

§ 1.678(b)-1

(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.

- (i) In general.
- (ii) Special rule.
- (iii) Effect on intermediary.
- (4) Related parties.
- (5) Examples.
- (d) Constructive transfers.
 - (1) In general.
 - (2) Examples.
- (e) Guarantee of trust obligations.
 - (1) In general.
 - (2) Amount transferred.
 - (3) Principal repayments.
 - (4) Guarantee.
 - (5) Examples.
- (f) Transfers to entities owned by a foreign trust.
 - (1) General rule.
 - (2) Examples.

§ 1.679-4 Exceptions to general rule.

- (a) In general.
- (b) Transfers for fair market value.
 - (1) In general.
 - (2) Special rule.
- (i) Transfers for partial consideration.
- (ii) Example.
- (c) Certain obligations not taken into account.
 - (d) Qualified obligations.
 - (1) In general.
 - (2) Additional loans.
 - (3) Obligations that cease to be qualified.
 - (4) Transfers resulting from failed qualified obligations.
 - (5) Renegotiated loans.
 - (6) Principal repayments.
 - (7) Examples.

§ 1.679-5 Pre-immigration trusts.

- (a) In general.
- (b) Special rules.
 - (1) Change in grantor trust status.
 - (2) Treatment of undistributed income.
- (c) Examples.

§ 1.679-6 Outbound migrations of domestic trusts.

- (a) In general.
- (b) Amount deemed transferred.
- (c) Example.

§ 1.679-7 Effective dates.

- (a) In general.
- (b) Special rules.

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

(a) *In general.* A U.S. transferor who transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to the property

transferred if there is a U.S. beneficiary of any portion of the trust, unless an exception in § 1.679-4 applies to the transfer.

(b) *Interaction with sections 673 through 678.* The rules of this section apply without regard to whether the U.S. transferor retains any power or interest described in sections 673 through 677. If a U.S. transferor would be treated as the owner of a portion of a foreign trust pursuant to the rules of this section and another person would be treated as the owner of the same portion of the trust pursuant to section 678, then the U.S. transferor is treated as the owner and the other person is not treated as the owner.

(c) *Definitions.* The following definitions apply for purposes of this section and §§ 1.679-2 through 1.679-7:

(1) *U.S. transferor.* The term *U.S. transferor* means any U.S. person who makes a transfer (as defined in § 1.679-3) of property to a foreign trust.

(2) *U.S. person.* The term *U.S. person* means a United States person as defined in section 7701(a)(30), a non-resident alien individual who elects under section 6013(g) to be treated as a resident of the United States, and an individual who is a dual resident taxpayer within the meaning of § 301.7701(b)-7(a) of this chapter.

(3) *Foreign trust.* Section 7701(a)(31)(B) defines the term *foreign trust*. See also § 301.7701-7 of this chapter.

(4) *Property.* The term *property* means any property including cash.

(5) *Related person.* A person is a *related person* if, without regard to the transfer at issue, the person is—

(i) A grantor of any portion of the trust (within the meaning of § 1.671-2(e)(1));

(ii) An owner of any portion of the trust under sections 671 through 679;

(iii) A beneficiary of the trust; or

(iv) A person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner or beneficiary of the trust.

(6) *Obligation.* The term *obligation* means any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.