

IRC Section 643(e)

Election to Recognize Gain or Loss on Distributions In Kind

Overview

Trusts and estates may make distributions of property to a beneficiary other than cash. Generally, such distributions of property do not result in the trust or estate recognizing a gain or loss. However, IRC §643(e) permits a trust or estate to elect to treat a property distribution as a sale to the beneficiary and recognize a gain or loss on the distribution. The election is made by the fiduciary on a year-by-year basis and is available for distributions made after June 1, 1984. Once the election is made, it applies to all property distributions made by a trust or estate during a taxable year, except for any distribution that is excluded from the trust's or estate's distribution deduction under §663(a).

It should be noted that if a trust realizes a loss on the distribution of property to a beneficiary, the trust will not be able to deduct the loss under the related party provisions of §267 even if a §643(e) election was made. Section 267 specifically disallows a loss deduction resulting from a sale or exchange between a trustee and a beneficiary of the trust.

The election under §643(e) may be revoked only with the consent of the Commissioner. The request for revocation must be made by the fiduciary in the form of a ruling request.

When to File

The election is made by attaching a statement to the trust's or estate's income tax return for the taxable year in which the distribution of property was made. In addition, the gain or loss must be included on Schedule D (Capital Gains and Losses) of Form 1041 (U.S. Fiduciary Income Tax Return). The election must be made no later than the due date, including extensions, of the trust's or estate's return for such year.

Where to File

The timely-filed income tax return and election statement are mailed to the designated Internal Revenue Service Center.

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1. Code Section: 643, 267, 663
2. Topic: Trusts, Estates and Gifts
3. Return Type: 1041

Authorities

IRC §643(e)(3); Reg. §301.9100-6T(h)