

§ 1.668(a)-3

26 CFR Ch. I (4-1-04 Edition)

(c) A will include in his gross income for 1955 two-thirds of each item shown in paragraph (b) of this example. Thus, he will include in gross income \$6,666.67 (10,000/15,000×\$10,000) of the 1955 distributable net income of the trust as provided in section 662(a)(2), and \$3,333.33 (10,000/15,000×\$5,000) of the accumulation distribution and \$733.33 (10,000/15,000×\$1,100) of the taxes imposed on the trust as provided in section 668(a).

(d) B will include in his gross income for 1955 one-third of each item shown in paragraph (b) of this example, computed in the manner shown in paragraph (c) of this example.

§ 1.668(a)-3 Excluded amounts.

When a trust pays, credits, or is required to distribute to a beneficiary amounts which are excluded under section 665(b) (1), (2), (3), or (4) from the computation of an accumulation distribution, the amount includible under subpart D (section 665 and following), part I, subchapter J, chapter 1 of the Code, in the gross income of the beneficiaries pursuant to § 1.668(a)-1 is first allocated to the beneficiaries as provided in § 1.668(a)-2 and, second, the amount allocable to the beneficiary receiving amounts which are excluded under section 665(b) (1), (2), (3), or (4) is reduced by the excluded amounts. This section may be illustrated by the following examples, in which it is assumed the trusts and beneficiaries report on the calendar year basis and the income of the trusts was derived entirely from taxable interest:

Example 1. (a) A trust in 1957 has income as defined in section 643(b) of \$35,000 and expenses allocable to corpus of \$5,000. Its distributable net income is, therefore, \$30,000 (\$35,000-\$5,000). The undistributed net income of the trust and the taxes imposed on the trust were \$12,840 and \$7,260, respectively, for each of the years 1956, 1955, and 1954. The terms of the trust instrument provide for the accumulation of income during the minority of beneficiaries A and B. However, the trustee may make discretionary distributions to either beneficiary after he becomes 21 years of age. Also, the trustee may invade corpus for the benefit of A and B. B became 21 years of age on January 1, 1957, and, as of that date, A was 25 years old. The trustee distributed \$50,000 each to A and B during 1957.

(b) Since each beneficiary received one-half of the total amount distributed by the trust, each must include in gross income under section 662(a)(2) one-half (\$15,000) of the distributable net income (\$30,000) of the trust for 1957.

(c) The excess distribution of \$35,000 (\$50,000-\$15,000) received by B is excluded from the determination of an accumulation distribution under section 665(b)(1) and accordingly is not includible in B's gross income under section 668(a). Nor is such amount treated as an accumulation distribution for the purpose of determining the amount includible in A's gross income under section 668(a).

(d) The accumulation distribution of the trust is \$35,000, computed as follows:

Total distribution by the trust	\$100,000
Less:	
Distributable net income for 1957	\$30,000
Excess distribution to B	35,000
	65,000
Accumulation distribution to A	35,000

(e) The accumulation distribution of \$35,000 will be allocated to the preceding taxable years 1956, 1955, and 1954, and the trust will be deemed to have made the following distributions to A on the last day of those years:

	1956	1955	1954	Total
Undistributed net income	\$12,840	\$12,840	\$9,320	\$35,000
Taxes imposed on the trust	7,260	7,260	5,270	19,790
Total	20,100	20,100	14,590	54,790

Thus, A will include \$54,790 in his gross income for 1957 under section 668(a). A will, however, receive credit against his tax under section 668(b).

Example 2. (a) Under the terms of a trust the trustee may make discretionary distributions out of income to A during her life. The balance of the income is to be accumulated during the minority of her son, B, and is to be distributed to him when he becomes 21 years of age. Thereafter the trustee may also make discretionary payments of income to B. Also, the trustee may invade corpus for the benefit of A and B. B became 21 years of age on December 31, 1955. The distributable net income of the trust for 1955 is \$30,000. It had undistributed net income of \$12,840 for the preceding taxable year 1954 and the taxes imposed on the trust for such year were \$7,260. The trustee distributed \$15,000 to A during 1955 and on December 31, 1955, he distributed \$60,000 to B, which represented income accumulated during his minority.

(b) Since B received four-fifths of the total amount (\$75,000) distributed by the trust during 1955, he must include in his gross income under section 662(a)(2) four-fifths (\$24,000) of the distributable net income (\$30,000) of the

trust for 1955. A will include in her gross income under section 662(a)(2) one-fifth (\$6,000) of the distributable net income (\$30,000) of the trust for 1955.

(c) The excess distribution of \$36,000 (\$60,000 - \$24,000) received by B is excluded from the determination of an accumulation distribution under section 665(b)(1) and accordingly is not includible in his gross income under section 668(a).

(d) The amount treated as an accumulation distribution for the purpose of determining the amount includible in A's gross income for 1955 under section 668(a) is \$9,000, computed as follows:

Total distribution by the trust		\$75,000
Less:		
Distributable net income for		
1955	\$30,000	
Excess distribution to B	36,000	
		66,000
Amount treated as an accumulation		
distribution		9,000

(e) Inasmuch as the amount of \$9,000 is less than the total undistributed net income of the trust (\$12,840) for the preceding taxable year 1954, a pro rata portion of the taxes imposed on the trust for that year are also deemed distributed by the trust. Thus, A will include \$14,089 in her gross income for 1955 under section 668 (a) computed as follows:

	1954	
Accumulation distribution		\$9,000
Taxes imposed on the trust (9,000/ 12,840 × \$7,260)		5,089
Total		14,089

A will, however, receive credit against her tax under section 668(b).

§ 1.668(a)-4 Tax attributable to throw-back.

(a) The tax attributable to amounts deemed distributed under section 666 is imposed on the beneficiary for the taxable year of the beneficiary in which the accumulation distribution is made unless the taxable year of the beneficiary is different from that of the trust (see section 662(c) and the regulations thereunder). In the case of a trust (other than a foreign trust created by a U.S. person), the tax cannot be greater than the aggregate of the taxes attributable to those amounts had they been included, in accordance with the provisions of section 662 (a)(2) and (b), in the gross income of the beneficiary for the preceding taxable year or years in which they were deemed distributed. In the case of a foreign trust created by a U.S. person, the tax on the beneficiary

shall be computed in accordance with the provisions of section 669 and the regulations thereunder. The tax liability of the beneficiary of a trust (other than a foreign trust created by a U.S. person), including the portion of an entire foreign trust which does not constitute a foreign trust created by a U.S. person (see § 1.643(d)-1), for the taxable year is computed in the following manner:

(1) First, compute the amount of tax for the taxable year attributable to the section 666 amounts which are included in the gross income of the beneficiary for the year. The tax attributable to those amounts is the difference between the tax for the taxable year computed with the inclusion of the section 666 amounts in gross income and the tax computed without including them in gross income.

(2) Next, compute the tax attributable to the section 666 amounts for each of the preceding taxable years as if they had been included in gross income for those years. The tax attributable to such amounts in each such preceding taxable year is the difference between the tax for such preceding year computed with the inclusion of the section 666 amounts in gross income and the tax for such year computed without including them in gross income. The tax computation for each preceding year shall reflect the taxpayer's marital and dependency status for that year.

(3) The total tax for the taxable year is the tax for that year computed without including the section 666 amounts, *plus*:

(i) The amount of the tax for the taxable year attributable to the section 666 amounts (computed in accordance with subparagraph (1) of this paragraph), or (ii) The sum of the taxes for the preceding taxable years attributable to the section 666 amounts (computed in accordance with subparagraph (2) of this paragraph), whichever is the smaller.

(b) The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. (1) During the taxable year 1956, \$10,000 is deemed distributed under section 666 to a beneficiary, of which \$6,000 is deemed distributed by the trust on the last day of