to the termination of the section 645 election period. Some interpreted proposed §1.641(b)-3 as requiring the filing of Forms 1041 for the estate until the applicable date even if, prior to that date, the electing trust and the related estate had been completely administered and the assets of the trust and the estate completely distributed. In response, the final regulations provide that the election period terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all of their assets, or the day before the applicable date. The final regulations continue to provide that the election does not apply to successor trusts (trusts which are distributees under the trust instrument).

The proposed regulations provide that, if the executor of the related estate is not appointed until after the trustee has made a section 645 election, the section 645 election period will terminate if the later appointed executor refuses to agree to the election. One commentator objected to the termination of the election as a result of the refusal to agree to the election by the later appointed executor. This commentator suggested that the election period should continue after the appointment of the executor and that the person seeking appointment as an executor could either accept or not accept appointment as an executor given the responsibilities of the previously made section 645 election. The IRS

and the Treasury Department believe that the later appointed executor must consent to the section 645 election for the election to be valid with respect to the related estate.

Accordingly, the final regulations provide that, for the election period to continue, a new election form must be filed by the trustee and the newly appointed executor within 90 days of the executor's appointment. Otherwise the election period terminates the day before the appointment of the executor.

#### F. Tax Treatment of the Electing Trust and Related Estate Upon Termination of the Election Period

At the close of the last day of the election period, the combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, is deemed to distribute all the assets and liabilities of the share (or shares) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. Thus, the combined electing trust and related estate, or the electing trust, as appropriate, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust must include the amount of the deemed distribution in gross income to the extent required under section 662.

One commentator questioned whether the net capital gains attributable to the electing trust should be included in the sections 661 and 662 calculations for the deemed distribution of the electing trust to a new trust upon the termination of the election period. The final regulations clarify that the net capital gains attributable to the electing trust are includible in the DNI of the share (or shares) comprising the electing trust for the purpose of

applying sections 661 and 662 to the deemed distribution to the new trust.

If there is an executor and the electing trust terminates on or before the termination of the section 645 election period, the trustee must file a final Form 1041 under the name and TIN of the electing trust to notify the IRS that the trust no longer exists. This Form 1041 will not include any of the trust's items of income, deduction, and credit because those items will be included on the Form 1041 filed for the combined electing trust and related estate.

If there is an executor, the trustee may not need to obtain a TIN for the new trust deemed to have been created upon the termination of the election period. The trustee must consult the instructions to the Form 1041 upon the termination of the election period to determine if a new TIN must be obtained. If a new TIN is not required to be obtained, the trustee must file Forms 1041 for the new trust under the TIN obtained by the trustee under § 301.6109-1(a)(3) for the QRT following the death of the decedent. If there is no executor, the trustee must obtain a TIN for the new trust deemed to have been created upon the termination of the election period. If a new TIN is required under the regulations or the instructions to the Form 1041, the trustee must file Forms W-9 with the payors of the trust to provide them with the TIN to be used following the termination of the election period.

G. Effective date of final regulations under section 645

The final regulations provide that election procedures in paragraph (c), the rules in paragraph (d) regarding obtaining a TIN for the electing trust and QRT, the rules in paragraph (f) regarding the duration of the election period, and paragraph (g) regarding

the later appointed executor are effective for estates and trusts of decedents dying on or after December 24, 2002. The final regulations provide that the rules in paragraph (e), regarding the tax treatment and general filing requirements of the electing trust and the related estate, if any, during the election period, and the rules in paragraph (h) regarding the tax treatment of the electing trust and related estate, if any, upon termination of the election period are effective for taxable years ending on or after December 24, 2002.

Estates and trusts of decedents dying before December 24, 2002 may follow the election procedures provided in the proposed regulations or Rev. Proc. 98-13. With respect to obtaining a TIN for a QRT and filing a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year, estates and trusts of decedents dying before December 24, 2002 may follow the procedures in these final regulations, the proposed regulations, or Rev. Proc. 98-13.

#### H. Clarification of the Reporting Rules for Grantor Trusts Under §1.671-4

The proposed regulations amend §1.671-4 to clarify that a trust, or portion of a trust, reports under §1.671-4 for the taxable year that ends with the death of the grantor or other person (decedent) treated as the owner of the trust. If the trust was filing a Form 1041 under §1.671-4(a) during the life of the decedent, the due date of the Form 1041 for the taxable year ending with the decedent's death is specified in §1.6072-1(a)(2). Proposed §1.6072-1(a)(2) provides that the due date for the Form 1041 for the taxable year ending with the death of the decedent is the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year. The

final regulations under §1.6072-1(a)(2) are revised to provide that the due date for the Form 1041 filed for the taxable year ending with the decedent's death is the fifteenth day of the fourth month following the close of the 12-month period that began with the first day of the decedent's last taxable year.

Section 301.6109-1(a)(3) of the proposed regulations provides that a trust, all of which was treated as owned by the decedent, must obtain a new TIN upon the death of the decedent, if the trust will continue after the decedent's death. One commentator asked if this provision is intended to apply to an "administrative trust." Section 1.641(b)-3 recognizes that a trust does not automatically terminate upon the happening of the event by which the duration of the trust is measured. A reasonable period of time is permitted after such event for the trustee to perform the duties necessary to complete the administration of the trust. Section 301.6109-1(a)(3) is intended to clarify that a trust must obtain a new TIN after the death of the decedent, if a trust that was treated as owned by the decedent during the decedent's life will continue for a period of time following the death of the decedent to allow a winding up of the affairs of the trust following the death of the decedent.

For administrative convenience, the proposed regulations provide that if a decedent and others are treated as the owners of a trust and following the decedent's death the decedent's portion remains in the trust, the trust continues to report under the TIN used by the trust prior to the death of the decedent. Commentators found this provision confusing and asked for clarification. The final regulations clarify that this provision applies to a trust that has multiple grantors (or other persons treated as the owners) that must

report under §1.671-4(a) after the death of the decedent because, although a portion of the trust continues to be treated as owned by a grantor or another person, the decedent's portion of the trust is no longer treated as owned by the decedent upon his death. The final regulations provide an example of a situation in which this provision applies.

### **Effect on Other Documents**

The following publications are obsolete as of December 24, 2002:

Revenue Procedure 98-13 (1998-1 CB 370)

Notice 2001-26 (2001-13 IRB 942)

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply and because this rule does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does 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 their impact on small business.

### **Drafting Information**

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS

and Treasury Department participated in their development.

### **Adoption of Amendments to the Regulations**

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

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.645-1 also issued under 26 U.S.C. 645. \* \* \*

Par. 2. Section 1.641(b)-3 is amended by adding a sentence to the end of paragraph (a) to read as follows:

#### §1.641(b)-3 Termination of estates and trusts.

(a) \* \* \* Notwithstanding the above, if the estate has joined in making a valid election under section 645 to treat a qualified revocable trust, as defined under section 645(b)(1), as part of the estate, the estate shall not terminate under this paragraph prior to the termination of the section 645 election period. See section 645 and the regulations thereunder for rules regarding the termination of the section 645 election period.

\* \* \* \* \*

Par. 3. In §1.642(c)-1, the last sentence of paragraph (a)(1) is revised to read as follows:

#### §1.642(c)-1 Unlimited deduction for amounts paid for a charitable purpose.

(a) \* \* \* (1) \* \* \* In applying this paragraph without reference to paragraph (b) of this

section, a deduction shall be allowed for an amount paid during the taxable year in respect of gross income received in a previous taxable year, but only if no deduction was allowed for any previous taxable year to the estate or trust, or in the case of a section 645 election, to a related estate, as defined under §1.645-1(b), for the amount so paid.

\* \* \* \* \*

Par. 4. An undesignated center heading is added immediately after § 1.642(c)-6(A) to read as follows:

“Election to Treat Trust as Part of an Estate”

Par. 5. Section 1.645-1 is added under the new undesignated centerheading “Election to Treat Trust as Part of an Estate” to read as follows:

§1.645-1 Election by certain revocable trusts to be treated as part of estate.

(a) In general. If an election is filed for a qualified revocable trust, as defined in paragraph (b)(1) of this section, in accordance with the rules set forth in paragraph (c) of this section, the qualified revocable trust is treated and taxed for purposes of subtitle A of the Internal Revenue Code as part of its related estate, as defined in paragraph (b)(5) of this section (and not as a separate trust) during the election period, as defined in paragraph (b)(6) of this section. Rules regarding the use of taxpayer identification numbers (TINs) and the filing of a Form 1041, “U.S. Income Tax Return for Estates and Trusts,” for a qualified revocable trust are in paragraph (d) of this section. Rules regarding the tax treatment of an electing trust and related estate and the general filing requirements for the combined entity during the election period are in paragraph (e)(2) of this section.

Rules regarding the tax treatment of an electing trust and its filing requirements during the election period if no executor, as defined in paragraph (b)(4) of this section, is appointed for a related estate are in paragraph (e)(3) of this section. Rules for determining the duration of the section 645 election period are in paragraph (f) of this section. Rules regarding the tax effects of the termination of the election are in paragraph (h) of this section. Rules regarding the tax consequences of the appointment of an executor after a trustee has made a section 645 election believing that an executor would not be appointed for a related estate are in paragraph (g) of this section.

(b) Definitions. For purposes of this section:

(1) Qualified revocable trust. A qualified revocable trust (QRT) is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). A trust that was treated as owned by the decedent under section 676 by reason of a power that was exercisable by the decedent only with the approval or consent of a nonadverse party or with the approval or consent of the decedent's spouse is a QRT. A trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party or by reason of a power held by the decedent's spouse is not a QRT.

(2) Electing trust. An electing trust is a QRT for which a valid section 645 election has been made. Once a section 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

(3) Decedent. The decendent is the individual who was treated as the owner of the QRT under section 676 on the date of that individual's death.

(4) Executor. An executor is an executor, personal representative, or administrator that has obtained letters of appointment to administer the decedent's estate through formal or informal appointment procedures. Solely for purposes of this paragraph (b)(4), an executor does not include a person that has actual or constructive possession of property of the decedent unless that person is also appointed or qualified as an executor, administrator, or personal representative of the decedent's estate. If more than one jurisdiction has appointed an executor, the executor appointed in the domiciliary or primary proceeding is the executor of the related estate for purposes of this paragraph (b)(4).

(5) Related estate. A related estate is the estate of the decedent who was treated as the owner of the QRT on the date of the decedent's death.

(6) Election period. The election period is the period of time during which an electing trust is treated and taxed as part of its related estate. The rules for determining the duration of the election period are in paragraph (f) of this section.

(c) The election--(1) Filing the election if there is an executor--(i) Time and manner for filing the election. If there is an executor of the related estate, the trustees of each QRT joining in the election and the executor of the related estate make an election under section 645 and this section to treat each QRT joining in the election as part of the related estate for purposes of subtitle A of the Internal Revenue Code by filing a form provided by the IRS for making the election (election form) properly completed and signed under penalties of

perjury, or in any other manner prescribed after December 24, 2002 by forms provided by the Internal Revenue Service (IRS), or by other published guidance for making the election. For the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the related estate (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the related estate, the election form will be timely filed if it is filed by the time prescribed for filing the Form 1041 including the extension granted with respect to the Form 1041.

(ii) Conditions to election. In addition to providing the information required by the election form, as a condition to a valid section 645 election, the trustee of each QRT joining in the election and the executor of the related estate agree, by signing the election form under penalties of perjury, that:

(A) With respect to a trustee--

(1) The trustee agrees to the election;

(2) The trustee is responsible for timely providing the executor of the related estate with all the trust information necessary to permit the executor to file a complete, accurate, and timely Form 1041 for the combined electing trust(s) and related estate for each taxable year during the election period;

(3) The trustee of each QRT joining the election and the executor of the related estate have agreed to allocate the tax burden of the combined electing trust(s) and related estate for each taxable year during the election period in a manner that reasonably reflects

the tax obligations of each electing trust and the related estate; and

(4) The trustee is responsible for insuring that the electing trust's share of the tax obligations of the combined electing trust(s) and related estate is timely paid to the Secretary.

(B) With respect to the executor--

(1) The executor agrees to the election;

(2) The executor is responsible for filing a complete, accurate, and timely Form 1041 for the combined electing trust(s) and related estate for each taxable year during the election period;

(3) The executor and the trustee of each QRT joining in the election have agreed to allocate the tax burden of the combined electing trust(s) and related estate for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust and the related estate;

(4) The executor is responsible for insuring that the related estate's share of the tax obligations of the combined electing trust(s) and related estate is timely paid to the Secretary.

(2) Filing the election if there is no executor--(i) Time and manner for filing the election. If there is no executor for a related estate, an election to treat one or more QRTs of the decedent as an estate for purposes of subtitle A of the Internal Revenue Code is made by the trustees of each QRT joining in the election, by filing a properly completed election form, or in any other manner prescribed after December 24, 2002 by forms

provided by the IRS, or by other published guidance for making the election. For the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the trust, taking into account the trustee's election to treat the trust as an estate under section 645 (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the electing trust, the election form will be timely filed if it is filed by the time prescribed for filing the Form 1041 including the extension granted with respect to the filing of the Form 1041.

(ii) Conditions to election. In addition to providing the information required by the election form, as a condition to a valid section 645 election, the trustee of each QRT joining in the election agrees, by signing the election form under penalties of perjury, that--

(A) The trustee agrees to the election;

(B) If there is more than one QRT joining in the election, the trustees of each QRT joining in the election have appointed one trustee to be responsible for filing the Form 1041 for the combined electing trusts for each taxable year during the election period (filing trustee) and the filing trustee has agreed to accept that responsibility;

(C) If there is more than one QRT, the trustees of each QRT joining in the election have agreed to allocate the tax liability of the combined electing trusts for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust;

(D) The trustee agrees to:

(1) Timely file a Form 1041 for the electing trust(s) for each taxable year during the election period; or

(2) If there is more than one QRT and the trustee is not the filing trustee, timely provide the filing trustee with all of the electing trust's information necessary to permit the filing trustee to file a complete, accurate, and timely Form 1041 for the combined electing trusts for each taxable year during the election period;

(3) Insure that the electing trust's share of the tax burden is timely paid to the Secretary;

(E) There is no executor and, to the knowledge and belief of the trustee, one will not be appointed; and

(F) If an executor is appointed after the filing of the election form and the executor agrees to the section 645 election, the trustee will complete and file a revised election form with the executor.

(3) Election for more than one QRT. If there is more than one QRT, the election may be made for some or all of the QRTs. If there is no executor, one trustee must be appointed by the trustees of the electing trusts to file Forms 1041 for the combined electing trusts filing as an estate during the election period.

(d) TIN and filing requirements for a QRT--(1) Obtaining a TIN. Regardless of whether there is an executor for a related estate and regardless of whether a section 645 election will be made for the QRT, a TIN must be obtained for the QRT following the death of the decedent. See §301.6109-1(a)(3) of this chapter. The trustee must furnish this TIN

to the payors of the QRT. See §301.6109-1(a)(5) of this chapter for the definition of payor.

(2) Filing a Form 1041 for a QRT--(i) Option not to file a Form 1041 for a QRT for which a section 645 election will be made. If a section 645 election will be made for a QRT, the executor of the related estate, if any, and the trustee of the QRT may treat the QRT as an electing trust from the decedent's date of death until the due date for the section 645 election. Accordingly, the trustee of the QRT is not required to file a Form 1041 for the QRT for the short taxable year beginning with the decedent's date of death and ending December 31 of that year. However, if a QRT is treated as an electing trust under this paragraph from the decedent's date of death until the due date for the section 645 election but a valid section 645 election is not made for the QRT, the QRT will be subject to penalties and interest for failing to timely file a Form 1041 and pay the tax due thereon.

(ii) Requirement to file a Form 1041 for a QRT if paragraph (d)(2)(i) of this section does not apply--(A) Requirement to file Form 1041. If the trustee of the QRT and the executor of the related estate, if any, do not treat the QRT as an electing trust as provided under paragraph (d)(2)(i) of this section, or if the trustee of the electing trust and the executor, if any, are uncertain whether a section 645 election will be made for a QRT, the trustee of the QRT must file a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year (unless the QRT is not required to file a Form 1041 under section 6012 for this period).

(B) Requirement to amend Form 1041 if a section 645 election is made--(1) If there is an executor. If there is an executor and a valid section 645 election is made for a QRT after a Form 1041 has been filed for the QRT as a trust (see paragraph (d)(2)(ii)(A) of this section), the trustee must amend the Form 1041. The QRT's items of income, deduction, and credit must be excluded from the amended Form 1041 filed under this paragraph and must be included on the Form 1041 filed for the first taxable year of the combined electing trust and related estate under paragraph (e)(2)(ii)(A) of this section.

(2) If there is no executor. If there is no executor and a valid section 645 election is made for a QRT after a Form 1041 has been filed for the QRT as a trust (see paragraph (d)(2)(ii)(A) of this section) for the short taxable year beginning with the decedent's death and ending December 31 of that year, the trustee must file an amended return for the QRT. The amended return must be filed consistent with paragraph (e)(3) of this section and must be filed by the due date of the Form 1041 for the QRT, taking into account the trustee's election under section 645.

(e) Tax treatment and general filing requirements of electing trust and related estate during the election period--(1) Effect of election. The section 645 election once made is irrevocable.

(2) If there is an executor--(i) Tax treatment of the combined electing trust and related estate. If there is an executor, the electing trust is treated, during the election period, as part of the related estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, the electing trust is treated as part of the related estate for

purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities in section 469(i)(4).

(ii) Filing requirements--(A) Filing the Form 1041 for the combined electing trust and related estate during the election period. If there is an executor, the executor files a single income tax return annually (assuming a return is required under section 6012) under the name and TIN of the related estate for the combined electing trust and the related estate. Information regarding the name and TIN of each electing trust must be provided on the Form 1041 as required by the instructions to that form. The period of limitations provided in section 6501 for assessments with respect to an electing trust and the related estate starts with the filing of the return required under this paragraph. Except as required under the separate share rules of section 663(c), for purposes of filing the Form 1041 under this paragraph and computing the tax, the items of income, deduction, and credit of the electing trust and related estate are combined. One personal exemption in the amount of \$600 is permitted under section 642(b), and the tax is computed under section 1(e), taking into account section 1(h), for the combined taxable income.

(B) Filing a Form 1041 for the electing trust is not required. Except for any final Form 1041 required to be filed under paragraph (h)(2)(i)(B) of this section, if there is an executor, the trustee of the electing trust does not file a Form 1041 for the electing trust during the election period. Although the trustee is not required to file a Form 1041 for the electing trust, the trustee of the electing trust must timely provide the executor of the related

estate with all the trust information necessary to permit the executor to file a complete, accurate and timely Form 1041 for the combined electing trust and related estate. The trustee must also insure that the electing trust's share of the tax obligations of the combined electing trust and related estate is timely paid to the Secretary. In certain situations, the trustee of a QRT may be required to file a Form 1041 for the QRT's short taxable year beginning with the date of the decedent's death and ending December 31 of that year. See paragraph (d)(2) of this section.

(iii) Application of the separate share rules--(A) Distributions to beneficiaries (other than to a share (or shares) of the combined electing trust and related estate). Under the separate share rules of section 663(c), the electing trust and related estate are treated as separate shares for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. Further, the electing trust share or the related estate share may each contain two or more shares. Thus, if during the taxable year, a distribution is made by the electing trust or the related estate, the DNI of the share making the distribution must be determined and the distribution provisions of sections 661 and 662 must be applied using the separately determined DNI applicable to the distributing share.

(B) Adjustments to the DNI of the separate shares for distributions between shares to which sections 661 and 662 would apply. A distribution from one share to another share to which sections 661 and 662 would apply if made to a beneficiary other than another share of the combined electing trust and related estate affects the computation of the DNI

of the share making the distribution and the share receiving the distribution. The share making the distribution reduces its DNI by the amount of the distribution deduction that it would be entitled to under section 661 (determined without regard to section 661(c)), had the distribution been made to another beneficiary, and, solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount. The distribution has the same character in the hands of the recipient share as in the hands of the distributing share. The following example illustrates the provisions of this paragraph (e)(2)(iii)(B):

Example. (i) A's will provides that, after the payment of debts, expenses, and taxes, the residue of A's estate is to be distributed to Trust, an electing trust. The sole beneficiary of Trust is C. The estate share has \$15,000 of gross income, \$5,000 of deductions, and \$10,000 of taxable income and DNI for the taxable year based on the assets held in A's estate. During the taxable year, A's estate distributes \$15,000 to Trust. The distribution reduces the DNI of the estate share by \$10,000.

(ii) For the same taxable year, the trust share has \$25,000 of gross income and \$5,000 of deductions. None of the modifications provided for under section 643(a) apply. In calculating the DNI for the trust share, the gross income of the trust share is increased by \$10,000, the amount of the reduction in the DNI of the estate share as a result of the distribution to Trust. Thus, solely for purposes of calculating DNI, the trust share has gross income of \$35,000, and taxable income of \$30,000. Therefore, the trust share has \$30,000 of DNI for the taxable year.

(iii) During the same taxable year, Trust distributes \$35,000 to C. The distribution deduction reported on the Form 1041 filed for A's estate and Trust is \$30,000. As a result of the distribution by Trust to C, C must include \$30,000 in gross income for the taxable year. The gross income reported on the Form 1041 filed for A's estate and Trust is \$40,000.

(iv) Application of the governing instrument requirement of section 642(c). A deduction is allowed in computing the taxable income of the combined electing trust and related estate to the extent permitted under section 642(c) for--

(A) Any amount of the gross income of the related estate that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the related estate for a purpose specified in section 170(c); and

(B) Any amount of gross income of the electing trust that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the electing trust for a purpose specified in section 170(c).

(3) If there is no executor--(i) Tax treatment of the electing trust. If there is no executor, the trustee treats the electing trust, during the election period, as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, an electing trust is treated as an estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities under section 469(i)(4). The trustee may also adopt a taxable year other than a calendar year.

(ii) Filing the Form 1041 for the electing trust. If there is no executor, the trustee of the electing trust must, during the election period, file a Form 1041, under the TIN obtained by the trustee under §301.6109-1(a)(3) of this chapter upon the death of the decedent, treating the trust as an estate. If there is more than one electing trust, the Form 1041 must be filed by the filing trustee (see paragraph (c)(2)(ii)(B) of this section) under the name and TIN of the electing trust of the filing trustee. Information regarding the names and TINs of the other electing trusts must be provided on the Form 1041 as required by the instructions to that form. Any return filed in accordance with this paragraph shall be treated as a return

filed for the electing trust (or trusts, if there is more than one electing trust) and not as a return filed for any subsequently discovered related estate. Accordingly, the period of limitations provided in section 6501 for assessments with respect to a subsequently discovered related estate does not start until a return is filed with respect to the related estate. See paragraph (g) of this section.

(4) Application of the section 6654(l)(2) to the electing trust. Each electing trust and related estate (if any) is treated as a separate taxpayer for all purposes of subtitle F of the Internal Revenue Code, including, without limitation, the application of section 6654. The provisions of section 6654(l)(2)(A) relating to the two year exception to an estate's obligation to make estimated tax payments, however, will apply to each electing trust for which a section 645 election has been made.

(f) Duration of election period--(1) In general. The election period begins on the date of the decedent's death and terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all of their assets, or the day before the applicable date. The election does not apply to successor trusts (trusts that are distributees under the trust instrument).

(2) Definition of applicable date--(i) Applicable date if no Form 706 "United States Estate (and Generation Skipping Transfer) Tax Return" is required to be filed. If a Form 706 is not required to be filed as a result of the decedent's death, the applicable date is the day which is 2 years after the date of the decedent's death.

(ii) Applicable date if a Form 706 is required to be filed. If a Form 706 is required to be filed as a result of the decedent's death, the applicable date is the later of the day

that is 2 years after the date of the decedent's death, or the day that is 6 months after the date of final determination of liability for estate tax. Solely for purposes of determining the applicable date under section 645, the date of final determination of liability is the earliest of the following--

(A) The date that is six months after the issuance by the Internal Revenue Service of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within twelve months after the issuance of the letter;

(B) The date of a final disposition of a claim for refund, as defined in paragraph (f)(2)(iii) of this section, that resolves the liability for the estate tax, unless suit is instituted within six months after a final disposition of the claim;

(C) The date of execution of a settlement agreement with the Internal Revenue Service that determines the liability for the estate tax;

(D) The date of issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax unless a notice of appeal or a petition for certiorari is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court; or

(E) The date of expiration of the period of limitations for assessment of the estate tax provided in section 6501.

(iii) Definition of final disposition of claim for refund. For purposes of paragraph (f)(2)(ii)(B) of this section, a claim for refund shall be deemed finally disposed of by the Secretary when all items have been either allowed or disallowed. If a waiver of notification with respect to disallowance is filed with respect to a claim for refund prior to disallowance

of the claim, the claim for refund will be treated as disallowed on the date the waiver is filed.

(iv) Examples. The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. A died on October 20, 2002. The executor of A's estate and the trustee of Trust, an electing trust, made a section 645 election. A Form 706 is not required to be filed as a result of A's death. The applicable date is October 20, 2004, the day that is two years after A's date of death. The last day of the election period is October 19, 2004. Beginning October 20, 2004, Trust will no longer be treated and taxed as part of A's estate.

Example 2. Assume the same facts as Example 1, except that a Form 706 is required to be filed as the result of A's death. The Internal Revenue Service issues an estate tax closing letter accepting the Form 706 as filed on March 15, 2005. The estate does not file a claim for refund by March 15, 2006, the day that is twelve months after the date of issuance of the estate tax closing letter. The date of final determination of liability is September 15, 2005, and the applicable date is March 15, 2006. The last day of the election period is March 14, 2006. Beginning March 15, 2006, Trust will no longer be treated and taxed as part of A's estate.

Example 3. Assume the same facts as Example 1, except that a Form 706 is required to be filed as the result of A's death. The Form 706 is audited, and a notice of deficiency authorized under section 6212 is mailed to the executor of A's estate as a result of the audit. The executor files a petition in Tax Court. The Tax Court issues a decision resolving the liability for estate tax on December 14, 2005, and neither party appeals within 90 days after the issuance of the decision. The date of final determination of liability is December 14, 2005. The applicable date is June 14, 2006, the day that is six months after the date of final determination of liability. The last day of the election period is June 13, 2006. Beginning June 14, 2006, Trust will no longer be treated and taxed as part of A's estate.

(g) Executor appointed after the section 645 election is made--(1) Effect on the election. If an executor for the related estate is not appointed until after the trustee has made a valid section 645 election, the executor must agree to the trustee's election, and the IRS must be notified of that agreement by the filing of a revised election form

(completed as required by the instructions to that form) within 90 days of the appointment of the executor, for the election period to continue past the date of appointment of the executor. If the executor does not agree to the election or a revised election form is not timely filed as required by this paragraph, the election period terminates the day before the appointment of the executor. If the IRS issues other guidance after December 24, 2002 for notifying the IRS of the executor's agreement to the election, the IRS must be notified in the manner provided in that guidance for the election period to continue.

(2) Continuation of election period--(i) Correction of returns filed before executor appointed. If the election period continues under paragraph (g)(1) of this section, the executor of the related estate and the trustee of each electing trust must file amended Forms 1041 to correct the Forms 1041 filed by the trustee before the executor was appointed. The amended Forms 1041 must be filed under the name and TIN of the electing trust and must reflect the items of income, deduction, and credit of the related estate and the electing trust. The name and TIN of the related estate must be provided on the amended Forms 1041 as required in the instructions to that Form. The amended return for the taxable year ending immediately before the executor was appointed must indicate that this Form 1041 is a final return. If the period of limitations for making assessments has expired with respect to the electing trust for any of the Forms 1041 filed by the trustee, the executor must file Forms 1041 for any items of income, deduction, and credit of the related estate that cannot be properly included on amended forms for the electing trust. The personal exemption under section 642(b) is not permitted to be taken on these Forms 1041 filed by the executor.

(ii) Returns filed after the appointment of the executor. All returns filed by the combined electing trust and related estate after the appointment of the executor are to be filed under the name and TIN of the related estate in accordance with paragraph (e)(2) of this section. Regardless of the change in the name and TIN under which the Forms 1041 for the combined electing trust and related estate are filed, the combined electing trust and related estate will be treated as the same entity before and after the executor is appointed.

(3) Termination of the election period. If the election period terminates under paragraph (g)(1) of this section, the executor must file Forms 1041 under the name and TIN of the estate for all taxable years of the related estate ending after the death of the decedent. The trustee of the electing trust is not required to amend any returns filed for the electing trust during the election period. Following termination of the election period, the trustee of the electing trust must obtain a new TIN. See §301.6109-1(a)(4) of this chapter.

(h) Treatment of an electing trust and related estate following termination of the election--(1) The share (or shares) comprising the electing trust is deemed to be distributed upon termination of the election period. On the close of the last day of the election period, the combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, is deemed to distribute the share (or shares, as determined under section 663(c)) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. All items of income, including net capital gains, that are attributable to the share (or shares) comprising the electing trust are included in the calculation of the distributable net income of the electing trust and treated as distributed by the combined electing trust and related estate, if there is an executor, or

by the electing trust, if there is no executor, to the new trust. The combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust shall include the amount of the deemed distribution in gross income to the extent required under section 662.

(2) Filing of the Form 1041 upon the termination of the section 645 election--(i) If there is an executor--(A) Filing the Form 1041 for the year of termination. If there is an executor, the Form 1041 filed under the name and TIN of the related estate for the taxable year in which the election terminates includes--

(1) The items of income, deduction, and credit of the electing trust attributable to the period beginning with the first day of the taxable year of the combined electing trust and related estate and ending with the last day of the election period;

(2) The items of income, deduction, and credit, if any, of the related estate for the entire taxable year; and

(3) A deduction for the deemed distribution of the share (or shares) comprising the electing trust to the new trust as provided for under paragraph (h)(1) of this section.

(B) Requirement to file a final Form 1041 under the name and TIN of the electing trust. If the electing trust terminates during the election period, the trustee of the electing trust must file a Form 1041 under the name and TIN of the electing trust and indicate that the return is a final return to notify the IRS that the electing trust is no longer in existence. The items of income, deduction, and credit of the trust are not reported on this final Form

1041 but on the appropriate Form 1041 filed for the combined electing trust and related estate.

(ii) If there is no executor. If there is no executor, the taxable year of the electing trust closes on the last day of the election period. A Form 1041 is filed in the manner prescribed under paragraph (e)(3)(ii) of this section reporting the items of income, deduction, and credit of the electing trust for the short period ending with the last day of the election period. The Form 1041 filed under this paragraph includes a distribution deduction for the deemed distribution provided for under paragraph (h)(1) of this section. The Form 1041 must indicate that it is a final return.

(3) Use of TINs following termination of the election--(i) If there is an executor. Upon termination of the section 645 election, a former electing trust may need to obtain a new TIN. See §301.6109-1(a)(4) of this chapter. If the related estate continues after the termination of the election period, the related estate must continue to use the TIN assigned to the estate during the election period.

(ii) If there is no executor. If there is no executor, the former electing trust must obtain a new TIN if the trust will continue after the termination of the election period. See §301.6109-1(a)(4) of this chapter.

(4) Taxable year of estate and trust upon termination of the election--(i) Estate-- Upon termination of the section 645 election period, the taxable year of the estate is the same taxable year used during the election period.

(ii) Trust. Upon termination of the section 645 election, the taxable year of the new trust is the calendar year. See section 644.

(i) Reserved.

(j) Effective date. Paragraphs (a), (b), (c), (d), (f), and (g) of this section apply to trusts and estates of decedents dying on or after December 24, 2002. Paragraphs (e) and (h) of this section apply to taxable years ending on or after December 24, 2002.

Par. 6. Section 1.671-4 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for newly designated paragraph (d)(1).

2. Paragraph (d)(2) is added.

3. Paragraphs (h) and (i) are redesignated as paragraphs (i) and (j), respectively.

4. New paragraph (h) is added.

5. The text of newly designated paragraph (i)(1) is revised.

6. Paragraph (i)(3) is added.

The additions and revisions read as follows:

§1.671-4 Method of reporting.

\* \* \* \* \*

(d) Due date and other requirements with respect to statement required to be furnished by trustee--(1) In general. \* \* \*

(2) Statement for the taxable year ending with the death of the grantor or other person treated as the owner of the trust. If a trust ceases to be treated as owned by the grantor, or other person, by reason of the death of that grantor or other person (decedent), the due date for the statement required to be furnished for the taxable year ending with the death of the decedent shall be the date specified by section 6034A(a) as though the

decedent had lived throughout the decedent's last taxable year. See paragraph (h) of this section for special reporting rules for a trust or portion of the trust that ceases to be treated as owned by the grantor or other person by reason of the death of the grantor or other person.

\* \* \* \* \*

(h) Reporting rules for a trust, or portion of a trust, that ceases to be treated as owned by a grantor or other person by reason of the death of the grantor or other person--

(1) Definition of decedent. For purposes of this paragraph (h), the decedent is the grantor or other person treated as the owner of the trust, or portion of the trust, under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code on the date of death of that person.

(2) In general. The provisions of this section apply to a trust, or portion of a trust, treated as owned by a decedent for the taxable year that ends with the decedent's death. Following the death of the decedent, the trust or portion of a trust that ceases to be treated as owned by the decedent, by reason of the death of the decedent, may no longer report under this section. A trust, all of which was treated as owned by the decedent, must obtain a new TIN upon the death of the decedent, if the trust will continue after the death of the decedent. See §301.6109-1(a)(3)(i) of this chapter for rules regarding obtaining a TIN upon the death of the decedent.

(3) Special rules--(i) Trusts reporting pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death. The due date for the filing of a return pursuant to paragraph (a) of this section for the taxable year ending with the decedent's

death shall be the due date provided for under §1.6072-1(a)(2). The return filed under this paragraph for a trust all of which was treated as owned by the decedent must indicate that it is a final return.

(ii) Trust reporting pursuant to paragraph (b)(2)(B) of this section for the taxable year of the decedent's death. A trust that reports pursuant to paragraph (b)(2)(B) of this section for the taxable year ending with the decedent's death must indicate on each Form 1096 "Annual Summary and Transmittal of the U.S. Information Returns" that it files (or appropriately on magnetic media) for the taxable year ending with the death of the decedent that it is the final return of the trust.

(iii) Trust reporting under paragraph (b)(3) of this section. If a trust has been reporting under paragraph (b)(3) of this section, the trustee may not report under that paragraph if any portion of the trust has a short taxable year by reason of the death of the decedent and the portion treated as owned by the decedent does not terminate on the death of the decedent.

(i) 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 paragraphs (a), (b), (c), (d)(1), (e), (f), and (g) of this section for taxable years beginning on or after January 1, 1996.

\* \* \* \* \*

(3) Effective date for paragraphs (d)(2) and (h) of this section.

Paragraphs (d)(2) and (h) of this section apply for taxable years ending on or after December 24, 2002.

Par. 7. Section 1.6012-3 is amended by adding paragraph (a)(1)(iv) to read as follows:

§1.6012-3 Returns by fiduciaries.

(iv) For each trust electing to be taxed as, or as part of, an estate under section 645 for which a trustee acts, and for each related estate joining in a section 645 election for which an executor acts, if the aggregate gross income of the electing trust(s) and related estate, if any, joining in the election for the taxable year is \$600 or more. (For the respective filing requirements of the trustee of each electing trust and executor of any related estate, see §1.645-1).

\* \* \* \* \*

Par. 8. Section 1.6072-1 is amended as follows:

1. The text of paragraph (a) is redesignated as paragraph (a)(1) and a paragraph heading is added for newly designated paragraph (a)(1).

2. Paragraph (a)(2) is added.

The additions are as follows:

§1.6072-1 Time for filing returns of individuals, estates, and trusts.

(a) In general--(1) Returns of income for individuals, estates and trusts. \* \* \*

(2) Return of trust, or portion of a trust, treated as owned by a decedent--(i) In general. In the case of a return of a trust, or portion of a trust, that was treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the date of the decedent's death that is filed in accordance with §1.671-4(a) for the fractional part of the year ending with the date of the

decedent's death, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of the decedent's taxable year.

(ii) Effective date. This paragraph (a)(2) applies to taxable years ending on or after December 24, 2002.

\* \* \* \* \*

#### PART 301--PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

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

Par. 10. Section 301.6109-1 is amended as follows:

1. Paragraph (a)(2)(iii) is removed.
2. Paragraphs (a)(3) through (a)(6) are added.

The additions are as follows:

#### §301.6109-1 Identifying numbers.

(a) \* \* \*

(3) Obtaining a taxpayer identification number for a trust, or portion of a trust, following the death of the individual treated as the owner--(i) In general--(A) A trust all of which was treated as owned by a decedent. In general, a trust all of which is treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the date of the decedent's death must obtain a new taxpayer identification number following the death of the decedent if the trust will continue after the death of the decedent.

(B) Taxpayer identification number of trust with multiple owners. With respect to a portion of a trust treated as owned under subpart E (section 671 and following), part I, subchapter J, chapter 1 (subpart E) of the Internal Revenue Code by a decedent as of the date of the decedent's death, if, following the death of the decedent, the portion treated as owned by the decedent remains part of the original trust and the other portion (or portions) of the trust continues to be treated as owned under subpart E by a grantor(s) or other person(s), the trust reports under the taxpayer identification number assigned to the trust prior to the decedent's death and the portion of the trust treated as owned by the decedent prior to the decedent's death (assuming the decedent's portion of the trust is not treated as terminating upon the decedent's death) continues to report under the taxpayer identification number used for reporting by the other portion (or portions) of the trust. For example, if a trust, reporting under §1.671-4(a) of this chapter, is treated as owned by three persons and one of them dies, the trust, including the portion of the trust no longer treated as owned by a grantor or other person, continues to report under the tax identification number assigned to the trust prior to the death of that person. See §1.671-4(a) of this chapter regarding rules for filing the Form 1041, "U.S. Income Tax Return for Estates and Trusts," where only a portion of the trust is treated as owned by one or more persons under subpart E.

(ii) Furnishing correct taxpayer identification number to payors following the death of the decedent. If the trust continues after the death of the decedent and is required to obtain a new taxpayer identification number under paragraph (a)(3)(i)(A) of this section, the trustee must furnish payors with a new Form W-9, "Request for Taxpayer Identification

Number and Certification,” or an acceptable substitute Form W-9, containing the new taxpayer identification number required under paragraph (a)(3)(i)(A) of this section, the name of the trust, and the address of the trustee.

(4) Taxpayer identification number to be used by a trust upon termination of a section 645 election-- (i) If there is an executor. Upon the termination of the section 645 election period, if there is an executor, the trustee of the former electing trust may need to obtain a taxpayer identification number. If §1.645-1(g) of this chapter regarding the appointment of an executor after a section 645 election is made applies to the electing trust, the electing trust must obtain a new TIN upon termination of the election period. See the instructions to the Form 1041 for whether a new taxpayer identification number is required for other former electing trusts.

(ii) If there is no executor. Upon termination of the section 645 election period, if there is no executor, the trustee of the former electing trust must obtain a new taxpayer identification number.

(iii) Requirement to provide taxpayer identification number to payors. If the trustee is required to obtain a new taxpayer identification number for a former electing trust pursuant to this paragraph (a)(4), or pursuant to the instructions to the Form 1041, the trustee must furnish all payors of the trust with a completed Form W-9 or acceptable substitute Form W-9 signed under penalties of perjury by the trustee providing each payor with the name of the trust, the new taxpayer identification number, and the address of the trustee.

(5) Persons treated as payors. For purposes of paragraphs (a)(2), (3), and (4) of

this section, a payor is a person described in §§1.671-4(b)(4) of this chapter.

(6) Effective date. Paragraphs (a)(3), (4), and (5) of this section apply to trusts of decedents dying on or after December 24, 2002.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. In §602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

\* \* \* \* \*

(b) \* \* \*

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CFR part or section where  
identified and described

Current OMB  
control No.

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\* \* \* \* \*

1.645-1.....1545-1578

\* \* \* \* \*

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David A. Mader,  
Assistant Deputy Commissioner of Internal Revenue.

Approved December 12, 2002.

Pamela T. Olson,  
Assistant Secretary of Treasury.