

other than income of the current year, the grantor is treated as a beneficiary of the trust, and the amount applied or distributed is considered to be an amount paid within the meaning of section 661(a)(2), taxable to the grantor under section 662. Thus, he is subject to the other relevant portions of subparts A through D (section 641 and following), part I, subchapter J, chapter 1 of the Code. Accordingly, the grantor may be taxed on an accumulation distribution or a capital gain distribution under subpart D (section 665 and following) of such part I. Those provisions are applied on the basis that the grantor is the beneficiary.

(c) For the purpose of determining the items of income, deduction, and credit of a trust to be included under this section in computing the grantor's tax liability, the income of the trust for the taxable year of distribution will be deemed to have been first distributed. For example, in the case of a trust reporting on the calendar year basis, a distribution made on January 1, 1956, will be deemed to have been made out of ordinary income of the trust for the calendar year 1956 to the extent of the income for that year even though the trust had received no income as of January 1, 1956. Thus, if a distribution of \$10,000 is made on January 1, 1956, for the support of the grantor's dependent, the grantor will be treated as the owner of the trust for 1956 to that extent. If the trust received dividends of \$5,000 and incurred expenses of \$1,000 during that year but subsequent to January 1, he will take into account dividends of \$5,000 and expenses of \$1,000 in computing his tax liability for 1956. In addition, the grantor will be treated as a beneficiary of the trust with respect to the \$6,000 (\$10,000 less distributable income of \$4,000 (dividends of \$5,000 less expenses of \$1,000)) paid out of corpus or out of other than income of the current year. See paragraph (b) of this section.

(d) The exception provided in section 677(b) relates solely to the satisfaction of the grantor's legal obligation to support or maintain a beneficiary. Consequently, the general rule of section 677(a) is applicable when in the discretion of the grantor or nonadverse parties income of a trust may be applied

in discharge of a grantor's obligations other than his obligation of support or maintenance falling within section 677(b). Thus, if the grantor creates a trust the income of which may in the discretion of a nonadverse party be applied in the payment of the grantor's debts, such as the payment of his rent or other household expenses, he is treated as an owner of the trust regardless of whether the income is actually so applied.

(e) The general rule of section 677(a), and not section 677(b), is applicable if discretion to apply or distribute income of a trust rests solely in the grantor, or in the grantor in conjunction with other persons, unless in either case the grantor has such discretion as trustee or cotrustee.

(f) The general rule of section 677(a), and not section 677(b), is applicable to the extent that income is required, without any discretionary determination, to be applied to the support of a beneficiary whom the grantor is legally obligated to support.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960, as amended by T.D. 7148, 36 FR 20750, Oct. 29, 1971]

§ 1.678(a)-1 Person other than grantor treated as substantial owner; general rule.

(a) Where a person other than the grantor of a trust has a power exercisable solely by himself to vest the corpus or the income of any portion of a testamentary or inter vivos trust in himself, he is treated under section 678(a) as the owner of that portion, except as provided in section 678(b) (involving taxation of the grantor) and section 678(c) (involving and obligation of support). The holder of such a power also is treated as an owner of the trust even though he has partially released or otherwise modified the power so that he can no longer vest the corpus or income in himself, if he has retained such control of the trust as would, if retained by a grantor, subject the grantor to treatment as the owner under sections 671 to 677, inclusive. See section 671 and §§ 1.671-2 and 1.671-3 for rules for treatment of items of income, deduction, and credit where a person is treated as the owner of all or only a portion of a trust.

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(b) Section 678(a) treats a person as an owner of a trust if he has a power exercisable solely by himself to apply the income or corpus for the satisfaction of his legal obligations, other than an obligation to support a dependent (see § 1.678(c)-1 subject to the limitation of section 678(b)). Section 678 does not apply if the power is not exercisable solely by himself. However, see § 1.662(a)-4 for principles applicable to income of a trust which, pursuant to the terms of the trust instrument, is used to satisfy the obligations of a person other than the grantor.

§ 1.678(b)-1 If grantor is treated as the owner.

Section 678(a) does not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust is treated as the owner under sections 671 to 677, inclusive.

§ 1.678(c)-1 Trusts for support.

(a) Section 678(a) does not apply to a power which enables the holder, in the capacity of trustee or cotrustee, to apply the income of the trust to the support or maintenance of a person whom the holder is obligated to support, except to the extent the income is so applied. See paragraphs (a), (b), and (c) of § 1.677(b)-1 for applicable principles where any amount is applied for the support or maintenance of a person whom the holder is obligated to support.

(b) The general rule in section 678(a) (and not the exception in section 678(c)) is applicable in any case in which the holder of a power exercisable solely by himself is able, in any capacity other than that of trustee or cotrustee, to apply the income in discharge of his obligation of support or maintenance.

(c) Section 678(c) is concerned with the taxability of income subject to a power described in section 678(a). It has no application to the taxability of income which is either required to be applied pursuant to the terms of the trust instrument or is applied pursuant to a power which is not described in section 678(a), the taxability of such income being governed by other provisions of the Code. See § 1.662(a)-4.

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§ 1.678(d)-1 Renunciation of power.

Section 678(a) does not apply to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

§ 1.679-0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.679-1 through 1.679-7 as follows:

§ 1.679-1 U.S. transferor treated as owner of foreign trust.

- (a) In general.
- (b) Interaction with sections 673 through 678.
- (c) Definitions.
 - (1) U.S. transferor.
 - (2) U.S. person.
 - (3) Foreign trust.
 - (4) Property.
 - (5) Related person.
 - (6) Obligation.
- (d) Examples.

§ 1.679-2 Trusts treated as having a U.S. beneficiary.

- (a) Existence of U.S. beneficiary.
 - (1) In general.
 - (2) Benefit to a U.S. person
 - (i) In general.
 - (ii) Certain unexpected beneficiaries.
 - (iii) Examples.
 - (3) Changes in beneficiary's status.
 - (i) In general.
 - (ii) Examples.
 - (4) General rules.
 - (i) Records and documents.
 - (ii) Additional factors.
 - (iii) Examples.
 - (b) Indirect U.S. beneficiaries.
 - (1) Certain foreign entities.
 - (2) Other indirect beneficiaries.
 - (3) Examples.
 - (c) Treatment of U.S. transferor upon foreign trust's acquisition or loss of U.S. beneficiary.
 - (1) Trusts acquiring a U.S. beneficiary.
 - (2) Trusts ceasing to have a U.S. beneficiary.
 - (3) Examples.

§ 1.679-3 Transfers.

- (a) In general.
- (b) Transfers by certain trusts.
 - (1) In general.
 - (2) Example.
- (c) Indirect transfers.
 - (1) Principal purpose of tax avoidance.
 - (2) Principal purpose of tax avoidance deemed to exist.
 - (3) Effect of disregarding intermediary.