

**FIDUCIARY ACCOUNTING TO THE FORM 1041-
U.S. INCOME TAX RETURN FOR ESTATES AND
TRUSTS...
A TIME FOR RECONCILIATION**

Presented to the Tampa CPA.....

May 24, 2012

BY

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FIDUCIARY ACCOUNTING TO THE FORM 1041 ESTATE/TRUST

INCOME TAX RETURN...A TIME FOR RECONCILIATION*

I. Understanding the Parts

A. Definition of Estate – F.S. § 731.201 (14)

B. Definition of Trust

1. F.S. § 731.201 (38).
2. Types of trusts – simple and complex.
 - Inter Vivos Revocable
 - Inter Vivos Irrevocable
 - Testamentary

C. Basic Concepts

1. Subchapter J of the Code governs the income taxation of estates and trusts.
2. Income taxation of estates and trusts follow the income taxation of individuals with certain exceptions.
3. “Either-or” concept- taxed either to the estate/trust or the beneficiary.
4. Taxable income and fiduciary accounting income are not the same items.

D. Definition of Simple Trust

1. Section 651(a) of the Internal Revenue Code (the “Code”):
 - “(a) Deduction.—In the case of any trust the terms of which—
 - (1) provide that all of its income is required to be distributed currently; and
 - (2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642(c) (relating to deduction for charitable, etc., purposes),there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the

* This outline was taken in substantial part from a PowerPoint Presentation provided by F. Gordon Spoor, CPA/PFS.

* Thanks to Nicholas J. Grimaudo, Esquire for his help in editing this outline.

* Many examples are taken from the excellent Heckerling Presentation from William A. Snyder, Esquire, Davie, Florida and Nicholas F. Christin, Esquire, Miami, Florida.

taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in paragraph (1)."

2. All trust accounting income is required to be distributed annually.
3. No charitable contributions.
4. No distribution of corpus.

E. Definition of Complex Trust

1. Section 661(a) of the Code:

"(a) Deduction.—In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

 - (1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and
 - (2) any other amounts properly paid or credited or required to be distributed for such taxable year;

But such deduction shall not exceed the distributable net income of the estate or trust."
2. Every trust other than a simple trust.

F. Taxation of Trusts and Estates

1. Estates taxed 15% to 35% under Section 1(e)(1) of the Code.
2. Simple trusts taxed 15% to 35% under Section 1(e)(2) of the Code.
3. Complex trusts taxed 15% to 35% under Section 1(e)(2) of the Code.

G. What is *Accounting* Income?

1. Chapter 738 of the Florida Statutes.
2. Is *not* taxable income.

II. How do you determine what income is taxable to the Estate or Trust and, thus, reportable on Form 1041?

A. Income for Distribution Purposes:

1. Governing Instrument.
2. Chapter 738 of Florida Statutes.
3. Section 643(b) of the Code defines income for *distribution* purposes as:

“(b) Income.—For purposes of this subpart and subparts B, C, and D, the term “income”, when not preceded by the words “taxable”, “distributable net”, “undistributed net”, or “gross”, means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.”

B. Income for Tax Purposes – Section 641(b) of the Code provides in part:

“The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part.”
(emphasis added).

C. Exemptions and Deductions Allowed to Estates and Trusts.

1. Personal Exemption – Section 642(b) of the Code:
 - (a) Estate: \$600; If less than \$600, you do not have to file a return, but you may want to if prior year had excess deductions that may be carried out;
 - (b) Simple Trust: \$300; and
 - (c) Complex Trust: \$300 if all income is required to be distributed currently, otherwise \$100.
2. General Deductions
 - (a) All ordinary and necessary expenses allowed, such as administration costs, trustee fees, and litigation costs.
 - (b) Charitable contributions.
 - (c) Limitations on other deductions.
 - (i) Section 642(g) of the Code - No double deduction if expense was allowed on Form 706.
 - Exception: deductions “in respect of a decedent” are allowed on both Form 706 and Form 1041 (e.g. property taxes, accrued interest paid).
 - (ii) Deductions subject to 2% AGI limitation:
 - Section 67(e) of the Code:

“(e) Determination of adjusted gross income in case of estates and trusts. For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section.”

- *Knight v. Commissioner*, 128 S.Ct. 782 (2008) – Case dealing with Section 67(e) of the Code. U.S. Supreme Court found that if expense would not be “uncommon, unusual, or unlikely” for an individual to incur, then not unique, and, therefore, subject to 2% limitation. Investment advisory fees may not be subject to 2% limitation but then have to be “unbundled”.

- Unless the expense is unique to a fiduciary relationship, it is likely to be subject to the 2% limitation. Some expenses in question under *Knight*: family office expenses, insurance on estate or trust property, expenses of maintaining trust property.
- IRS proposed regulation Section 1.67-4 provides guidance. Costs incurred by a trust avoid the 2% AGI limitation only if the costs *could not be incurred by an individual*.
- IRS Notice 2011-37- Extension of Interim Guidance on Section 67 Limitations on Estates or Trusts extends IRS Notice 2010-32 that allowed a full deduction of bundled fiduciary fees on 2009 tax returns, including those fees that could be incurred by an individual, to taxable years that begin before the date that final regulations under Section 1.67-4 of the Income Tax Regulations are published.

- (d) Deductions are disallowed to the extent attributable to tax-exempt income.

- (e) Allocation of other deductions Treas. Reg. Section 1.652(b)-3
- Direct expenses – allocated to the class of income to which they relate.
 - Indirect expenses – allocated first to non-taxable income, then to any class of income.
 - EXAMPLE:

FAI = Fiduciary accounting income
TTI = Tentative taxable income

	FAI (Ch 738)	TTI – IRC
Rents	30,000	30,000
Dividends	20,000	20,000
Capital Gains	- 0 -	10,000
Trustee Commissions	<1,000>50%	<2,000>
Repairs	<5,000>	<5,000>
Personal Exemption	<u>- 0 -</u>	<u><300></u>
TOTAL	44,000	52,700

3. Distribution Deduction

- (a) Simple Trusts – Section 651(a) of the Code provides a deduction for “the amount of the income for the taxable year which is *required* to be distributed currently.” (emphasis added).
- Section 651(b) of the Code limits the deduction available to a simple trust as follows:
“(b) Limitation on Deduction.—If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.”

FAI – 651(a)
Limited by DNI – 651(b)
Adj. DNI – 651(b)
Or FAI less tax exempt income.

- (b) Complex Trusts and Estates – Section 661(a) of the Code provides a distribution deduction for the sum of:

- 1) Section 661(a)(1): the amounts currently required to be distributed to the beneficiary ("Tier I") PLUS
 - 2) Section 661(a)(2): any other amounts properly paid, credited, or permanently set aside for the beneficiary ("Tier II").
- (c) In all cases, the distribution deduction *cannot* exceed distributable net income ("DNI") as defined in Section 643(a) of the Code. Note: this DNI number is *only* on page 2 of the Form 1041.
- (d) Section 643(a)(1-5) of the Code:
- "(a) Distributable Net Income.—For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—
- (1) Deduction for distributions.—No deduction shall be taken under sections 651 and 661 (relating to additional deductions).
 - (2) Deduction for personal exemption.—No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).
 - (3) Capital gains and losses.—Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account.
 - (4) Extraordinary dividends and taxable stock dividends.—For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.
 - (5) Tax-exempt interest.—There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of

disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).”

(1) DNI is calculated as follows:

Taxable Income

- + 643(a)(2) (personal exemption)
- 643(a)(3) (capital gains)
- + 643(a)(5) municipal income (less 265 expenses allocate)

(2) The function of DNI is to determine the character of the income distributed to the beneficiary of a trust or estate and the amount of income retained by the trust or estate for tax purposes.

- a. DNI is very taxpayer friendly and ensures that the trust and the beneficiary are fairly taxed on the actual amount of taxable income received by the beneficiary or retained by the trust.
- b. Think of the different types of income as flavors of ice cream. The Code taxes the beneficiary on the flavors of ice cream that the trust distributes to them (DNI) and taxes the trust on the flavors of ice cream kept in the trust or estate principal.
 - i. The trust or estate personal exemption is included in DNI because the beneficiary should not get the benefit of the trust or estate’s “flavor” of personal exemption because the beneficiary has their own “flavor” of personal exemption.
 - ii. Capital gains are normally allocated to principal for FAI purposes and will not be distributed to the beneficiary and thus this “flavor” is not included in the calculation of DNI.
 - iii. The trust or estate capital losses are added back in to DNI because the trust or estate principal is decreased by the loss from the sale of such property and only the trust or estate receives that “flavor” of the loss ice cream.
 - iv. Tax exempt income is kept in the DNI calculation because this tax exempt “flavor” passes through to the beneficiary.

- c. The distribution deduction to the trust is capped at DNI because anything over this DNI amount is viewed as having the “flavor” of trust principal and is not taxable income to the trust or beneficiary.
- d. The distribution of any amount over DNI is considered a gift of trust or estate principal to the beneficiary and is thus free of taxes.

DNI Example

In 2008, the trust received: \$32,000 in proceeds from sale of a capital asset that was purchased at a cost of \$20,000 more than a year ago; \$10,000 of taxable interest, \$10,000 of tax-exempt interest, \$1000 of deductible trustees' commissions (1/2 charged to income, 1/2 charged to principal). Calculate FAI, Gross Income (GI), TTI, and DNI. The trustee is required to distribute all income currently.

	<u>Trust</u>				
	<u>FAI</u>	<u>GI</u>	<u>TI</u>	<u>DNI</u>	
Taxable Interest	10,000	10,000	10,000	643(a)(1)	21,200
Tax Exempt Interest	10,000	0	0	643(a)(2)	300
Capital Gains	0	12,000	12,000	643(a)(3)	(12,000)
Trustee Commission	(500)	0	(500)	643(a)(5)	10,000
Personal Exemption	0	0	(300)		(500)
	19,500	22,000	21,200	Total DNI	19,000

DNI (Recap)

Taxable Interest	10,000
	(500)
Tax Exempt Interest	10,000
	(500)
	19,000

- (e) Inclusion and character of income to beneficiary
 - (1) Simple Trust inclusion in income –
Section 652(a) of the Code:
“(a) Inclusion.—Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross

income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.”

- (2) Simple Trust character of amount includable to beneficiary –

Section 652(b) of the Code:

“(b) Character of Amounts.—The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.”

- (3) Simple Trust Illustrations: Receipts and disbursement of the Trust were as follows: Dividends of \$20,000, taxable interest of \$20,000, tax-exempt interest of \$20,000, rents of \$40,000, long term capital gain from the sale of securities of \$50,000, depreciation expenses (for federal income tax purposes) of \$10,000, rental repairs of \$10,000, trustees’ fees of \$20,000 (allocable ½ to income, ½ to principal). The trustee is required to distribute all income currently, does not make any distributions from principal, and does not make any disbursements deductible as charitable contributions under Section 642(c).

Determine the following:

- FAI
- GI
- TTI
- DNI

- Distribution Deduction (§651)
- Taxable Income
- Potential Gross Income of Each Beneficiary
- Character of Beneficiary Amounts
- Net Taxable Amount to Beneficiaries.

	FAI	GI	TI	DNI	
Dividends	20,000	20,000	20,000	643(a)(1)	103,700
Taxable Interest	20,000	20,000	20,000	643(a)(2)	300
Tax Exempt Interest	20,000	0	0	643(a)(3)	(50,000)
Rents	40,000	40,000	40,000	643(a)(5)	20,000
Long Term Capital	0	50,000	50,000		(4,000)
Depreciation	0	0	0	Total DNI	70,000
Rental Repairs	(10,000)	0	(10,000)		
Trustee Fee	(10,000)	0	(16,000)		
Personal	0	0	(300)		
	80,000	130,000	103,700		

DNI (Recap)

651 Deduction

Dividends	20,000	651(a) FAI	80,000
Taxable Interest	20,000	651(b) DNI	70,000
	(16,000)		(16,000)
Rents	40,000	mDNI	54,000
	(10,000)		
Tax Exempt	20,000	Taxable Income	
	(4,000)		
	70,000	TTI	103,700
		651 deduction	(54,000)
			49,700

- (4) During the taxable year, a simple trust receives \$60,000 of taxable interest income, \$15,000 of tax-exempt income and a \$25,000 distribution from an IRA, which is the minimum required distribution from the IRA, but which is allocated all to trust principal because the IRA generated no income during the taxable year.

	GI	FAI	TTI	DNI
Interest	60,000	60,000	60,000	85,000 643(a)
Tax Exempt	0	15,000	0	15,000 643(a)(5)
IRA Distribution	25,000	0	25,000	0
Totals	85,000	75,000	85,000	100,000
Less distribution deduction			<60,000>	
			Taxable Income:	
			\$25,000	

Distribution Deduction: lesser of income required to be distributed or DNI – \$75,000 or \$100,000 so would be \$75,000 but can not exceed FAI less 15,000 (tax exempt income under Treas. Reg. § 1.651(b)(1)) Taxable income to beneficiary(Section 652(a) of the code): \$60,000

(5) Complex Trust inclusion in income –
Section 662(a) of the Code:

“(a) Inclusion.—Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) Amounts required to be distributed currently.—The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642(c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase “the amount of income for the taxable year required to be distributed currently” includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) Other amounts distributed.—All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of— (A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and (B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the

preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.”

- (6) Complex Trust character of amount includable to beneficiary –

Section 662(b) of the Code:

“(b) Character of Amounts.—The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section 642(c) which is not attributable to income of the taxable year.”

- (7) Allocation of DNI between tiers of distributions

- Not proportionality
- Tier I (income required to be distributed) – receives DNI first
- Tier II (other amounts paid, credited, or otherwise set aside) – taxed on distributions only to the extent of *remaining* DNI

Example: Principal of \$20,000 (IRA) to trust and FAI of \$10,000. If distribution of \$20,000, then

- Carry out \$10,000 DNI
- Carry out \$10,000 – Tier II
- No income taxed at trust level

(8) **Complex Trust Illustration:** A Trust was created under Decedent A's Will. The material provisions of the Trust are as follows:

- The Trust under A's Will required that one-half of the Trust was required to be distributed to A's children in equal shares. A had three children, Beneficiaries X, Y, and Z. None of this income was actually distributed to the beneficiaries during the year.
- The Trust permits the Trust to pay income or corpus for the benefit of X, Y, or Z for their health, education, maintenance, and support.
- The Trust does not provide for any reserve for depreciation.
- The Trust incorporated Florida's Uniform Principal and Income Act which will govern the determinations of principal and income or any of the matters set forth herein.
- The Trust is on a calendar year from January 1, 2008 through December 31, 2008 and Beneficiaries X, Y, and Z are on a calendar year January 1, 2008 through December 31, 2008.

Receipts and disbursements of the Trust from January 1, 2008 through December 31, 2008 were as follows:

Dividends	\$30,000
Taxable Interest	\$30,000
Tax-Exempt Interest	\$20,000
Rents	\$20,000
Long Term Capital Gain on Sale of Securities	\$50,000
Depreciation Expense (for federal income tax purposes)	(\$10,000)
Rental Repairs	(\$10,000)
Trustees' Fees	(\$20,000)

The Trustee distributed \$20,000 of principal to X and \$20,000 of principal to Y during 2008.

Please calculate the following for the Trust and for X, Y, and Z for the period of January 1, 2008 through December 31, 2008:

- FAI
- GI
- TI
- DNI
- Distribution Deduction (§661)
- Taxable Income
- Potential Gross Income of Each Beneficiary
- Character of Beneficiary Amounts
- Net Taxable Amount to Beneficiaries.

Trust

	FAI	GI	TTI		
Dividends	30,000	30,000	30,000	643(a)(1)	98,900
Taxable Interest	30,000	30,000	30,000	643(a)(2)	100
Tax Exempt Interest	20,000	0	0	643(a)(3)	(50,000)
Rent	20,000	20,000	20,000	643(a)(4)	0
Long Term Capital	0	50,000	50,000	643(a)(5)	20,000
Depreciation	0	0	(5,000)		(4,000)
<hr/>					
Rental Repair	(10,000)	0	(10,000)		
Trustee Fee	(10,000)	0	(16,000)		
Personal Exemption	0	0	(100)		
	80,000	130,000	98,900	Total DNI	65,000

DNI Recap

Dividends	30,000
Taxable Interest	30,000
	(16,000)
Tax Exempt Interest	20,000
	(4,000)
Rent	20,000
	(10,000)
	(5,000)
	<u>65,000</u>

661 Deduction

661(a)(1)	40,000
661(a)(2)	<u>40,000</u>
	80,000
Limit DNI	65,000

661(b)

$$65,000 \times 16,000/65,000 = 16,000$$

661(c)

$$65,000 - 16,000/65,000 = 49,000$$

Taxable Income

TTI	98,900
661 Deduction	<u>(49,000)</u>

Beneficiaries

662(a) Potential Gross Income of Beneficiaries

662(a)(1)	X	662(a)(1)	13,333	
	Y	662(a)(1)	13,333	
	Z	662(a)(1)	<u>13,334</u>	
			40,000	
662(a)(2)	DNI	65,000	X:	25,000 x (20,000/40,000)=12,500
	Less 662(a)(1)	<u>(40,000)</u>	Y:	25,000 x (20,000/40,000)=12,500
	Residual DNI	25,000		
662(a) amount	X	662(a)(1)	13,333	
		662(a)(2)	<u>12,500</u>	
			25,833	
	Y	662(a)(1)	13,333	
		662(a)(2)	<u>12,500</u>	
			25,833	
	Z	662(a)(1)	<u>13,334</u>	
			65,000	

662(b) Character

662(a) amount x (Item of DNI/DNI)

662(b)	X, Y	662(a) amount x (item of DNI/DNI)	
		25,833 x (30,000/65,000) = 11,923	Dividends
		25,833 x (14,000/65,000) = 5,564	Taxable Interest
		25,833 x (16,000/65,000) = 6,359	Tax Exempt Interest
		25,833 x (5,000/65,000) = 1,987	Rent
	Z	13,334 x (30,000/65,000) = 6,159	Dividends
		13,334 x (14,000/65,000) = 2,872	Taxable Interest
		13,334 x (16,000/65,000) = 3,782	Tax Exempt Interest
		13,334 x (5,000/65,000) = 1,026	Rents

Net Taxable Amount to Beneficiaries

X, Y	11,923 (dividends-1(h) rate) + 5,564 (taxable interest-ordinary income rate) + 1,987 (rents-ordinary income rate)=19,474 X: 19,474-1,667 (depreciation)=17,807.Y: 19,474-1,667 (depreciation)=17,807
Z	6,159 (dividends-1(h) rate) + 2,872 (taxable interest-ordinary income rate) + 1,026 (rents ordinary income rate)=10,051 Z: 10,051-1,667 (depreciation)=8,384

Depreciation Calculation

167(d) Total Depreciation=Deduction Allowed to Trust +
Deduction Allowed to Beneficiaries
10,000=5,000+Deduction Allowed to Beneficiaries
5,000=Deduction Allowed to Beneficiaries

X	1667
Y	1666

III. Special Situations

A. Specific Bequests (Section 663(a) of the Code)

1. Requirements:
 - (a) Nondeductible by trust.
 - (b) Nontaxable to beneficiary.
 - (c) Properly paid or credited as gift or bequest.
 - (d) Specific sum of money or specific property.
 - (e) Pay at once or not more than 3 installments.
 - (f) Must not be payable, pursuant to the governing instrument, only from income.
 - (g) No application from intestate estate.
2. Examples:
 - (a) A's Will leaves \$5,000 to B? → Yes, a specific bequest.
 - (b) "I leave all stock I own at death to B." → Yes, a specific bequest.
 - (c) A's Will directs the sale of the property and all proceeds payable to B. → No, not a specific bequest.
 - (d) Trust leaves pecuniary amount to Marital Trust that is the smallest amount to reduce the estate tax to zero. → No, not a specific bequest because not ascertainable at date of death.

B. Keenan Gain

1. Requirements as listed in *Keenan v. Commissioner*, 111 F.2d 217:
 - (a) Distribute appreciated property in kind in satisfaction of a pecuniary bequest.
 - (b) If distribute shares of assets there is no gain.
 - (c) Must be an obligation to pay a specific dollar amount.
 - (d) Must be a satisfaction of the obligation by transfer of other property.
 - (e) Gains and losses are treated as gains or losses from the sale of a capital asset.
2. Examples:
 - (a) Will contains a specific bequest of \$20,000 to friend F. Personal Representative gives friend IBM stock worth \$20,000 with a tax basis of \$10,000. → Yes, Keenan Gain of \$10,000.
 - (b) Will bequeaths to pre-residuary pecuniary formula marital deduction trust an amount equal to the smallest amount of money to reduce the estate taxes to zero. Personal

Representative satisfies this bequest by distributing vacation home worth 4 million with a tax basis of 2 million. → Yes, Keenan gain of 2 million.

C. Election to recognize Gain (Section 643(e)(3) of the Code)

1. Requirements:
 - (a) Distribution of property (this is not in satisfaction of a pecuniary amount).
 - (b) Fiduciary must elect.
 - (c) "Pulling the Trigger".
 - (d) Does not avoid or supersede Keenan gain.
2. Example:
 - (a) Trustee distributes land with FMV of \$200,000 and a basis of \$100,000 to residuary beneficiary.
 - (b) Trustee can elect to use Section 643(e)(3) of the Code and recognize a gain at the trust level of \$100,000.
 - (c) Distribution deduction is \$200,000 and the basis in the hands of the beneficiary would be the FMV of \$200,000.

D. Excess Losses and Deduction in Year of Termination (Section 642(h) of the Code)

1. Requirements:
 - (a) Estate or Trust Termination ("final year").
 - (b) Beneficiaries can use those losses or deductions.
2. Example: Final Year of Estate/Trust attorney fees of \$100,000, which result in \$50,000 of excess deductions that the beneficiary can use.

E. Income in respect of a decedent (Section 691(a) of the Code)

1. Requirements:
 - (a) Income earned by the decedent that the decedent was entitled to receive before death, but never actually received before his or her death.
 - (b) The item of income must have been taxable to the decedent, had the decedent survived.
 - (c) Although the decedent was entitled to the income at death, these rights must not have matured sufficiently to require inclusion on the decedent's final income tax return.
 - (d) The right must be a passive right to receive income and not "property" entitled to a FMV basis increase under Section 1014 of the Code.

- (e) The recipient of the right to the income in question must have acquired the right solely by reason of the death of the decedent.
- 2. Examples:
 - (a) A is paid once a month at the end of the month. If A dies on April 20, the April paycheck is not included in A's final income tax return. When the 20 days of income are paid after death, the payment will be income in respect of a decedent.
 - (b) O sells Blackacre to B for \$5,000,000 and O has a basis of \$3,000,000, so there is a gain of \$2,000,000 on the sale. B Agrees to pay \$1,000,000 each year over a 5 year period. O dies at the end of the third year and thus O doesn't recognize any of the gain on his final return. When the estate/successor is paid, it will be included in gross income as income in respect of a decedent.

IV. Uniform Principal and Income Act ("UPIA") - Chapter 738 of the Florida Statutes (For purposes of this section the Florida Statutes are referenced by § and the number.)

§ 738.101 – Short title

§ 738.102 – Definitions

- (4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in §. 738.401-738.403 and § 738.503.
- (10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

§ 738.103 – Fiduciary duties; general principals

- How to determine what goes to income vs principal?

- (1) Follow the trust document. § 738.103(1)(a), also Reg. 1.643(b)-1.
- (2) Based upon a discretionary power given to fiduciary. §738.103(1)(b).
- (3) If trust is silent, then use Chapter 738. You have to draft if you do not like what the default rules are. § 738.103(1)(c).
- (4) Allocate to principal if there is no rule on point. § 738.103(1)(d)

§ 738.104 – Trustee's power to adjust

§ 738.1041 – Total return unitrust

§ 738.105 – Judicial control of discretionary powers

§ 738.201 – Determination and distribution of net income

§ 738.202 – Distribution to residuary and remainder beneficiaries

§ 738.301 – When right to income begins and ends

§ 738.302 – Apportionment of receipts and disbursements when decedent dies or income interest begins

§ 738.303 – Apportionment when income interest ends

§ 738.401 – Character of receipts

- (2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
- (3) Except as otherwise provided in this section, a trustee shall allocate the following receipts from an entity to principal:
 - (a) Property other than money.
 - (b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.
 - (c) Money received in total or partial liquidation of the entity.
 - (d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed represents short-term or long-term capital gain realized within the entity.

§ 738.402 – Distribution from trust or estate

§ 738.403 – Business and other activities conducted by trustee

§ 738.501 – Principal receipts

- (1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payor under a contract naming the trust or its trustee as beneficiary.
- (2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this section.
- (3) Amounts recovered from third parties to reimburse the trust because of disbursements described in § 738.702(1)(g) or for other reasons to the extent not based on the loss of income.

§ 738.502 – Rental property

- Rental property. To the extent a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§ 738.503 – Obligation to pay money

- (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.
- (2) Except as otherwise provided herein, a trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee.

- § 738.504 – Insurance policies and similar contracts
- § 738.601 – Insubstantial allocations not required
- § 738.602 – Payments from deferred compensation plans
- § 738.603 – Liquidating asset
- § 738.604 – Minerals, water, and other natural resources
- § 738.605 – Timber
- § 738.606 – Property not productive of income
- § 738.607 – Derivative and options
- § 738.608 – Asset-backed securities
- § 738.701 – Disbursements from income

A trustee shall make the following disbursements from income to the extent they are not disbursements to which §738.201(2)(a) or (c) applies:

- (1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.
- (2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.
- (3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.
- (4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§ 738.702 – Disbursements from principal

- (1) A trustee shall make the following disbursements from principal:
 - (a) The remaining one-half of the disbursements described in § 738.701(1) and (2).
 - (b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale.
 - (c) Payments on the principal of a trust debt.
 - (d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.
 - (e) Premiums paid on a policy of insurance not described in § 738.701(4) of which the trust is the owner and beneficiary.
 - (f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

§ 738.703 – Transfers from income to principal for depreciation.

- (1) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

- (2) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation but may not transfer any amount for depreciation:
 - (a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
 - (b) During the administration of a decedent's estate; or
 - (c) Under this section if the trustee is accounting under § 738.403 for the business or activity in which the asset is used.
- (3) The amount of depreciation taken for tax purposes with respect to an asset shall be presumed to be a reasonable amount of depreciation. An amount taken for depreciation shall not be considered unreasonable solely because it is greater or less than the amount taken for tax purposes.

§ 738.704 – Transfers from income to reimburse principal

§ 738.705 – Income taxes

§ 738.706 – Adjustments between principal and income because of taxes

§ 738.706 – Application with respect to apportionment of expenses; improvements

§ 738.802 – Uniformity of application and construction

§ 738.803 – Severability

§ 738.804 – Application

V. IRS Revenue Ruling 2006-26

A. Major characteristics

1. Effective for tax years beginning after May 30, 2006.
2. Impacts marital trusts (QTIPs) owning an interest in an IRA, 401(k), annuity, or deferred compensation plan.
3. Renders UPIA Section 409(c) useless.

B. UPIA Section 409 – What is income?

- “(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or dividend a trustee shall allocate it to income.”
- “(c) If no part is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal.”

C. F.S. § 738.602 – Deferred compensation, annuities, and similar payments

1. Old F.S. § 738.602(a) provided: A trustee shall allocate to income in the following order: first, payments characterized by the payor as interest or dividends or as a payment made in lieu of interest or dividends; second, all other payments to the extent that the trustee, reasonably and in good faith, determines that such payments represent interest, dividends or their equivalent. If either of the aforementioned does not apply, then 10% of the payment is income.
2. Current F.S. § 738.602
 - (a) Filed jointly by the FICPA, Florida Bar, and Florida Bankers Association.
 - (b) Leaves old rules essentially intact for non-marital trusts.
 - (c) Rewrites F.S. § 738.602 as it relates to marital trusts.
 - Applies to trusts which, to qualify for the estate or gift tax marital deduction under the Code, entitle the spouse to *all* of the income of the trust and the terms of the trust are silent as to the time and frequency for distribution of the income of the fund. The trustee must pay the amount as computed in the statute *at least annually* unless the spouse *directs otherwise under the terms of the trust*.
 - (d) New definitions:
 - Non-separate account: a fund for which the value of the participant's or account owner's right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund (ex. annuity contract).
 - Separate account: a fund holding assets exclusively for the benefit of a participant or account and: (1) the value of such assets or the value of the separate account is ascertainable at any time; or (2) the administrator of the fund maintains records that show receipts and disbursements associated with such assets (ex. mutual fund – see the income-dividends).
 - (e) Payments from “separate accounts”
 - (i) Income of the fund shall be determined:
 - As if the fund were a trust subject to the provisions of F.S. §§ 738.401-738.706; or
 - As a unitrust amount calculated by multiplying the fair market value of the fund as of the first day of the accounting period that immediately precedes the accounting period during which a payment is received by the percentage

determined in accordance with F.S. § 738.1041(2)(b)2.a.

- (ii) The trustee has the discretion to elect the method of determining the income of the fund and may change the method of determining income of the fund for any future accounting period.
- (f) Payments from “non-separate accounts”
 - Income of the fund is a unitrust amount determined by calculating the present value of the right to receive the remaining payments under Section 7520 of the Code as of the first day of the accounting period and multiplying it by the percentage determined in accordance with F.S. § 738.1041(2)(B)2.a.

Example: Section 7520 of the Code rate for January 2011 = 2.4% and right to receive \$12,000 per month for 20 years

- Present value (“PV”) of right to receive \$12,000 per month for 20 years = \$2,266,191
- Range for income:
 - 3% = $67,986 \times (9/12) = 50,989$
 - 5% = $113,310 \times (9/12) = 84,982$

VI. 2008 UPIA Revisions

A. General information

1. Revised UPIA Section 505-Income Taxes.
2. Corresponding Florida Statute → F.S. § 738.705.
3. Revision intended to clear up confusing language in original version.
4. Designed for allocation of income taxes payable on income received from a pass-through entity.

Example: Trustee problem with distribution. Trust has an interest in a partnership. Trust provides for income to kids. Income is *cash* received; K-1 doesn't mean anything.

- Partnership distributes \$40,000 → \$40,000 distribution deduction
- K-1: \$100,000

FAI	40,000
TI	100,000
	<u><40,000></u> distribution deduction
	60,000 taxable income → tax is \$18,000

But gave away all cash – then only give the \$22,000

	100,000
	<u><22,000></u>
	78,000 taxable income → tax is \$23,400

Where does the trustee pay the tax from?

B. Tax payment requirements

1. Basic rules F.S. § 738.705
 - A tax required to be paid by a trustee on receipts allocated to *income* must be *paid* from income (trust's share of allocated income).
 - A tax required to be paid by a trustee on receipts allocated to *principal* must be paid from *principal* (no receipts to principal).
2. A tax required to be paid by the trustee on the trust's share of an entity's taxable income must be paid:
 - from income to the extent that receipts from the entity are allocated *only* to income (income pays the tax);
 - from principal to the extent payments are allocated *only* to principal;
 - proportionately from income and principal to the extent payments are allocated to both; and
 - from principal to the extent that the tax paid by the trust on the entity's income exceeds the cash received.
 - Note: the trustee must take into account *any deduction* received for amounts paid to the income beneficiary for which a distribution deduction is allowed (example previously given – always get deduction).

Example 1: Trust owns an interest in an entity and receives a schedule K-1 reporting \$1,000,000 of ordinary income and \$100,000 of cash. Trust is in a 35% tax bracket.

- Tax due of \$350,000 → exceeds cash received of \$100,000 → no distribution
- All of the income cash is used to pay the tax and will have to use \$250,000 of principal to pay the remainder of the tax

Example 2: Trust owns an interest in an entity and receives a schedule K-1 reporting \$1,000,000 of ordinary income and \$500,000 of cash. Trust is in a 35% tax bracket.

- Tax due of \$350,000 → all tax is paid from income
- Tax will be reduced by the remaining income distributed to the income beneficiary → \$150,000 distributed to income beneficiary, but then get distribution deduction which reduces the tax

3. Calculating the distribution amount when tax due is less than cash received

$$D = (C - (R * K)) / (1 - R)$$

D = distribution to income beneficiary
C = cash paid by the entity to the trust
R = tax rate on income
K = entity's K-1 taxable income

Same facts as Example 2 above

$$D = (500,000 - (0.35 \times 1,000,000)) / (1 - 0.35)$$

$$D = (500,000 - 350,000) / 0.65$$

$$D = 150,000 / 0.65$$

$$D = 230,769$$

Income distributed to income beneficiary = \$230,769

Proof

TI (K-1)	1,000,000
Payment to beneficiary	<u><230,769></u>
TI	769,231
Tax at 35%	<u><269,231></u>
Cash received	500,000
Less tax	<u><269,231></u>
Distribution	230,769

- Sometimes the K-1 is not filed until extension date for distributions in the prior year. If advising the trustee in the above example and trustee wants to distribute the \$500,000 cash, should advise the trustee that he cannot distribute the cash to the income beneficiary since he won't know the tax attributable to it until the end of the year. If the trustee has already distributed the money, he will have to get it back from the beneficiary or, if the beneficiary has died since the distribution, make a claim against the beneficiary's estate.

VII. Items Currently Under Study

A. F.S. § 738.705

- Revise language to incorporate NCCUSL clarifying language relating to the payment of taxes on income from pass-through entities.

B. F.S. § 738.401

- Study language in subsection (5) relating to distributions from entities in liquidation. Revisit 20% rule.
- Clarify treatment of income items under this provision from Targeted and Investment entities.
- Clarify subsection (7) defining "Trust's pro rata share."

C. F.S. § 738.202

- Review the impact of subsection (2) on the use of pecuniary v. fractional share trusts. New statute is a departure from the old statute.

D. F.S. § 738.603

- Revisit this provision which contains a 10% rule similar to the one in F.S. § 738.602.

E. F.S. § 738.104

- Clarify this provision (power to adjust) as it relates to the inclusion of capital gains in DNI as allowed under Section 643(b) of the Code.

→ If increase income because return not high enough so capital gains are being transferred to income. Distribute capital gains therefore capital gains should be in DNI if switch. 1041 is clear.

F. F.S. § 738.704 and § 738.403

- Revise conflict between F.S. § 738.704 and F.S. § 738.403 relative to income used to make mortgage payments. Note: this is always a problem.

G. LLC issues

- Clarify the treatment of capital investments in a pass-through entity as being charged to *principal*.

→ Assume there is a horse farm in an LLC and the stepchild is the remainder beneficiary. If the horse farm is losing money, can't reduce FAI and isolate loser. Should charge checks to *income*, but generally charged to principal because income is only *cash*.

H. Revisit conflict between F.S. § 738.704 (4) and F.S. § 738.403 relative to income used to make mortgage payments.

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one or more Federal tax issues such opinion was not written to be used and cannot be used for the purpose of avoiding penalties. If you would like a written opinion on the one or more Federal tax issues addressed above upon which you can rely for the purpose of avoiding penalties please contact me.

INCOME TAX-ESTATES, TRUSTS, BENEFICIARIES

Subchapter J - Estates, Trusts, Beneficiaries, and Decedents

[PART I](#) ESTATES, TRUSTS, AND BENEFICIARIES

[PART II](#) INCOME IN RESPECT OF DECEDENTS

PART I - ESTATES, TRUSTS, AND BENEFICIARIES

[Subpart A](#) General Rules for Taxation of Estates and Trusts

[Subpart B](#) Trusts Which Distribute Current Income Only

[Subpart C](#) Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

[Subpart D](#) Treatment of Excess Distributions by Trusts

[Subpart E](#) Grantors and Others Treated as Substantial Owners

[Subpart F](#) Miscellaneous (§§ 681—685)

Subpart A - General Rules for Taxation of Estates and Trusts

[Sec. 641.](#) Imposition of tax.

[Sec. 642.](#) Special rules for credits and deductions.

[Sec. 643.](#) Definitions applicable to subparts A, B, C, and D.

[Sec. 644.](#) Taxable year of trusts.

[Sec. 645.](#) Certain revocable trusts treated as part of estate.

[Sec. 646.](#) Tax treatment of electing Alaska Native Settlement Trusts.

[Sec. 641]

SEC. 641. Imposition of tax

(a) **Application of tax** - The tax imposed by section [1\(e\)](#) shall apply to the taxable income of **estates** or of any kind of property held in **trust**, including –

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

[Sec. 641(b)]

(b) **Computation and payment** - The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.

[Sec. 641(c)]

(c) Special rules for taxation of electing small business trusts

(1) **In general** - For purposes of this chapter -

(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

(2) **Modifications** - For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section [1\(h\)](#), the amount of the tax imposed by section [1\(e\)](#) shall be determined by using the highest rate of tax set forth in section [1\(e\)](#).

(B) The exemption amount under section [55\(d\)](#) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section [1366](#).

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section [1211\(b\)](#).

(3) **Treatment of remainder of trust and distributions** - For purposes of determining -

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust, the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

(4) **Treatment of unused deductions where termination of separate trust** - If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section [642\(h\)](#) shall be taken into account by the entire trust.

(5) **Electing small business trust** - For purposes of this subsection, the term “electing small business trust” has the meaning given such term by section [1361\(e\)\(1\)](#).

[Sec. 642]

SEC. 642. Special rules for credits and deductions

[Sec. 642(a)]

(a) **Foreign tax credit allowed** - An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section [901](#), only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

[Sec. 642(b)]

(b) **Deduction for personal exemption**

(1) **Estates** - An estate shall be allowed a deduction of \$600.

(2) **Trusts** -

(A) **In general** - Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of \$100.

(B) **Trusts distributing income currently** - A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of \$300.

(C) **Disability trusts** -

(i) In General - A qualified disability trust shall be allowed a deduction equal to the exemption amount under section [151\(d\)](#), determined -

(I) by treating such trust as an individual described in section [151\(d\)\(3\)\(C\)\(iii\)](#), and

(II) by applying section [67\(e\)](#) (without the reference to section [642\(b\)](#)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust For purposes of clause (i), the term “qualified disability trust” means any trust if -

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act ([42 U.S.C. 1396p](#)), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, [42 U.S.C. 1382c\(a\)\(3\)](#)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(3) **Deductions in lieu of personal exemption** - The deductions allowed by this subsection shall be in lieu of the deductions allowed under section [151](#) (relating to deduction for personal exemption).

[Sec. 642(c)]

(c) **Deduction for amounts paid or permanently set aside for a charitable purpose**

(1) **General rule** - In the case of an estate or trust (other than a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section [170\(a\)](#), relating to deduction for charitable, etc., contributions and gifts) any amount of

the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section [170\(c\)](#) (determined without regard to section [170\(c\)\(2\)\(A\)](#)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

(2) **Amounts permanently set aside** - In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was-

- A) created on or before October 9, 1969, if -
 - i) an irrevocable remainder interest is transferred to or for the use of an organization described in section [170\(c\)](#), or
 - ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or
- B) established by a will executed on or before October 9, 1969, if -
 - i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,
 - ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or
 - iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section [170\(c\)](#), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

(3) **Pooled income funds** - In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 1 year, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section [170\(c\)](#).

(4) **Adjustments** - To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section [1202\(a\)](#), proper adjustment shall be made for any exclusion allowable to the estate or trust under section [1202](#). In the case of a trust, the deduction allowed by this subsection shall be subject to section [681](#) (relating to unrelated business income).

(5) **Definition of pooled income fund** - For purposes of paragraph (3), a pooled income fund is a trust -

(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section [170\(b\)\(1\)\(A\)](#) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

(E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and

(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is made the rate of return shall be deemed to be 6 percent per annum, except that the Secretary may prescribe a different rate of return.

(6) **Taxable private foundations** - In the case of a private foundation which is not exempt from taxation under section [501\(a\)](#) for the taxable year, the provisions of this subsection shall not apply and the provisions of section [170](#) shall apply.

[Sec. 642(d)]

(d) **Net operating loss deduction** - The benefit of the deduction for net operating losses provided by section [172](#) shall be allowed to estates and trusts under regulations prescribed by the Secretary.

[Sec. 642(e)]

(e) **Deduction for depreciation and depletion** - An estate or trust shall be allowed the deduction for depreciation and depletion only to the extent not allowable to beneficiaries under section [167\(d\)](#) and [611\(b\)](#).

[Sec. 642(f)]

(f) **Amortization deductions** - The benefit of the deductions for amortization provided by sections [169](#) and [197](#) shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary.

[Sec. 642(g)]

(g) **Disallowance of double deductions** - Amounts allowable under section [2053](#) or [2054](#) as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary, a statement that the amounts have not been allowed as deductions under section [2053](#) or [2054](#) and a waiver of the right to have such amounts allowed at any time as deductions under section [2053](#) or [2054](#). Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under section [2621\(a\)\(2\)](#) or [2622\(b\)](#). This subsection shall not apply with respect to deductions allowed under part II (relating to income in respect of decedents).

[Sec. 642(h)]

(h) **Unused loss carryovers and excess deductions on termination available to beneficiaries** - If on the termination of an estate or trust, the estate or trust has –

- (1) a net operating loss carryover under section [172](#) or a capital loss carryover under section [1212](#), or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subsections (b) or (c)) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

[Sec. 642(i)]

(i) **Certain distributions by cemetery perpetual care funds** - In the case of a cemetery perpetual care fund which -

(1) was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property, and

(2) is treated for the taxable year as a trust for purposes of this subchapter,

any amount distributed by such fund for the care and maintenance of gravesites which have been purchased from the cemetery corporation before the beginning of the taxable year of the trust and with respect to which there is an obligation to furnish care and maintenance shall be considered to be a distribution solely for purposes of sections [651](#) and [661](#), but only to the extent that the aggregate amount so distributed during the taxable year does not exceed \$5 multiplied by the aggregate number of such gravesites.

[Sec. 643]

SEC. 643. Definitions applicable to subparts A, B, C, and D

[Sec. 643(a)]

(a) **Distributable net income** - For purposes of this part, the term “distributable net income” means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications -

(1) **Deduction for distributions** - No deduction shall be taken under sections [651](#) and [661](#) (relating to additional deductions).

(2) **Deduction for personal exemption** - No deduction shall be taken under section [642\(b\)](#) (relating to deduction for personal exemptions).

(3) **Capital gains and losses** - Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not

(A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or

(B) paid, permanently set aside, or to be used for the purposes specified in section [642\(c\)](#). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section [1202](#) shall not be taken into account.

(4) **Extraordinary dividends and taxable stock dividends** - For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) **Tax-exempt interest** - There shall be included any tax-exempt interest to which section [103](#) applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section [265](#) (relating to disallowance of certain deductions).

(6) **Income of foreign trust** - In the case of a foreign trust -

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section [265\(a\)\(1\)](#) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section [894](#) (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges.

(7) **Abusive transactions** - The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

If the estate or trust is allowed a deduction under section [642\(c\)](#), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the

amount of income which is paid, permanently set aside, or to be used for the purposes specified in section [642\(c\)](#) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all - classes.

[Sec. 643(b)]

(b) **Income** - For purposes of this subpart and subparts B, C, and D, the term “income”, when not preceded by the words “taxable”, “distributable net”, “undistributed net”, or “gross”, means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.

[Sec. 643(c)]

(c) **Beneficiary** - For purposes of this part, the term “beneficiary” includes heir, legatee, devisee.

[Sec. 643(d)]

(d) **Coordination with back-up withholding** - Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section [3406](#) -

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section [31\(c\)](#) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

[Sec. 643(e)]

(e) **Treatment of property distributed in kind**

(1) **Basis of beneficiary** - The basis of any property received by a beneficiary in a distribution from an estate or trust shall be -

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) **Amount of distribution** - In the case of any distribution of property (other than cash), the amount taken into account under sections [661\(a\)\(2\)](#) and [662\(a\)\(2\)](#) shall be the lesser of -

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

(3) **Election to recognize gain**

(A) **In general** - In the case of any distribution of property (other than cash) to which an election under this paragraph applies -

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections [661\(a\)\(2\)](#) and [662\(a\)\(2\)](#) shall be the fair market value of such property.

(B) **Election** - Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) **Exception for distributions described in section 663 (a)** - This subsection shall not apply to any distribution described in section [663\(a\)](#).

[Sec. 643(f)]

(f) **Treatment of multiple trusts** - For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

[Sec. 643(g)]

(g) **Certain payments of estimated tax treated as paid by beneficiary**

(1) **In general** - In the case of a trust -

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and

(C) for purposes of subtitle F, the amount so treated -

(i) shall not be treated as a payment of estimated tax made by the trust, but

(ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

(2) **Time for making election** - An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe.

(3) **Extension to last year of estate** - In the case of a taxable year reasonably expected to be the last taxable year of an estate -

(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

(B) the fiduciary of the estate shall be treated as the trustee.

[Sec. 643(h)]

(h) **Distributions by certain foreign trusts through nominees** - For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.

[Sec. 643(i)]

(i) **Loans from foreign trusts** - For purposes of subparts B, C, and D -

(1) **General rule** - Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities directly or indirectly to -

(A) any grantor or beneficiary of such trust who is a United States person, or

(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

(2) **Definitions and special rules** - For purposes of this subsection -

(A) **Cash** - The term “cash” includes foreign currencies and cash equivalents.

(B) **Related person** -

(i) In general A person is related to another person if the relationship between such persons would result in a disallowance of losses under section [267](#) or [707\(b\)](#). In applying section [267](#) for purposes of the preceding sentence, section [267\(c\)\(4\)](#) shall be applied as if the family of an individual includes the spouses of the members of the family.

(ii) Allocation If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

(C) **Exclusion of tax-exempts** - The term “United States person” does not include any entity exempt from tax under this chapter.

(D) **Trust not treated as simple trust** - Any trust which is treated under this subsection as making a distribution shall be treated as not described in section [651](#).

(3) **Subsequent transactions regarding loan principal** - If any loan is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title.

[Sec. 644]

SEC. 644. Taxable year of trusts

[Sec. 644(a)]

(a) **In general** - For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

[Sec. 644(b)]

(b) **Exception for trusts exempt from tax and charitable trusts** - Subsection (a) shall not apply to a trust exempt from taxation under section [501\(a\)](#) or to a trust described in section [4947\(a\)\(1\)](#).

[Sec. 645]

SEC. 645. Certain revocable trusts treated as part of estate

[Sec. 645(a)]

(a) **General rule** - For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed 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.

[Sec. 645(b)]

(b) **Definitions** - For purposes of subsection (a) -

(1) **Qualified revocable trust** - The term "qualified revocable trust" means any trust (or portion thereof) which was treated under section [676](#) as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section [672\(e\)](#)).

(2) **Applicable date** - The term "applicable date" means -

(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

[Sec. 645(c)]

(c) **Election** - The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.

[Sec. 646]

SEC. 646. Tax treatment of electing Alaska Native Settlement Trusts

[Sec. 646(a)]

(a) **In general** - If an election under this section is in effect with respect to any Settlement Trust, the provisions of this section shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust.

[Sec. 646(b)]

(b) **Taxation of income of trust** - Except as provided in subsection (f)(1)(B)(ii) -

(1) **In general** - There is hereby imposed on the taxable income of an electing Settlement Trust, other than its net capital gain, a tax at the lowest rate specified in section [1\(c\)](#).

(2) **Capital gain** - In the case of an electing Settlement Trust with a net capital gain for the taxable year, a tax is hereby imposed on such gain at the rate of tax which would apply to such gain if the taxpayer were subject to a tax on its other taxable income at only the lowest rate specified in section [1\(c\)](#).

Any such tax shall be in lieu of the income tax otherwise imposed by this chapter on such income or gain.

[Sec. 646(c)]

(c) **One-time election** -

(1) **In general** - A Settlement Trust may elect to have the provisions of this section apply to the trust and its beneficiaries.

(2) **Time and method of election** - An election under paragraph (1) shall be made by the trustee of such trust -

(A) on or before the due date (including extensions) for filing the Settlement Trust's return of tax for the first taxable year of such trust ending after the date of the enactment of this section, and

(B) by attaching to such return of tax a statement specifically providing for such election.

(3) **Period election in effect** - Except as provided in subsection (f), an election under this subsection -

(A) shall apply to the first taxable year described in paragraph (2)(A) and all subsequent taxable years, and
(B) may not be revoked once it is made.

Subpart B - Trusts Which Distribute Current Income Only

[Sec. 651.](#) Deduction for trusts distributing current income only

[Sec. 652.](#) Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only

[Sec. 651]

SEC. 651. Deduction for trusts distributing current income only

[Sec. 651(a)]

(a) **Deduction** - In the case of any trust the terms of which -

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section [642\(c\)](#) (relating to deduction for charitable, etc., purposes),

there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in paragraph (1).

[Sec. 651(b)]

(b) **Limitation on deduction** - If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.

[Sec. 652]

SEC. 652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only

[Sec. 652(a)]

(a) **Inclusion** - Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section [651](#) shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

[Sec. 652(b)]

(b) **Character of amounts** - The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

[Sec. 652(c)]

(c) **Different taxable years** – If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year.

Subpart C - Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

[Sec. 661](#). Deduction for estates and trusts accumulating income or distributing corpus

[Sec. 662](#). Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

[Sec. 663](#). Special rules applicable to sections 661 and 662

[Sec. 661]

SEC. 661. Deduction for estates and trusts accumulating income or distributing corpus

[Sec. 661(a)]

(a) **Deduction** - In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of -

(1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and

(2) any other amounts properly paid or credited or required to be distributed for such taxable year;

but such deduction shall not exceed the distributable net income of the estate or trust.

[Sec. 661(b)]

(b) **Character of amounts distributed** - The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section [642\(c\)](#)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

[Sec. 661(c)]

(c) **Limitation on deduction** - No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

[Sec.662]

SEC. 662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

[Sec.662(a)]

(a) **Inclusion** - Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section [661\(a\)](#) is paid, credited, or required to be distributed (by an estate or trust described in section [661](#)), the sum of the following amounts:

(1) **Amounts required to be distributed currently** - The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section [642\(c\)](#), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase “the amount of income for the taxable year required to be distributed currently” includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) **Other amounts distributed** - All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of -

(A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

[Sec.662(b)]

(b) **Character of amounts** - The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section [642\(c\)](#)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section [642\(c\)](#) which is not attributable to income of the taxable year.

[Sec.662(c)]

(c) **Different taxable years** - If the taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited, or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year.

[Sec.663]

SEC. 663. Special rules applicable to sections 661 and 662

[Sec.663(a)]

(a) **Exclusions** - There shall not be included as amounts falling within section [661\(a\)](#) or [662\(a\)](#) -

(1) **Gifts, bequests, etc.** - Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(2) **Charitable, etc., distributions** - Any amount paid or permanently set aside or otherwise qualifying for the deduction provided in section [642\(c\)](#) (computed without regard to sections [508\(d\)](#), [681](#), and [4948\(c\)\(4\)](#)).

(3) **Denial of double deduction** - Any amount paid, credited, or distributed in the taxable year, if section [651](#) or section [661](#) applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

[Sec.663(b)]

(b) Distributions in first sixty-five days of taxable year

(1) **General rule** - If within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year.

(2) **Limitation** - Paragraph (1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations, to have paragraph (1) apply for such taxable year.

[Sec.663(c)]

(c) **Separate shares treated as separate estates or trusts** - For the sole purpose of determining the amount of distributable net income in the application of sections [661](#) and [662](#), in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts or estates, including the application of subpart D, shall be determined in accordance with regulations prescribed by the Secretary.

A Type of entity (see instr.): <input type="checkbox"/> Decedent's estate <input type="checkbox"/> Simple trust <input type="checkbox"/> Complex trust <input type="checkbox"/> Qualified disability trust <input type="checkbox"/> ESBT (S portion only) <input type="checkbox"/> Grantor type trust <input type="checkbox"/> Bankruptcy estate—Ch. 7 <input type="checkbox"/> Bankruptcy estate—Ch. 11 <input type="checkbox"/> Pooled income fund		For calendar year 2010 or fiscal year beginning _____, 2010, and ending _____, 20____ Name of estate or trust (If a grantor type trust, see page 15 of the instructions.) _____ Name and title of fiduciary _____ Number, street, and room or suite no. (If a P.O. box, see page 15 of the instructions.) _____ City or town, state, and ZIP code _____		C Employer identification number _____ D Date entity created _____ E Nonexempt charitable and split-interest trusts, check applicable boxes (see page 16 of the instr.): <input type="checkbox"/> Described in section 4947(a)(1) <input type="checkbox"/> Not a private foundation <input type="checkbox"/> Described in section 4947(a)(2) <input type="checkbox"/> Change in trust's name <input type="checkbox"/> Change in fiduciary's address
B Number of Schedules K-1 attached (see instructions) ► _____		F Check applicable boxes: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return <input type="checkbox"/> Amended return <input type="checkbox"/> Change in fiduciary <input type="checkbox"/> Change in fiduciary's name <input type="checkbox"/> Change in fiduciary's address		
G Check here if the estate or filing trust made a section 645 election <input type="checkbox"/>				

Income	1	Interest income	1		
	2a	Total ordinary dividends	2a		
	b	Qualified dividends allocable to: (1) Beneficiaries _____ (2) Estate or trust _____			
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	3		
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4		
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5		
	6	Farm income or (loss). Attach Schedule F (Form 1040)	6		
	7	Ordinary gain or (loss). Attach Form 4797	7		
	8	Other income. List type and amount _____	8		
	9	Total income. Combine lines 1, 2a, and 3 through 8 ►	9		
Deductions	10	Interest. Check if Form 4952 is attached ► <input type="checkbox"/>	10		
	11	Taxes	11		
	12	Fiduciary fees	12		
	13	Charitable deduction (from Schedule A, line 7)	13		
	14	Attorney, accountant, and return preparer fees	14		
	15a	Other deductions not subject to the 2% floor (attach schedule)	15a		
	b	Allowable miscellaneous itemized deductions subject to the 2% floor	15b		
	16	Add lines 10 through 15b ►	16		
	17	Adjusted total income or (loss). Subtract line 16 from line 9 17			
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	18		
	19	Estate tax deduction including certain generation-skipping taxes (attach computation)	19		
20	Exemption	20			
21	Add lines 18 through 20 ►	21			
Tax and Payments	22	Taxable income. Subtract line 21 from line 17. If a loss, see page 23 of the instructions	22		
	23	Total tax (from Schedule G, line 7)	23		
	24	Payments: a 2010 estimated tax payments and amount applied from 2009 return	24a		
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	24b		
	c	Subtract line 24b from line 24a	24c		
	d	Tax paid with Form 7004 (see page 24 of the instructions)	24d		
	e	Federal income tax withheld. If any is from Form(s) 1099, check ► <input type="checkbox"/>	24e		
		Other payments: f Form 2439 _____; g Form 4136 _____; Total ►	24h		
	25	Total payments. Add lines 24c through 24e, and 24h ►	25		
	26	Estimated tax penalty (see page 24 of the instructions)	26		
27	Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed	27			
28	Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	28			
29	Amount of line 28 to be: a Credited to 2011 estimated tax ► _____; b Refunded ► _____	29			

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				
	Signature of fiduciary or officer representing fiduciary _____ Date _____ EIN of fiduciary if a financial institution _____				
Paid Preparer Use Only	Print/Type preparer's name _____		Preparer's signature _____		Date _____
	Firm's name ► _____		Firm's EIN ► _____		Check <input type="checkbox"/> if self-employed
	Firm's address ► _____		Phone no. _____		PTIN _____

Schedule A Charitable Deduction. Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see page 25)	1		
2	Tax-exempt income allocable to charitable contributions (see page 25 of the instructions)	2		
3	Subtract line 2 from line 1	3		
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4		
5	Add lines 3 and 4	5		
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see page 25 of the instructions)	6		
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7		

Schedule B Income Distribution Deduction

1	Adjusted total income (see page 25 of the instructions)	1		
2	Adjusted tax-exempt interest	2		
3	Total net gain from Schedule D (Form 1041), line 15, column (1) (see page 26 of the instructions)	3		
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4		
5	Capital gains for the tax year included on Schedule A, line 1 (see page 26 of the instructions)	5		
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6		
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7		
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8		
9	Income required to be distributed currently	9		
10	Other amounts paid, credited, or otherwise required to be distributed	10		
11	Total distributions. Add lines 9 and 10. If greater than line 8, see page 26 of the instructions	11		
12	Enter the amount of tax-exempt income included on line 11	12		
13	Tentative income distribution deduction. Subtract line 12 from line 11	13		
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14		
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15		

Schedule G Tax Computation (see page 27 of the instructions)

1	Tax: a Tax on taxable income (see page 27 of the instructions)	1a			1d	
	b Tax on lump-sum distributions. Attach Form 4972	1b				
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c				
	d Total. Add lines 1a through 1c					
2a	Foreign tax credit. Attach Form 1116	2a			3	
b	General business credit. Attach Form 3800	2b				
c	Credit for prior year minimum tax. Attach Form 8801	2c				
d	Bond credits. Attach Form 8912	2d				
3	Total credits. Add lines 2a through 2d					
4	Subtract line 3 from line 1d. If zero or less, enter -0-				4	
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611				5	
6	Household employment taxes. Attach Schedule H (Form 1040)				6	
7	Total tax. Add lines 4 through 6. Enter here and on page 1, line 23				7	

Other Information

	Yes	No
1 Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends ► \$		
2 Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		
3 At any time during calendar year 2010, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See page 29 of the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country ►		
4 During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See page 29 of the instructions		
5 Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see page 29 for required attachment		
6 If this is an estate or a complex trust making the section 663(b) election, check here (see page 29) ► <input type="checkbox"/>		
7 To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see page 29) ► <input type="checkbox"/>		
8 If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here ► <input type="checkbox"/>		
9 Are any present or future trust beneficiaries skip persons? See page 29 of the instructions		

**Schedule K-1
(Form 1041)**Department of the Treasury
Internal Revenue Service**2010**For calendar year 2010,
or tax year beginning _____, 2010,
and ending _____, 20 _____☐ Final K-1☐ Amended K-1

OMB No. 1545-0092

**Beneficiary's Share of Income, Deductions,
Credits, etc.**

▶ See back of form and instructions.

Part I Information About the Estate or Trust

A	Estate's or trust's employer identification number
B	Estate's or trust's name
C	Fiduciary's name, address, city, state, and ZIP code
D	<input type="checkbox"/> Check if Form 1041-T was filed and enter the date it was filed _____
E	<input type="checkbox"/> Check if this is the final Form 1041 for the estate or trust

Part II Information About the Beneficiary

F	Beneficiary's identifying number
G	Beneficiary's name, address, city, state, and ZIP code
H	<input type="checkbox"/> Domestic beneficiary <input type="checkbox"/> Foreign beneficiary

**Part III Beneficiary's Share of Current Year Income,
Deductions, Credits, and Other Items**

1	Interest income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
6	Ordinary business income		
7	Net rental real estate income	13	Credits and credit recapture
8	Other rental income		
9	Directly apportioned deductions		
		14	Other information
10	Estate tax deduction		

*See attached statement for additional information.

Note. A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

For Paperwork Reduction Act Notice, see the Instructions for Form 1041.

Cat. No. 11380D

Schedule K-1 (Form 1041) 2010

This list identifies the codes used on Schedule K-1 for beneficiaries and provides summarized reporting information for beneficiaries who file Form 1040. For detailed reporting and filing information, see the Instructions for Beneficiary Filing Form 1040 and the instructions for your income tax return.

	<i>Report on</i>
1. Interest income	Form 1040, line 8a
2a. Ordinary dividends	Form 1040, line 9a
2b. Qualified dividends	Form 1040, line 9b
3. Net short-term capital gain	Schedule D, line 5
4a. Net long-term capital gain	Schedule D, line 12
4b. 28% rate gain	Line 4 of the worksheet for Schedule D, line 18
4c. Unrecaptured section 1250 gain	Line 11 of the worksheet for Schedule D, line 19
5. Other portfolio and nonbusiness income	Schedule E, line 33, column (f)
6. Ordinary business income	Schedule E, line 33, column (d) or (f)
7. Net rental real estate income	Schedule E, line 33, column (d) or (f)
8. Other rental income	Schedule E, line 33, column (d) or (f)
9. Directly apportioned deductions	
<i>Code</i>	
A Depreciation	Form 8582 or Schedule E, line 33, column (c) or (e)
B Depletion	Form 8582 or Schedule E, line 33, column (c) or (e)
C Amortization	Form 8582 or Schedule E, line 33, column (c) or (e)
10. Estate tax deduction	Schedule A, line 28
11. Final year deductions	
A Excess deductions	Schedule A, line 23
B Short-term capital loss carryover	Schedule D, line 5
C Long-term capital loss carryover	Schedule D, line 12; line 5 of the wksht. for Sch. D, line 18; and line 16 of the wksht. for Sch. D, line 19
D Net operating loss carryover — regular tax	Form 1040, line 21
E Net operating loss carryover — minimum tax	Form 6251, line 11

12. Alternative minimum tax (AMT) items

<i>Code</i>	<i>Report on</i>
A Adjustment for minimum tax purposes	Form 6251, line 15
B AMT adjustment attributable to qualified dividends	See the beneficiary's instructions and the Instructions for Form 6251
C AMT adjustment attributable to net short-term capital gain	
D AMT adjustment attributable to net long-term capital gain	
E AMT adjustment attributable to unrecaptured section 1250 gain	
F AMT adjustment attributable to 28% rate gain	
G Accelerated depreciation	
H Depletion	
I Amortization	
J Exclusion items	2011 Form 8801

13. Credits and credit recapture

A Credit for estimated taxes	Form 1040, line 62
B Credit for backup withholding	Form 1040, line 61
C Low-income housing credit	Form 8586 (also see the beneficiary's instructions)
D Rehabilitation credit and energy credit	See the beneficiary's instructions
E Other qualifying investment credit	See the beneficiary's instructions
F Work opportunity credit	Form 5884, line 3
G Credit for small employer health insurance premiums	Form 8941, line 15
H Alcohol and cellulosic biofuel fuels credit	Form 6478, line 8 (also see the beneficiary's instructions)
I Credit for increasing research activities	Form 3800, line 1c
J Renewable electricity, refined coal, and Indian coal production credit	See the beneficiary's instructions
K Empowerment zone and renewal community employment credit	Form 8844, line 3
L Indian employment credit	Form 3800, line 1g
M Orphan drug credit	Form 3800, line 1h
N Credit for employer-provided child care and facilities	Form 3800, line 1k
O Biodiesel and renewable diesel fuels credit	Form 8864, line 9 (also see the beneficiary's instructions)
P Nonconventional source fuel credit	Form 3800, line 1o
Q Credit to holders of tax credit bonds	Form 8912, line 8
R Agricultural chemicals security credit	Form 3800, line 1v
S Energy efficient appliance credit	Form 3800, line 1q
T Credit for employer differential wage payments	Form 3800, line 1w
U Recapture of credits	See the beneficiary's instructions

14. Other information

A Tax-exempt interest	Form 1040, line 8b
B Foreign taxes	Form 1040, line 47 or Sch. A, line 8
C Qualified production activities income	Form 8903, line 7, col. (b) (also see the beneficiary's instructions)
D Form W-2 wages	Form 8903, line 17
E Net investment income	Form 4952, line 4a
F Gross farm and fishing income	Schedule E, line 42
G Foreign trading gross receipts (IRC 942(a))	See the Instructions for Form 8873
H Other information	See the beneficiary's instructions

Note. If you are a beneficiary who does not file a Form 1040, see instructions for the type of income tax return you are filing.

Instructions for Beneficiary Filing Form 1040

Note. The fiduciary's instructions for completing Schedule K-1 are in the Instructions for Form 1041.

What's New

If Schedule K-1 shows backup withholding in box 13, code B, attach a copy to your return.

General Instructions

Purpose of Form

Use Schedule K-1 to report your share of the estate's or trust's income, credits, deductions, etc. Keep it for your records. Do not file it with your tax return, unless backup withholding was reported in box 13, code B.

Inconsistent Treatment of Items

Generally, you must report items shown on your Schedule K-1 (including attached schedules) the same way that the estate or trust treated the items on its return.

If the treatment of an item on your original or amended return is inconsistent with the estate's or trust's treatment (or if the estate or trust was required to but has not filed a return), you must file Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), with your original or amended return to identify and explain any inconsistency (or to note that an estate or trust return has not been filed).

If you are required to file Form 8082 but fail to do so, you may be subject to the accuracy-related penalty. This penalty is in addition to any tax that results from making your amount or treatment of the item consistent with that shown on the estate's or trust's return. Any deficiency that results from making the amounts consistent may be assessed immediately.

Errors

If you believe the fiduciary has made an error on your Schedule K-1, notify the fiduciary and ask for an amended or a corrected Schedule K-1. Do **not** change any items on your copy. Be sure that the fiduciary sends a copy of the amended Schedule K-1 to the IRS. If you are unable to reach an agreement with the fiduciary regarding the inconsistency, you must file Form 8082.

Beneficiaries of Generation-Skipping Trusts

If you received Form 706-GS(D-1), Notification of Distribution From a Generation-Skipping Trust, and paid a generation-skipping transfer (GST) tax on Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions, you can deduct the GST tax paid on income distributions on Schedule A (Form 1040), line 8. To figure the deduction, see the Instructions for Form 706-GS(D).

Specific Instructions

Part I—Information About the Estate or Trust

Item E

If the item E box is checked, this is the final year of the estate or trust.

Note. If the "Final K-1" box at the top of Schedule K-1 is checked, this is the final return for the beneficiary.

Part III—Beneficiary's Share of Current Year Income, Deductions, Credits, and Other Items

The amounts shown in boxes 1 through 14 reflect your share of income, loss, deductions, credits, etc., from an estate or trust. For Form 1040 filers, page 2 of Schedule K-1 provides summarized reporting information. The summarized reporting information reflects references to forms in use for calendar year 2010.

If you are not an individual, report the amounts in each box as instructed on your tax return.

Codes. In box 9 and boxes 11 through 14, the fiduciary will identify each item by entering a code in the column to the left of the dollar amount entry space. These codes are identified on page 2 of Schedule K-1.

Attached statements. The fiduciary will enter an asterisk (*) after the code, if any, in the column to the left of the dollar amount entry space for each item for which it has attached a statement providing additional information. For those informational items that cannot be reported as a single dollar amount, the estate or trust will enter an asterisk in the left column and write "STMT" in the dollar amount entry space to indicate the information is provided on an attached statement.

Boxes 3 and 4a—Net Short-Term and Net Long-Term Capital Gain

If there is an attachment to this Schedule K-1 reporting a disposition of a passive activity, see the Instructions for Form 8582, Passive Activity Loss Limitations, for information on the treatment of a disposition of an interest in a passive activity.

Box 5—Other Portfolio and Nonbusiness Income

The amount reported in this box is your distributive share of royalties, annuities, and other income that is not subject to the passive activity rules. It also includes income in respect of a decedent (IRD), which is not included in boxes 1, 2a, 3, 4a, 6, 7, or 8.

Boxes 6 through 8—Ordinary Business Income, Net Rental Real Estate Income, and Other Rental Income

The deductions in boxes 6 through 8 may be subject to the passive loss limitations of Internal Revenue Code section 469, which generally limits deductions from passive activities to the income from those activities. The fiduciary will provide you with a separate schedule showing your distributive share of income from each trade or business, net rental real estate, or other rental activity. The rules for applying these limitations to beneficiaries have not yet been issued. For more details, see Pub. 925, Passive Activity and At-Risk Rules.

Box 9—Directly Apportioned Deductions

The fiduciary must attach a statement showing depreciation, depletion, and amortization directly apportioned to you, if any, for each activity reported in boxes 5 through 8.

Box 12—Alternative Minimum Tax Items

The information reported in box 12, codes A through I is used to prepare your Form 6251, Alternative Minimum Tax—Individuals. Code A, Adjustment for minimum tax purposes, is the total amount reported on Form 6251, line 15. Codes B through F represent the portion, if any, of the amount included in code A.

Codes B through F. If you have an amount in box 12 with code B, C, D, E, or F, see the instructions for lines 37, 38, and 39 of Form 6251.

Codes G through I. Include the amount with any of these codes on the applicable line of Form 6251.

Code J. Exclusion items. If you pay alternative minimum tax in 2010, the amount in box 12, code J will help you figure any minimum tax credit for 2011. See the 2011 Form 8801, Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts, for more information.

Box 13—Credits and Credit Recapture

Codes A through T list all the credits that may be allocated to you as a beneficiary. The corresponding line shows you what form to use when reporting the amount.

Code A. Credit for estimated taxes. The beneficiary treats this amount as a payment of estimated tax. To figure any underpayment and penalty on Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts, treat the amount entered on box 13, code A, as an estimated tax payment made on January 15, 2011.

Note. Form 1041-T, Allocation of Estimated Tax Payments to Beneficiaries, must be timely filed by the fiduciary for the beneficiary to get the credit for an estimated tax payment.

Code C. Low-income housing credit. The fiduciary will provide you with a statement showing the amount to report on lines 4 and 11 of Form 8586, Low-Income Housing Credit. If you only have an amount to report on line 4 of Form 8586 and your only source for the credit is a pass-through entity, such as an estate or trust, then you can report the amount on line 1d of Form 3800, General Business Credit, and you do not have to complete Form 8586.

Code D. Rehabilitation credit and energy credit. The fiduciary must give you a statement that shows the information you will need and where to enter it on Form 3468, Investment Credit, so that you can figure the amount of any rehabilitation credit and energy credit that you may claim.

Code E. Other qualifying investment credit. This code is used to report the qualified investment for figuring the qualifying advanced coal project credit, the qualifying gasification project credit, the qualifying advanced energy project credit, and the qualifying therapeutic discovery project credit. The fiduciary must provide you with a statement that shows the information you will need and where to report it on Form 3468 so that you can figure the amount of the previously listed credits that you may claim.

Code H. Alcohol and cellulosic biofuel fuels credit. If this credit includes the small ethanol producer credit, the fiduciary will provide additional information on an attached statement. If a statement is attached, see the instructions for line 16 of Form 6478, Alcohol and Cellulosic Biofuel Fuels Credit.

If no statement is attached, report this amount on Form 6478, line 8.

Code J. Renewable electricity, refined coal, and Indian coal production credit. Complete Form 8835, Renewable Electricity, Refined Coal, and Indian Coal Production Credit, to figure the amount of your credit. The fiduciary must provide a statement showing the amount of credit to report on line 9 in Part I, and how much to report on line 29 in Part II of Form 8835.

Code O. Biodiesel and renewable diesel fuels credit. If this credit includes the small agri-biodiesel producer credit, the fiduciary will provide additional information on an attached statement. If no statement is attached, report this amount on line 9 of Form 8864, Biodiesel and Renewable Diesel Fuels Credit. If a statement is attached, see the instructions for Form 8864, line 11.

Code U. Recapture of credits. If you are required to recapture any credits, the fiduciary will provide a statement with the information you need to figure your credit recapture.

Box 14—Other Information

Code C. Qualified productions activities income. If any of the income is oil-related qualified production activities income, the fiduciary must give you a statement that shows the amount. Enter the oil-related amount on Form 8903, line 7, col. (a). Enter the amount from all activities on Form 8903, line 7, col. (b).

Code F. Gross farming and fishing income. The amount of farming and fishing income is included in box 6. This income is separately stated to help determine if you are subject to a penalty for underpayment of estimated tax. Report the amount of gross farming and fishing income on Schedule E (Form 1040), line 42.

Code H. Other information. If this code is used, the fiduciary will provide you with any additional information you may need to file your return that is not shown elsewhere on this Schedule K-1.