

Part III - Administrative, Procedural and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 646.)

Rev. Proc. 98-13

SECTION 1. PURPOSE

Section 1305 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997) (Act) added § 646¹ to the Internal Revenue Code, which provides an election to have certain revocable trusts be treated and taxed as part of an estate. This revenue procedure provides the procedures and requirements for making the § 646 election.

SECTION 2. BACKGROUND

Both estates and trusts can function to settle the affairs of a decedent and distribute assets to heirs. In the case of a revocable inter vivos trust, the grantor transfers property to a trust that is revocable during the grantor's lifetime. When the grantor dies, the power to revoke ceases and the trustee performs the settlement functions typically performed by an estate executor. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997).

Section 646(a) provides that if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect

¹ H.R. 2676, 105th Cong. § 612 (1997) would redesignate § 646 as § 645. If the redesignation is enacted, all references in this revenue procedure to § 646 shall be deemed to be references to § 645.

the treatment provided in § 646, such trust shall be treated and taxed for income tax purposes as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date, as defined in § 646(b)(2).

Section 646(b)(1) provides that the term "qualified revocable trust" means any trust (or portion thereof) that was treated under § 676 as owned by the decedent by reason of a power in the decedent to revoke (determined without regard to § 672(e)).

Section 646(b)(2) provides that the term "applicable date" means--(A) if no estate tax return is required to be filed, the date that is 2 years after the date of the decedent's death, and (B) if an estate tax return is required to be filed, the date that is 6 months after the date of the final determination of the estate tax liability.

Section 646(c) provides that the election under § 646(a) shall be made not later than the time prescribed for filing the income tax return for the first taxable year of the estate (determined with regard to extensions), and once made, shall be irrevocable.

SECTION 3. PROCEDURES AND REQUIREMENTS FOR MAKING THE § 646 ELECTION

.01 Required Statement.

To make the election, a required statement must be attached to a Form 1041, U.S. Income Tax Return for Estates and Trusts, at the time and in the manner described in this revenue procedure.

The required statement must:

- (1) Identify the election as an election made under § 646;
- (2) Contain the name, address, date of death, and taxpayer identification number (TIN) of the decedent;
- (3) Contain the qualified revocable trust's name, address, and TIN. If the trust does not have a TIN because the trust was reporting pursuant to § 1.671-4(b)(2)(i)(A) of the Income Tax Regulations, the trustee must obtain a TIN unless a Form 1041 does not have to be filed under SECTION 3.03. See § 301.6109-1(a)(2) of the Procedure and Administrative Regulations;
- (4) Contain the estate's name, address, and TIN;
- (5) Provide a representation that as of the date of the decedent's death, the trust for which the election is being made, or a portion thereof, was treated under § 676 as owned by the decedent of the estate referred to in § 646(a) by reason of a power in the decedent to revoke (determined without regard to § 672(e)); and
- (6) Be signed and dated by both an executor or administrator of the estate and a trustee of the qualified revocable trust. If there is more than one trustee, only one must sign the required statement, unless otherwise required by the governing instrument or by local law. Similarly, if there is more than one executor, only one must sign the required statement, unless otherwise required by the governing instrument or by local law.
If there is no probate estate and, hence, no executor or

administrator, the election may still be made. In that case, a TIN must still be obtained for the estate and only a trustee of the qualified revocable trust must sign the required statement; however, the required statement must then include a representation that there is no executor or administrator and that neither an executor nor an administrator will be appointed.

.02 Submission of the Required Statement.

The original required statement must be attached to the Form 1041 filed for the estate for its first taxable year.

Additionally, except as provided in SECTION 3.03, a copy of the required statement must be attached to a Form 1041 filed for the trust for the taxable year ending after the date of the decedent's death. The election is considered made when the original required statement is attached to the Form 1041 filed for the estate's first taxable year, or when a copy of the required statement is attached to the Form 1041 filed for the trust, whichever occurs first. Once made, the election is effective from the date of the decedent's death.

If the election is made, then the items of the trust, including income, deductions and credits, that are attributable to the qualified revocable trust for the period subsequent to the decedent's death must be excluded from the Form 1041 filed for the trust for the taxable year ending after the date of the decedent's death and must be reported on the estate's Form 1041. If there is no executor or administrator and neither one will be appointed, a trustee of the qualified revocable trust must sign

every Form 1041 filed for the estate.

If a Form 1041 reporting the items of the trust has already been filed for the trust for its taxable year ending after the date of the decedent's death without a copy of the required statement attached to the form, then the trust must file an amended Form 1041 and attach a copy of the required statement to the amended form. The items of the trust that are attributable to the qualified revocable trust for the period subsequent to the decedent's death must be excluded from the amended Form 1041 and reported on the estate's Form 1041.

.03 A Form 1041 Does Not Have to be Filed for Certain Trusts. The trust does not have to file a Form 1041 for its taxable year ending after the date of the decedent's death if the following conditions are met: (1) The Form 1041 for the estate's first taxable year is filed before the due date for filing a Form 1041 for the trust for the taxable year ending after the date of the decedent's death; (2) The trust items attributable to the decedent are reported pursuant to §1.671-4(b)(2)(i)(A) or (B); and (3) The entire trust is a qualified revocable trust.

SECTION 4. EFFECTIVE DATE

Section 646 applies with respect to estates of decedents dying after August 5, 1997, the date of enactment of the Act. This revenue procedure applies to elections made after August 5, 1997.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue

procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1578.

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

The collection of information in this revenue procedure is in the section headed Procedures and Requirements for Making the § 646 Election. This information is required to be submitted in order to make the § 646 election. The likely respondents are trusts and estates.

The estimated total reporting burden is 5,000 hours.

The estimated average burden per respondent is .5 hours. The estimated number of respondents is 10,000.

The estimated frequency of responses is twice.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Eliana Dolgoff of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Eliana Dolgoff at (202) 622-3060 (not a toll-free call).