

Applicable Date Under § 645 With Respect to Trusts and Estates of Decedents Dying Before December 24, 2002

Notice 2003-33

This notice provides guidance regarding the determination of the applicable date that terminates the election period under § 645 of the Internal Revenue Code for trusts and estates of decedents dying before December 24, 2002.

Section 645 provides that a qualified revocable trust may elect to be treated and taxed for purposes of subtitle A of the Code as part of an estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date. Section 1.645-1(f)(1) of the Income Tax Regulations provides that the § 645 election period begins on the date of the decedent's death and terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all their assets, or the day before the applicable date.

Section 645(b)(2) provides that the "applicable date" is — (A) if no federal estate tax return is required to be filed, the date which is 2 years after the date of the decedent's death, and (B) if a federal estate tax return is required to be filed, the date that is 6 months after the date of final determination of liability for the estate tax.

Under proposed regulations for § 645 published on December 18, 2000 (REG-106542-98, 2001-5 I.R.B. 473 [79015]), the applicable date, if a federal estate tax return is required to be filed, is the day that is 6 months after the date of final determination of liability for estate tax. The date of final determination of liability is the day on which the first of a series of events occurs. One of those events is the issuance of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within 6 months after the issuance of the letter. Thus, under the proposed regulations, if the closing letter determines the date of final determination of liability, the applicable date is the date that is 6 months after the date that the closing letter is issued.

When the regulations were issued as final regulations on December 24, 2002, (T.D.

9032, 2003-7 I.R.B. 471 [78371]), the applicable date was changed for those situations in which a federal estate tax return is required to be filed. Section 1.645-1(f)(2)(ii) provides that the applicable date is the later of the day that is 2 years after the date of the decedent's death or the day that is 6 months after the date of final determination of liability for estate tax.

Further, under the final regulations, if the issuance of the closing letter triggers the date of final determination of liability, the date of final determination is the date that is 6 months after the date the closing letter is issued, rather than the date the closing letter is issued as provided in the proposed regulations. Thus, under the final regulations, if the closing letter triggers the date of final determination of liability, the applicable date (that is, 6 months after the date of final determination of liability) is the date that is 12 months after the date that the closing letter is issued.

Section 1.645-1(j) of the final regulations provides that § 1.645-1(f)(2)(ii) is effective for trusts and estates of decedents dying on or after December 24, 2002. The preamble to the final regulations provides that trusts and estates of decedents dying before December 24, 2002, may follow certain provisions of the final regulations, but § 1.645-1(f)(2)(ii) is not included in those provisions.

The Internal Revenue Service has received several requests that trusts and estates of decedents dying before December 24, 2002, be permitted to rely on § 1.645-1(f)(2)(ii) of the final regulations to determine the applicable date that terminates the election period. Accordingly, provided that a Form 1041, *U.S. Income Tax Return for Estates and Trusts*, has not been filed treating the § 645 election period as terminated, trusts and estates of decedents dying before December 24, 2002, may rely on § 1.645-1(f)(2)(ii) of the final regulations to determine the applicable date.

The principal author of this notice is Faith Colson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Faith Colson at (202) 622-3060 (not a toll-free call).