

Trust 645 Election

Notice 2001-26

This notice provides guidance regarding the election for a trust to be treated as part of an estate under § 645 of the Internal Revenue Code and the filing of a Form 1041, *U.S. Income Tax Return for Estates and Trusts*, for the first (short) taxable year of the trust.

Section 645 provides that a qualified revocable trust may elect to be treated and taxed for income tax purposes as part of an 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 described in § 645(b)(2).

Rev. Proc. 98-13, 1998-1 C.B. 370, sets forth procedures for making the § 645 election and filing the appropriate tax returns. A qualified revocable trust that will make the § 645 election generally is required to obtain a taxpayer identification number (TIN) and to file a Form 1041 for the trust's short taxable year beginning with the decedent's death and ending December 31 of that year. A trust does not have to file a short year return if: (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.

Under Rev. Proc. 98-13, if the trust is required to file a Form 1041 for the short taxable year, a copy of the required election statement must be attached to that form. The original of the required statement must be attached to the Form 1041 filed for the estate's first taxable year. The § 645 election is considered made on the first to occur of the filing of the estate's Form 1041 with the original required statement attached or the filing of the trust's Form 1041 with the copy of the required statement attached. Once the election is made, the items of income, deductions, and credits attributable to the trust for the short year must be excluded from the trust's Form 1041 and reported on the estate's Form 1041.

Proposed income tax regulations under § 645 published in the Federal Register on December 18, 2000 (65 Fed. Reg. 79015), contain different procedures for making the election and filing the short year return for the trust. These procedures are proposed to replace the procedures in Rev. Proc. 98-13 when the regulations are finalized. Under the proposed regulations, the § 645 election is considered made upon the filing of the Form 1041, with the required election statement attached, for the first taxable year of the estate, or if there is no personal representative, for the first taxable year of the trust filing as an estate. Section 1.645-1(c) of the proposed Income Tax Regulations. The proposed regulations also provide that if the § 645 election will be made, the trust is not required to obtain a TIN for the trust or file a Form 1041 for the short year. In such a situation, the trust's items of income, deductions, and credits are included on the combined Form 1041 for the electing trust and related estate under the TIN for the related estate. Section 1.645-1(d)(1)(i) and (ii)(A).

The Internal Revenue Service has received numerous requests that taxpayers be permitted to use the procedures in the proposed regulations prior to the time that the final regulations are issued. Accordingly, estates and qualifying revocable trusts of decedents who die after December 31, 1999, and before the effective date of the final § 645 regulations, may choose to use either the election and reporting procedures set forth in Rev. Proc. 98-13, or the election and reporting procedures set forth in § 1.645-1(c) and § 1.645-1(d)(1)(i) and (ii)(A) of the proposed regulations.

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