

INCOME IN RESPECT OF A DECEDENT

IRC Section 691

Margaret Van Houten

Dentons Davis Brown

215 10th Street

Des Moines, IA 50309

margaret.vanhouten@dentons.com

or margvh125@gmail.com

515-490-7714

I. Introduction. Income in respect of a decedent (IRD) refers to assets belonging to a Decedent that is characterized as income due to a Decedent at the time of death but payable to the Decedent's estate, trusts, or individual beneficiaries sometime after death. These are assets that are includible in the Decedent's estate for federal estate tax purposes but which do not receive a step up in basis to the date of death value of the assets. IRC §1014(c).

Accordingly, it is possible that the same asset will be 'taxed twice, as an asset of the estate for estate tax purposes and the IRD component will be subject to income tax when received. To reduce the negative impact of this rule, IRC §691(c) provides an income tax deduction for the estate tax payable on the assets characterized as IRD. This deduction does not, in the best of cases, result in a complete remediation of the 'double tax' effect, and given current limitations on individual itemized deductions, can be of very limited value.

This presentation will address the types of IRD assets, the different rules relating to them, the § 691(c) deduction, and perhaps more importantly, how to explain this to our clients and beneficiaries who could easily forget to take account of the IRD deduction.

II. History of § 691. Before the enactment of the 1939 Code predecessor to IRC §691 in 1942, "all income earned by a decedent whether or not received at death was required to be taxed to him." Poorbaugh V. U.S. 423 F.2d 157 (3rd Cir 1970), citing the holding in Helvering v. Enright's Estate, 312 U.S. 636 (1941). The Enright case in effect converted a cash basis taxpayer (an attorney) to an accrual basis taxpayer in the year of death. The addition of §691 was made in order avoid a complete bunching of income on the decedent's final return.

III. Different Kinds of IRD.

- A. *Qualified Retirement Accounts and IRA's, including employer sponsored pension plans, profit sharing plans, 401(k) plans, SEPS.* Pre-Tax retirement accounts are IRD, regardless of whether the 'income' is attributed to ordinary income or principal appreciation in the account. This includes defined benefit pension plans and profit-sharing plans, 401(k)'s, IRA's, SEP and simple IRA's and 401(k)'s. Roth IRAs are not IRD since distributions are not taxable income. Any amount of

a retirement account that is an after-tax contribution is not IRD.

- B. *Non-qualified deferred compensation and retirement accounts.* Non-qualified plans, severance arrangements and the like are IRD, and to the extent included in income when received.
- C. *Stock Options.* The income component of stock options, whether statutory or not, will be treated as IRD.
- D. *Installment Contracts.* If a decedent sold property using the installment method, and decedent's estate or the successor holder of the contract must include both the interest and principal component of the sale, which will usually result in ordinary income and capital gain. The successor holder of the obligation would use the same gross profit percentage the decedent used to figure the part of each payment that represents profit. See IRS Pub. 559, Survivors, Executors and Administrators and Pub 537, Installment Sales.
- E. *Savings Bond Interest.* Accrued (and untaxed) interest on a decedent's ownership of U.S. Series E and EE (and some series H) Savings Bonds is IRD if included in his or her estate. For example, if an individual bought a \$100.00 series EE Bond for \$50.00, and dies when the bond is worth \$70.00, there is \$20.00 of IRD. Special rules apply when there is more than one owner of an account, based on contributions to the purchase of the bonds. If the decedent recognized the income each year instead of deferring it, or if the decedent's personal representative elects to accrue the income on the decedent's final return, there will be little IRD.

For general information about savings bond redemptions, go to:
www.TreasuryDirect.gov.

- F. *Certain Business Income.*
 - 1. Partnerships. Any unpaid distributive share or guaranteed payment in liquidation of decedent's interest in the partnership is IRD.

If an individual is a partner in a partnership and if the partnership income for the year of death includes pre-death receivables, the deceased partner's interest in that pre-death receivable is IRD. See Woodhall v. Commissioner, 454 F2d 226 (9th Cir 1972), in which a decedent's surviving spouse and executor sold decedent's interest in the general partnership to the surviving partner. The partnership, a cash basis taxpayer, had accounts receivables on its books. The selling partner (the estate and surviving spouse) filed a return that did not include the accounts receivable in gross income as IRD, taking the position that there was a step up in basis on the receivable. The Service argued and the court held that the portion of the sales price allocated to the accounts receivable was IRD. The buy sell agreement provided that the partnership terminated upon death, with a required purchase of the interest by the surviving partner at a formula

price, which included the accounts receivable as part of the purchase price allocation. The Court held that because there was no prior income inclusion of Decedent's share of the receivables, the amount received for them constituted IRD and there was no step up in basis. The court further found that IRC §§ 741 and 751 specifically provided for the treatment of the sale of the receivables as a sale of an asset other than a capital asset. See also Quick's Trust v. Commissioner, 444 F2d 90 (8th Cir 1971).

2. S Corporation Income. IRC §1367(b)(4)(A) provides that "if any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item." And §1367(b)(4)(A) goes on to provide that the §1014 basis adjustment for S Corporation stock shall be reduced by the portion of the value of the stock attributable to IRD. I assume that this basis adjustment will be required even if no federal estate tax is payable.

G. *Unpaid Wages, salaries and other unpaid employment related compensation, including bonuses, commissions, vacation pay and sick pay.* Wages and other unpaid employment or independent contractor payments paid after death constitute IRD, and there is accordingly no step up in basis. Treas. Reg. §1.691(a)-1(B). Interestingly, earned but unpaid compensation is not subject to federal income tax withholding, but if paid during the year of death will be subject to withholding for social security and Medicare taxes. The withheld social security and Medicare tax should be reported on the decedent's final W-2 for the year of death. The actual wages are to be reported on a Form 1099-MISC. See IRS Pub. 559, page 23..

See also Collins V. U.S 318 F. Supp 382 (C.D. California, 1970), in which a widow unsuccessfully attempted to have her husband's death benefit from his employers obtain a step up in basis. That case held that the specific listing of the 9 items treated as property acquired by bequest, devise or inheritance in IRC §1014(b) that receive a step up in basis is exclusive, not a starting point for other items. In addition, that case held that the salary continuation payment was IRD and accordingly does not receive a step up in basis.

H. *Decedent's share of partnership income for the period before death for a partnership tax year that ends after death unless the death causes the partner's tax year to close.*

I. *Farm Income - Special rule for stored crops of farm.* Generally, "a farmer's growing crops and livestock at the date of death normally would not give rise to IRD of a decedent or income to be included in the final return. The operative word here is "farmer." A farmer who materially participates in the business of farming receives a step up in basis of growing crops and stored crops, and no IRD is involved. However, when a cash method landowner receives rent in the form of crop shares or livestock and owns the crop shares or livestock at the time of death, the rent is IRD and is reported in the year in which the crop shares or livestock are sold or otherwise disposed of. There is no

step up in basis. The same treatment applies to crop shares or livestock that the decedent had a right to receive as rent at the time of death for economic activities that occurred before death. *Example:* Alonzo Roberts, who used the cash method of accounting, leased part of his farm for a 1-year period beginning March 1. The rental was one-third of the crop, payable in cash when the crop share is sold at the direction of Alonzo. He died on June 30 and was alive during 122 days of the rental period. Seven months later, Alonzo's personal representative ordered the crop to be sold and was paid \$1,500. Of the \$1,500, 122/365, or \$601, is IRD. The balance of the \$1,500 received by the estate, \$999, is income to the estate." Pub. 559, page 25.

J. *Accrued Interest and ex-dividends accrued as of date of death but not paid until after death.* Interest accrued but not paid prior to death on certificates of deposits, promissory notes, savings accounts and other interest-bearing obligations are characterized as IRD. The amount of interest so characterized for a cash basis taxpayer is the amount of interest accrued from the date of the last interest payment (if the interest is fully paid at that time) to the date of death. For dividends, if the date of record is before the date of death but the payment date is after death, the dividend is characterized as DNI.

K. *Gain from the sale of property if sale is deemed to occur before death but proceeds are not collected until after death.*

L. *Annuities.* Pre death accrued interest on an annuity is classified as IRD. The amount of income vs. investment in the contract accrued to date of death is calculated pursuant to the provisions of IRC §72. The income component of *joint and survivor* annuities in pay status are covered by IRC §691(d) and Treas. Reg. § 1.691(d)-1. Under that section, "annuity payments received by a surviving annuitant under a joint and survivor annuity contract" are IRD for purpose of allowing the estate tax IRD deduction.

M. *Character of IRD.* IRD maintains the same ordinary income or capital asset character as it would have had if decedent had lived and received it. Treas. Reg. §1.691(a)-3.

IV. Deductions in Respect of a Decedent. IRC §691(b) provides the other side of the coin to IRC § 691, authorizing an income tax deduction (in addition to an estate tax deduction) in certain circumstances. If a Decedent has an obligation at death which is deductible under IRC § 162 (trade or business expenses), §163 (interest), §164 (taxes) , § 212 (expenses for production of income) or the amount of any deduction specified in section 162, 163, 164, 212, or 611 (depletion) or a credit allowed under §27 (foreign tax credit) but not allowable in the year of death or in a prior year, certain expenses will be deductible not only as an obligation of the estate for estate tax purposes, but also deductible on the estate's income tax return for the year in which paid, unless the estate is not liable to discharge the obligation to which the deduction or credit might otherwise be deductible. In other words, some expenses may be deducted twice, just like some assets/income must be included twice. IRC §642(g) and Treas. Regs. §1.642(g)-2 provides that amounts allowable under IRC §2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction in computing the taxable income of the estate or any other person, but that this provision shall not apply with respect to

deductions allowed under §691. If the obligation passes to someone other than the estate, the successor obligee is allowed to deduct when paid, which would not result in any double deduction, but the income tax deduction would be allowed. The first step in determining whether there is an allowable income tax deduction is to determine whether the expense would have been deductible under one of the above sections by the decedent had she lived, and the second step is to determine whether the deduction can receive both the income and estate tax deductions.

A. *Commissions.* In Rev. Rul. 76-498, 1976-2 C.B. 199, the service allowed double deduction for pre-death commissions, fees and expenses payable with respect to a grantor trust that held both income producing assets and real estate not held for the production of income. Trustee fees and expenses are generally deductible under IRC §212 if related to income producing assets. After death, only the portion of the fees attributable to the income producing assets of the trust associated with pre-death services were deductible for both estate and income tax. Post-death fees were deductible only as an estate tax deduction under IRC §2053. See also Rev. Rul. 71-423, 1971-2 C.B. 255, which required an allocation of pre-death guardianship and legal fees and expenses between ordinary and necessary services with respect to the production of income as opposed to assets that are not held for the production of income.

B. *Interest Obligations.*

1. Interest and an Accrual Basis Taxpayer. In Rev. Rul. 71-422, 1972-2 C.B. 255, the IRS found that the estate of an *accrual* basis decedent may deduct, under IRC § 691 (b), predeath interest on a tax deficiency that was contested by the decedent, as well as an IRC §2053 estate tax deduction. Post-death interest was allowable to be deducted as an estate or income tax deduction, but not both. Treas. Regs § 1.642(g)-1. Pursuant to that statement, a statement must be filed with the income tax return if the expense is deducted on the income tax return and the estate tax §2053 deduction is waived. This would not be an issue with a cash basis taxpayer as the pre-death accrued but unpaid interest would not be deductible until paid.

2. Interest on Life Insurance Policy Loans against Cash Value. In Estate of Hooks v. Commissioner, 22 TC 502 (1954), decided under the 1939 Code, not the 1954 Code. Decedent owned insurance policies on his life and had, over the years, borrowed against the cash value of those policies, with annual accrued interest being added to the principal of the loans. Decedent's wife was the beneficiary of the policy and the parties lived in Texas, a community property state. At the date of death, there was \$13,104 of accrued interest which was deducted on the Decedent's and surviving spouse's joint income tax return. On audit, the IRS disallowed the deduction based on the following: (a) the interest is not deductible by decedent because it was not paid prior to his death; (b) it was not a liability of the estate (agreed to by both parties); and (3) it was not the liability of the surviving spouse. The parties agreed that an interest deduction had not been allowable to the decedent during his life as the interest was added

to the principal of the loan. The court did hold, though, that the interest was deductible on the final joint return either to the surviving spouse or to the estate as interest. The Court seemed to imply that it would be deductible as a deduction in respect of a decedent to the surviving spouse as the successor to the obligation or as executor of the estate. Of course, when this case was decided, the interest deduction was not as limited as it is now.

3. Expenses that are not Deductible on Income Tax Return (but allowed on Estate Tax Return). These deductions are usually administration expenses, including funeral and estate administration expenses, attorney, executor and accountant fees. These expenses are simply not deductible by the payor for income tax purposes because they are not specifically allowed under IRC §691(b). See also Harrell v. Commissioner T.C. Memo 2017-76 (2017).

C. *Charitable Contributions Carryovers of Individuals*. Unused, excess charitable contributions are not deductible as a deduction in respect of a decedent. “In case of the death of one spouse, any unused portion of an excess charitable contribution which is allocable in accordance with subdivision (i) of this subparagraph to such spouse shall not be treated as paid in the taxable year in which death occurs or in any subsequent taxable year except on a separate return made for the deceased spouse by a fiduciary for the taxable year which ends with the date of death or on a joint return for the taxable year in which such death occurs.” Treas. Reg. §1.170A-1(d)(iii). The application of this subdivision may be illustrated by the following example (paraphrased from regulation example): **Example:** Both husband and wife had unused charitable contribution carryovers as of the date of husband’s death in 2021. H’s unused carryover cannot be treated as paid in any year after his death, although it could be used on his 2021 return if otherwise allowable.

D. *Decedent’s Medical Expenses*. Deductions for medical expenses do not qualify as a deduction with respect to a decedent under § 601(b), but IRC §213((c) provides special rules for deduction of medical expenses prior to death. The executor/survivor may choose to deduct medical expenses paid within a year following the date of death on the decedent’s tax year when the expenses were incurred. As with other deductions that can be taken on either an income tax return or on the federal estate tax return. If taken as an income tax deduction, a waiver of the estate tax deduction must be filed. IRC § 213(c)(2).

E. *Depletion*. Pursuant to Treas. Reg. § 1.691(b)-1(b), “the deduction for percentage depletion is allowable only to the person who receives the [IRD] to which the depletion deduction relates, whether or not such person receives the property from which such income is derived.” In order to obtain the depletion IRD deduction, the decedent must have used percentage depletion method.

V. Estate Tax Deductions for Income in Respect of a Decedent § 691(c). If a Decedent’s estate has an estate tax obligation, items of IRD in the estate may be subject to an

income tax deduction in the amount of the estate tax paid on that IRD, subject to some adjustments. Treas. Reg. §1.691(c)-1. IRS Publication 559.

A. *Where is the deduction taken?* The deduction is characterized as a miscellaneous itemized deduction on an individual's tax return, subject to all limitations and restrictions on those deductions. Rev. Rul. 78-203, 1978-1 C.B. 199. The IRD Estate Tax Deduction is not subject to the suspension of the allowance of miscellaneous itemized deductions imposed by the 2018 Tax Cuts and Jobs Act nor is it a miscellaneous itemized deduction subject to the now suspended 2% floor. IRC § 67. . If a Trust or estate is the recipient of the IRD, the Estate Tax deduction is taken on line 19 of Form 1041. An individual reports it on line 16 of Schedule A.

It is important to note that the individual or entity that receives the benefit of the estate tax deduction is often NOT the same as the individual or entity that pays the estate tax.

B. *Specific Items.*

1. Savings Bond Interest. As stated above, if a decedent dies owning savings bonds that are not fully matured, the executor has the option of electing to include the accrued interest on decedent's final income tax return. IRC §454(a). According to an early revenue ruling, Rev. Rul. 58-435, the accrued but unreported interest, whether or not the election is made to include the income on the decedent's final tax return, is characterized as IRD and there is an allowed deduction for the estate tax paid on that accrued but unpaid interest. Rev. Rul. 58-435, 1958-2 C.B. 370. Also see IRS Publication 559 (2020), page 26, in which an example states that if an executor makes the election to include accrued savings bond interest on the final return, no deduction for estate tax on the IRD is allowed for post death interest, but no specific allowance for the pre-death interest is noted.

2. Real Estate Taxes. Generally, real estate taxes are paid in arrears, so upon a decedent's death, there are often accrued taxes which are not due until after death. In addition, different states have different rules with respect to whether real estate is subject to administration and whether the estate is liable for unpaid taxes. "If the real estate was not subject to the possession of the executor, that is, not subject to administration, then the executor is entitled to a deduction for the real estate taxes paid by the estate only to the extent that such taxes were a charge against the real estate at the date of death of the decedent." Rev. Rul. 58-69, 1958-1 C.B. 254. The question is whether and to what extent the unpaid taxes have become against the real estate. If so, it is deductible as a §691(b) expense as well as a §2053 deduction. If not, it is only deductible as a §2053 expense.

C. *Whose IRD is it? Successive Decedents.* Generally, if a decedent leaves IRD to a beneficiary, and the beneficiary dies before recognizing all of the IRD on his or her tax return, the beneficiary's successor may be able to continue to take the estate tax deduction. See Treas. Regs. §1.691(a)-1(c).

1. In Schermer v. Commissioner, T.C. Memo. 2019-28 (2019), the Tax Court held that a beneficiary was not entitled to an IRD deduction for the amount of IRA and annuity distributions she had received from her deceased husband. These assets had been previously inherited by her husband from his father. No estate tax was paid in the husband's estate, but apparently estate tax had been paid in the husband's father's estate. The court finds that "The Federal estate tax return for [husband's father] did not include the three distributions petitioner received." This appears to be a matter of failure to prove that the actual accounts she inherited were the same accounts that her husband had inherited from his father, rather than direct authority that only the primary beneficiary of the original account is entitled to the IRD deduction.

D. *How to Calculate the Deduction.*

1. Step 1: Make a listing or a chart of all IRD and DRD in the estate.
Perhaps something that looks like this:

Description of IRD	706 Schedule and Item #	Amount of IRD	Amount of DRD	Net IRD	Beneficiary	Subject to Estate Tax?
IRA		\$500,000	0	\$500,000	Spouse	No
Deferred Comp		\$1,000,000	0	\$1,000,000	Child #1	Yes
"Ex-Dividends"		\$5,000	0	\$5,000	Estate	Yes
Commercial Annuity		\$100,000	0	\$100,000	Child # 2	Yes
Farm Rents		\$50,000	\$3,000	\$47,000	Child # 1 and # 2	Yes

2. Step 2: Determine the portion of the estate tax attributable to the inclusion of the gross estate. This is the excess of the estate tax over the estate tax computed without including such net value in the gross estate. See Treas. Reg. § 1.691(d)-1(e), example 2. The items of IRD are grouped together, including the Net IRD. The difference is the total amount of the IRD deduction.

3. Step 3: Allocate the IRD Deduction among the beneficiaries, including estates and trusts and trust beneficiaries.

4. Step 4: Consider payments made to beneficiaries over several years. Many items of IRD, particularly annuities and retirement plans, are paid over several years and, of course, the value of the account will fluctuate. The question becomes whether the IRD deduction is spread over a longer period of smaller deductions, or whether it is deducted without much consideration of the appreciation or depreciation. The answer is that the total amount of an annual distribution is divided by the total IRD amount for that account as of date of death and multiplied by the estate tax deduction amount allocated to that asset.

For example: D died bequeathing to C an item of IRD that is valued for estate tax purposes at \$10,000. The total § 691(c) deduction is \$3,000. With respect to this item of IRD, C collects \$1,000 a year for 14 years. In fact, C will collect more than \$10,000. C is entitled to a § 691(c) deduction of \$300 ($\$3,000 \times \$1,000/\$10,00$) in each of the first 10 years. There is no § 691(c) deduction available against C's receipts in excess of 410,000 (the value of the IRD item for estate tax purposes). Aker, *862-4 T.M. Income in Respect of a Decedent*, VI.C.5, page A-39.

This is a very simplistic example and does not include issues concerning the application of the § 691(c) deduction to capital gains, tax credits, apportionment over several taxable years, and other complicated matters. The regulations are very helpful with respect to specific items as is 862-4th T.M, *Income in Respect of a Decedent*, written by Alan S Acker, which is very comprehensive.

VI. Explaining all of this to clients and beneficiaries. The required inclusion of IRD on the beneficiary's income tax returns for the years received is not often missed, but it is oftentimes not thought of by the beneficiary until the dreaded 1099 or K-1 arrives in the mailbox when it may be too late to make estimated tax payments. My suspicion, however, is that some successors to the IRD of a decedent may miss the deduction, particularly when the IRD passes directly, such as by joint ownership, TOD, POD or beneficiary designation. As attorneys for the executor and/or trustee(s), a good practice is to let the beneficiary know that the inheritance or benefit he or she is receiving is subject to income taxes and, if applicable, may have a deduction available for estate tax paid on the IRD received by the beneficiary or successor. The following is sample language for such a letter to the beneficiaries. It would be easy to develop a template from this form.

Dear Beneficiary:

As a beneficiary of ***'s *estate/trust/*description of account(s)*, you *will /may* be receiving benefits that are subject to income tax on your tax return for the year you receive those benefits. This type of income is called Income in Respect of a Decedent, which basically means that it was income in the hands of *name of decedent* but was not reportable on *his/her* tax returns during *his/her* life. *This type of assets includes but is not limited to unpaid wages and other compensation and fringe benefits, accrued and unpaid interest and dividends, retirement plan and IRA assets, annuities, savings bonds and installment contracts. Our records reflect that you will receive the following assets which have the following value as of the date of ***'s death:*

Insert a table that includes the description of the asset, the beneficiary's share of the asset, and the DOD value of the asset.

For those assets on which you are a direct beneficiary, which would be the _____ and _____ **Alt A:** we advise you to work with your tax advisor to determine the best manner for you to receive benefits, including working with the custodian of the accounts and/or ***'s employer to ascertain the available distribution options and the tax effects of those distributions. We are available to assist in this process, including working with your tax advisor. **Alt B (when beneficiary is a client).** We would be happy to work with you and your accountant to determine the best manner for you to receive benefits, including working with the custodian of the accounts and/or ***'s employer, to ascertain the available distribution options. Please note that you will receive a form 1099 from the financial institution and/or employer but it is best for you to plan for the tax and the possibility of paying estimated tax prior to receiving that tax form in the year following the distribution.

For assets on which you are a beneficiary through ***'s estate/trust, which would be the _____ and _____, you will be receiving those assets during and/or at the end of the estate/trust administration. At the time the distributions are made, you should consult with your tax accountant with respect to the income tax effects of the distributions. The formal notification of any income to you will be reported on a Form K-1 furnished you at the time the estate/trust income tax return is filed.

For taxable estates.

Since ***'s estate/trust is subject to federal estate tax, there is a deduction (reported as a miscellaneous itemized deduction) that may be available to you as the recipient of income that has already been taxed for estate tax purposes. This deduction is complicated and we suggest you work with a tax attorney or accountant on your return for the years you will be entitled to this deduction .

If the income you receive comes through the estate/trust, the amount of your deduction will be listed on the K-1 of the income tax return of the estate/trust.

If you receive that income directly from the custodian of the assets, such as from an employer plan, IRA custodian, the financial institution or a third party such as an obligor on an installment note, *you will not receive that type of notification.* **Alt A:** Accordingly, we will provide you with a listing of the amount of the Income you are entitled to receive, which may be stretched over several years as you receive the income as well as the total amount of deduction for federal estate taxes you will be allowed. **Alt B:** Accordingly, we will provide you and your tax accountant all the information you need to calculate the annual deduction.

APPENDIX A: Text of IRC § 691

SECTION 691.

(a) INCLUSION IN GROSS INCOME

(1) **GENERAL RULE:** The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

- (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;
- (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or
- (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) **INCOME IN CASE OF SALE, ETC.:** If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the [transfer](#) occurs, the fair market value of such right at the time of such [transfer](#) plus the amount by which any consideration for the [transfer](#) exceeds such fair market value. For purposes of this paragraph, the term "[transfer](#)" includes sale, exchange, or other [disposition](#), or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a [transfer](#) to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) CHARACTER OF INCOME DETERMINED BY REFERENCE TO DECEDENT

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) **INSTALLMENT OBLIGATIONS ACQUIRED FROM DECEDENT.** In the case of an installment obligation reportable by the decedent on the installment method under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

- (A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and
- (B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under [section 453B](#)).

(5) OTHER RULES RELATING TO INSTALLMENT OBLIGATIONS

(A) In general. In the case of an installment obligation reportable by the decedent on the installment method under section 453, for purposes of paragraph (2)—

- (i) the second sentence of paragraph (2) shall be applied by inserting “(other than the obligor)” after “or a [transfer](#) to a person”,
- (ii) any cancellation of such an obligation shall be treated as a [transfer](#), and
- (iii) any cancellation of such an obligation occurring at the death of the decedent shall be treated as a [transfer](#) by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(B) Face amount treated as fair market value in certain cases

In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

(C) Cancellation includes becoming unenforceable

For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

(b) ALLOWANCE OF DEDUCTIONS AND CREDIT The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) EXPENSES, INTEREST, AND TAXES In the case of a deduction specified in section 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

- (A) to the estate of the decedent; except that
- (B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) DEPLETION In the case of the deduction specified in section 611, to the person described in subsection (a)(1)(A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) DEDUCTION FOR ESTATE TAX

(1) ALLOWANCE OF DEDUCTION

(A) General rule

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the [estate tax](#) attributable to the net value for [estate tax](#) purposes of all the items described in subsection (a)(1) as the value for [estate tax](#) purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for [estate tax](#) purposes of all the items described in subsection (a)(1).

(B) Estates and trusts

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a)(1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

(2) METHOD OF COMPUTING DEDUCTION For purposes of paragraph (1)—

(A) The term “[estate tax](#)” means the tax imposed on the estate of the decedent or any prior decedent under [section 2001](#) or 2101, reduced by the credits against such tax.

(B) The net value for [estate tax](#) purposes of all the items described in subsection (a)(1) shall be the excess of the value for [estate tax](#) purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for [estate tax](#) with respect to stock options to which part II of subchapter D applies.

(C) The [estate tax](#) attributable to such net value shall be an amount equal to the excess of the [estate tax](#) over the [estate tax](#) computed without including in the gross estate such net value.

(3) SPECIAL RULE FOR GENERATION-SKIPPING TRANSFERS

In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination.

(4) COORDINATION WITH CAPITAL GAIN PROVISIONS

For purposes of sections 1(h), 1202, and 1211, the amount taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

(d) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT

(1) DEDUCTION FOR ESTATE TAX. For purposes of computing the deduction under subsection (c)(1)(A), amounts received by a surviving annuitant—

(A) as an annuity under a joint and survivor annuity contract where the decedent annuitant died after the annuity starting date (as defined in [section 72\(c\)\(4\)](#)), and

(C) during the surviving annuitant's [life expectancy period](#), shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

(2) NET VALUE FOR ESTATE TAX PURPOSES. In determining the net value for [estate tax](#) purposes under subsection (c)(2)(B) for purposes of this subsection, the value for [estate tax](#) purposes of the items described in paragraph (1) of this subsection shall be computed—

(A) by determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under [section 72](#) during the surviving annuitant's [life expectancy period](#), and

(B) by multiplying the figure so obtained by the ratio which the value of the annuity for [estate tax](#) purposes bears to the value of the annuity at the date of the death of the deceased.

(3) DEFINITIONS. For purposes of this subsection—

(A) The term "[life expectancy period](#)" means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(B) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(e) CROSS REFERENCE

For application of this section to income in respect of a deceased partner, see section 753.

APPENDIX II

Treasury Regulations – 26 CFR § 1.691(a)-1

§ 1.691(a)-1 Income in respect of a decedent.

(a) Scope of section 691. In general, the regulations under section 691 cover: (1) The provisions requiring that amounts which are not includible in gross income for the decedent's last taxable year or for a prior taxable year be included in the gross income of the estate or persons receiving such income to the extent that such amounts constitute "income in respect of a decedent"; (2) the taxable effect of a transfer of the right to such income; (3) the treatment of certain deductions and credit in respect of a decedent which are not allowable to the decedent for the taxable period ending with his death or for a prior taxable year; (4) the allowance to a recipient of income in respect of a decedent of a deduction for estate taxes attributable to the inclusion of the value of the right to such income in the decedent's estate; (5) special provisions with respect to installment obligations acquired from a decedent and with respect to the allowance of a deduction for estate taxes to a surviving annuitant under a joint and survivor annuity contract; and (6) special provisions relating to installment obligations transmitted at death when prior law applied to the transmission.

(b) General definition. In general, the term *income in respect of a decedent* refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing his taxable income for the taxable year ending with the date of his death or for a previous taxable year under the method of accounting employed by the decedent. See the regulations under section 451. Thus, the term includes:

- (1) All accrued income of a decedent who reported his income by use of the cash receipts and disbursements method;
- (2) Income accrued solely by reason of the decedent's death in case of a decedent who reports his income by use of an accrual method of accounting; and
- (3) Income to which the decedent had a contingent claim at the time of his death.

See sections 736 and 753 and the regulations thereunder for "income in respect of a decedent" in the case of a deceased partner.

(c) Prior decedent. The term *income in respect of a decedent* also includes the amount of all items of gross income in respect of a prior decedent, if (1) the right to receive such amount was acquired by the decedent by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent and if (2) the amount of gross income in respect of the prior decedent was not properly includible in computing the decedent's taxable income for the taxable year ending with the date of his death or for a previous taxable year. See example 2 of paragraph (b) of § 1.691(a)-2.

(d) Items excluded from gross income. Section 691 applies only to the amount of items of gross income in respect of a decedent, and items which are excluded from gross income under subtitle A of the Code are not within the provisions of section 691.

(e) Cross reference. For items deemed to be income in respect of a decedent for purposes of the deduction for estate taxes provided by section 691(c), see paragraph (c) of § 1.691(c)-1.

§ 1.691(a)-2 Inclusion in gross income by recipients.

(a) Under section 691(a)(1), income in respect of a decedent shall be included in the gross income, for the taxable year when received, of:

- (1) The estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;
- (2) The person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or
- (3) The person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

These amounts are included in the income of the estate or of such persons when received by them whether or not they report income by use of the cash receipts and disbursements methods.

(b) The application of paragraph (a) of this section may be illustrated by the following examples, in each of which it is assumed that the decedent kept his books by use of the cash receipts and disbursements method.

EXAMPLE 1.

The decedent was entitled at the date of his death to a large salary payment to be made in equal annual installments over five years. His estate, after collecting two installments, distributed the right to the remaining installment payments to the residuary legatee of the estate. The estate must include in its gross income the two installments received by it, and the legatee must include in his gross income each of the three installments received by him.

EXAMPLE 2.

A widow acquired, by bequest from her husband, the right to receive renewal commissions on life insurance sold by him in his lifetime, which commissions were payable over a period of years. The widow died before having received all of such commissions, and her son inherited the right to receive the rest of the commissions. The commissions received by the widow were includible in her gross income. The commissions received by the son were not includible in the widow's gross income but must be included in the gross income of the son.

EXAMPLE 3.

The decedent owned a Series E United States savings bond, with his wife as co-owner or beneficiary, but died before the payment of such bond. The entire amount of interest accruing on the bond and not includible in income by the decedent, not just the amount accruing after the death of the decedent, would be treated as income to his wife when the bond is paid.

EXAMPLE 4.

A, prior to his death, acquired 10,000 shares of the capital stock of the X Corporation at a cost of \$100 per share. During his lifetime, A had entered into an agreement with X Corporation whereby X Corporation agreed to purchase and the decedent agreed that his executor would sell the 10,000 shares of X Corporation stock owned by him at the book value of the stock at the date of A's death. Upon A's death, the shares are sold by A's executor for \$500 a share pursuant to the agreement. Since the sale of stock is consummated after A's death, there is no income in respect of a decedent with respect to the appreciation in value of A's stock to the date of his death. If, in this example, A had in fact sold the stock during his lifetime but payment had not been received before his death, any gain on the sale would constitute income in respect of a decedent when the proceeds were received.

EXAMPLE 5.

(1) A owned and operated an apple orchard. During his lifetime, A sold and delivered 1,000 bushels of apples to X, a canning factory, but did not receive payment before his death. A also entered into negotiations to sell 3,000 bushels of apples to Y, a canning factory, but did not complete the sale before his death. After A's death, the executor received payment from X. He also completed the sale to Y and transferred to Y 1,200 bushels of apples on hand at A's death and harvested and transferred an additional 1,800 bushels. The gain from the sale of apples by A to X constitutes income in respect of a decedent when received. On the other hand, the gain from the sale of apples by the executor to Y does not.

(2) Assume that, instead of the transaction entered into with Y, A had disposed of the 1,200 bushels of harvested apples by delivering them to Z, a cooperative association, for [processing](#) and sale. Each [year](#) the association commingles the fruit received from all of its [members](#) into a pool and assigns to each [member](#) a percentage [interest](#) in the pool based on the fruit delivered by him. After the fruit is processed and the products are sold, the association [distributes](#) the net [proceeds](#) from the pool to its [members](#) in proportion to their [interests](#) in the pool. After A's death, the association made [distributions](#) to the executor with respect to A's share of the [proceeds](#) from the pool in which A had in [interest](#). Under such circumstances, the [proceeds](#) from the [disposition](#) of the 1,200 bushels of apples constitute [income](#) in respect of a decedent.

§ 1.691(a)-3 [Character of gross income](#).

(a) The right to receive an [amount](#) of [income](#) in respect of a decedent shall be treated in the hands of the estate, or by the [person](#) entitled to receive such [amount](#) by bequest, devise, or inheritance from the decedent or [by reason of](#) his death, as if it had been [acquired](#) in the transaction by which the decedent (or a prior decedent) [acquired](#) such right, and shall be considered as having the same [character](#) it would have had if the decedent (or a prior decedent) had lived and received such [amount](#). The provisions of section 1014(a), relating to the basis of [property acquired](#) from a decedent, and section 1022, relating to the basis of [property acquired](#) from certain decedents who died in 2010, do not apply to these [amounts](#) in the hands of the estate and such [persons](#). See sections 1014(c) and 1022(f).

(b) The [application](#) of [paragraph \(a\)](#) of this section may be illustrated by the following:

(1) If the [income](#) would have been capital gain to the decedent, if he had lived and had received it, from the sale of [property](#), held for more than 1 [year](#) (6 months for [taxable years](#) beginning before 1977; 9 months for [taxable years](#) beginning in 1977), the [income](#), when received, shall be treated in the hands of the estate or of such [person](#) as capital gain from the sale of the [property](#), held for more than 1 [year](#) (6 months for [taxable years](#) beginning before 1977; 9 months for [taxable years](#) beginning in 1977), in the same manner as if such [person](#) had held the [property](#) for the period the decedent held it, and had made the sale.

(2) If the [income](#) is [interest](#) on [United States obligations](#) which were owned by the decedent, such [income](#) shall be treated as [interest](#) on [United States obligations](#) in the hands of the [person](#) receiving it, for the [purpose](#) of determining the credit provided by section 35, as if such [person](#) had owned the [obligations](#) with respect to which such [interest](#) is paid.

(3) If the [amounts](#) received would be subject to special [treatment](#) under part I (section 1301 and following), subchapter Q, chapter 1 of the Code, relating to [income attributable to](#) several [taxable years](#), as in effect for [taxable years](#) beginning before January 1, 1964, if the decedent had lived and included such [amounts](#) in his [gross income](#), such sections apply with respect to the recipient of the [income](#).

(4) The provisions of sections 632 and 1347, relating to the tax attributable to the sale of certain oil or gas [property](#) and to certain claims against the [United States](#), apply to any [amount](#) included in [gross income](#), the right to which was obtained by the decedent by a sale or claim within the provisions of those sections.

(c) **Effective/applicability dates.** The last two sentences of [paragraph \(a\)](#) of this section apply on and after January 19, 2017. For [rules](#) before January 19, 2017, see § 1.691(a)-3 as contained in [26 CFR part 1](#) revised as of April 1, 2016.

§ 1.691(a)-4 [Transfer](#) of right to [income](#) in respect of a decedent.

(a) Section 691(a)(2) provides the [rules](#) governing the [treatment](#) of [income](#) in respect of a decedent (or a prior decedent) in the event a right to receive such [income](#) is [transferred](#) by the estate or [person](#) entitled thereto by bequest, devise, or inheritance, or [by reason of](#) the death of the decedent. In general, the transferor must include in his [gross income](#) for the taxable period in which the [transfer](#) occurs the [amount](#) of the consideration, if any, received for the right or the [fair market value](#) of the right at the time of the [transfer](#), whichever is greater. Thus, upon a sale of such right by the estate or [person](#) entitled to receive it, the [fair market value](#) of the right or the [amount](#) received upon the sale, whichever is greater, is included in the [gross income](#) of the vendor. Similarly, if such right is disposed of by gift, the [fair market value](#) of the right at the time of the gift must be included in the [gross income](#) of the [donor](#). In the case of a satisfaction of an [installment obligation](#) at other than face [value](#), which is likewise considered a [transfer](#) under section 691(a)(2), see [§ 1.691\(a\)-5](#).

(b) If the estate of a decedent or any [person](#) transmits the right to [income](#) in respect of a decedent to another who would be required by section 691(a)(1) to include such [income](#) when received in his [gross income](#), only the [transferee](#) will include such [income](#) when received in his [gross income](#). In this situation, a [transfer](#) within the meaning of section 691(a)(2) has not occurred. This paragraph may be illustrated by the following:

- (1) If a [person](#) entitled to [income](#) in respect of a decedent dies before receiving such [income](#), only his estate or other [person](#) entitled to such [income](#) by bequest, devise, or inheritance from the latter decedent, or [by reason of](#) the death of the latter decedent, must include such [amount](#) in [gross income](#) when received.
- (2) If a right to [income](#) in respect of a decedent is [transferred](#) by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such [income](#) in [gross income](#) when received.
- (3) If a [trust](#) to which is bequeathed a right of a decedent to certain [payments](#) of [income](#) terminates and [transfers](#) the right to a [beneficiary](#), only the [beneficiary](#) must include such [income](#) in [gross income](#) when received.

If the [transferee](#) described in subparagraphs (1), (2), and (3) of this paragraph [transfers](#) his right to receive the [amounts](#) in the manner described in [paragraph \(a\)](#) of this section, the principles contained in [paragraph \(a\)](#) are applied to such [transfer](#). On the other hand, if the [transferee](#) transmits his right in the manner described in this paragraph, the principles of this paragraph are again applied to such [transfer](#).

§ 1.691(a)-5 [Installment obligations acquired](#) from decedent.

(a) Section 691(a)(4) has reference to an [installment obligation](#) which remains uncollected by a decedent (or a prior decedent) and which was originally [acquired](#) in a transaction the [income](#) from which was properly reportable by the decedent on the [installment](#)

[method](#) under section 453. Under the provisions of section 691(a)(4), an [amount](#) equal to the excess of the face [value](#) of the [obligation](#) over its basis in the hands of the decedent (determined under section 453(d)(2) and the regulations thereunder) shall be considered an [amount](#) of [income](#) in respect of a decedent and shall be treated as such. The decedent's estate (or the [person](#) entitled to receive such [income](#) by bequest or inheritance from the decedent or [by reason of](#) the decedent's death) shall include in its [gross income](#) when received the same proportion of any [payment](#) in satisfaction of such [obligations](#) as would be returnable as [income](#) by the decedent if he had lived and received such [payment](#). No gain on [account](#) of the transmission of such [obligations](#) by the decedent's death is required to be reported as [income](#) in the return of the decedent for the [year](#) of his death. See [§ 1.691\(e\)-1](#) for special provisions relating to the filing of an [election](#) to have the provisions of section 691(a)(4) apply in the case of [installment obligations](#) in respect of which section 44(d) of the [Internal Revenue Code of 1939](#) (or corresponding provisions of prior law) would have applied but for the filing of a [bond](#) referred to therein.

(b) If an [installment obligation](#) described in [paragraph \(a\)](#) of this section is [transferred](#) within the meaning of section 691(a)(2) and paragraph (a) of [§ 1.691\(a\)-4](#), the entire [installment obligation transferred](#) shall be considered a right to [income](#) in respect of a decedent but the [amount](#) includible in the [gross income](#) of the transferor shall be reduced by an [amount](#) equal to the basis of the [obligation](#) in the hands of the decedent (determined under section 453(d)(2) and the regulations thereunder) adjusted, however, to take into [account](#) the [receipt](#) of any [installment payments](#) after the decedent's death and before such [transfer](#). Thus, the [amount](#) includible in the [gross income](#) of the transferor shall be the [fair market value](#) of such [obligation](#) at the time of the [transfer](#) or the consideration received for the [transfer](#) of the [installment obligation](#), whichever is greater, reduced by the basis of the [obligation](#) as described in the preceding sentence. For [purposes](#) of this paragraph, the term “transfer” in section 691(a)(2) and paragraph (a) of [§ 1.691\(a\)-4](#) includes the satisfaction of an [installment obligation](#) at other than face [value](#).

(c) The [application of this section](#) may be illustrated by the following example:

EXAMPLE.

An heir of a decedent is entitled to collect an installment obligation with a face value of \$100, a fair market value of \$80, and a basis in the hands of the decedent of \$60. If the heir collects the obligation at face value, the excess of the amount collected over the basis is considered income in respect of a decedent and includible in the gross income of the heir under section 691(a)(1). In this case, the amount includible would be \$40 (\$100 less \$60). If the heir collects the obligation at \$90, an amount other than face value, the entire obligation is considered a right to receive income in respect of a decedent but the amount ordinarily required to be included in the heir's gross income under section 691(a)(2) (namely, the consideration received in satisfaction of the installment obligation or its fair market value, whichever is greater) shall be reduced by the amount of the basis of the obligation in the hands of the decedent. In this case, the amount includible would be \$30 (\$90 less \$60).

§ 1.691(b)-1 Allowance of [deductions](#) and credit in respect to decedents.

(a) Under section 691(b) the expenses, [interest](#), and taxes described in sections 162, 163, 164, and 212 for which the decedent (or a prior decedent) was liable, which were not properly allowable as a deduction in his last [taxable year](#) or any prior [taxable year](#), are [allowed](#) when paid:

(1) As a deduction by the estate; or

(2) If the estate was not liable to pay such [obligation](#), as a deduction by the [person](#) who by bequest, devise, or inheritance from the decedent or [by reason of](#) the death of the decedent acquires, subject to such [obligation](#), an [interest](#) in [property](#) of the decedent (or the prior decedent).

Similar [treatment](#) is given to the foreign tax credit provided by section 33. For the [purposes](#) of subparagraph (2) of this paragraph, the right to receive an [amount](#) of [gross income](#) in respect of a decedent is considered [property](#) of the decedent; on the other hand, it is not necessary for a [person](#), otherwise within the provisions of subparagraph (2) of this paragraph, to receive the right to any [income](#) in respect of a decedent. Thus, an heir who receives a right to [income](#) in respect of a decedent (by reason of the death of the decedent) subject to any [income](#) tax imposed by a [foreign country](#) during the decedent's life, which tax must be satisfied out of such [income](#), is entitled to the credit provided by section 33 when he pays the tax. If a decedent who reported [income](#) by use of the [cash receipts](#) and disbursements method owned [real property](#) on which accrued taxes had become a lien, and if such [property](#) passed directly to the heir of the decedent in a jurisdiction in which [real property](#) does not become a part of a decedent's estate, the heir, upon paying such taxes, may take the same deduction under section 164 that would be [allowed](#) to the decedent if, while alive, he had made such [payment](#).

(b) The deduction for percentage [depletion](#) is allowable only to the [person](#) (described in section 691(a)(1)) who receives the [income](#) in respect of the decedent to which the deduction relates, whether or not such [person](#) receives the [property](#) from which such [income](#) is derived. Thus, an heir who (by reason of the decedent's death) receives [income](#) derived from [sales](#) of units of mineral by the decedent (who reported [income](#) by use of the [cash receipts](#) and disbursements method) shall be [allowed](#) the deduction for percentage [depletion](#), computed on the [gross income](#) from such number of units as if the heir had the same [economic interest](#) in the [property](#) as the decedent. Such heir need not also receive any [interest](#) in the mineral [property](#) other than such [income](#). If the decedent did not compute his deduction for [depletion](#) on the basis of percentage [depletion](#), any deduction for [depletion](#) to which the decedent was entitled at the date of his death would be allowable in computing his [taxable income](#) for his last [taxable year](#), and there can be no deduction in respect of the decedent by any other [person](#) for such [depletion](#).

§ 1.691(c)-1 Deduction for estate tax attributable to [income](#) in respect of a decedent.

(a) *In general.* A [person](#) who is required to include in [gross income](#) for any [taxable year](#) an [amount](#) of [income](#) in respect of a decedent may deduct for the same [taxable year](#) that portion of the estate tax imposed upon the decedent's estate which is attributable to the inclusion in the decedent's estate of the right to receive such [amount](#). The deduction is determined as follows:

(1) Ascertain the net [value](#) in the decedent's estate of the items which are included under section 691 in computing [gross income](#). This is the excess of the [value](#) included in the [gross estate](#) on [account](#) of the items of [gross income](#) in respect of the decedent (see [§ 1.691\(a\)-1](#) and [paragraph \(c\)](#) of this section) over the [deductions](#) from the [gross estate](#) for claims which represent the [deductions](#) and credit in respect of the decedent (see [§ 1.691\(b\)-1](#)). But see section 691(d) and [paragraph \(b\)](#) of [§ 1.691\(d\)-1](#) for [computation](#) of the special [value](#) of a survivor's annuity to be used in computing the net [value](#) for estate tax [purposes](#) in cases involving joint and survivor [annuities](#).

(2) Ascertain the portion of the estate tax attributable to the inclusion in the [gross estate](#) of such net [value](#). This is the excess of the estate tax over the estate tax computed without

including such net [value](#) in the [gross estate](#). In computing the estate tax without including such net [value](#) in the [gross estate](#), any estate tax deduction (such as the marital deduction) which may be based upon the [gross estate](#) shall be recomputed so as to take into [account](#) the [exclusion](#) of such net [value](#) from the [gross estate](#). See [example 2](#), paragraph [\(e\)](#) of [§ 1.691\(d\)-1](#).

For [purposes](#) of this section, the term *estate tax* means the tax imposed under section 2001 or 2101 (or the corresponding provisions of the [Internal Revenue Code of 1939](#)), reduced by the credits against such tax. Each [person](#) including in [gross income](#) an [amount](#) of [income](#) in respect of a decedent may deduct as his share of the portion of the estate tax (computed under subparagraph (2) of this paragraph) an [amount](#) which bears the same ratio to such portion as the [value](#) in the [gross estate](#) of the right to the [income](#) included by such [person](#) in [gross income](#) (or the [amount](#) included in [gross income](#) if lower) bears to the [value](#) in the [gross estate](#) of all the items of [gross income](#) in respect of the decedent.

(b) *Prior decedent.* If a [person](#) is required to include in [gross income](#) an [amount](#) of [income](#) in respect of a prior decedent, such [person](#) may deduct for the same [taxable year](#) that portion of the estate tax imposed upon the prior decedent's estate which is attributable to the inclusion in the prior decedent's estate of the [value](#) of the right to receive such [amount](#). This deduction is computed in the same manner as provided in [paragraph \(a\)](#) of this section and is in addition to the deduction for estate tax imposed upon the decedent's estate which is attributable to the inclusion in the decedent's estate of the right to receive such [amount](#).

(c) *Amounts deemed to be income in respect of a decedent.* For [purposes](#) of [allowing](#) the deduction under section 691(c), the following items are also considered to be [income](#) in respect of a decedent under section 691(a):

(1) The [value](#) for estate tax [purposes](#) of [stock options](#) in respect of which [amounts](#) are includible in [gross income](#) under section 421(b) (prior to amendment by section 221(a) of the [Revenue Act of 1964](#)), in the case of [taxable years](#) ending before January 1, 1964, or under section 422(c)(1), 423(c), or 424(c)(1), whichever is applicable, in the case of [taxable years](#) ending after December 31, 1963. See section 421(d)(6) (prior to amendment by sec. 221(a) of the [Revenue Act of 1964](#)), in the case of [taxable years](#) ending before January 1, 1964, and section 421(c)(2), in the case of [taxable years](#) ending after December 31, 1963.

(2) [Amounts](#) received by a surviving [annuitant](#) during his [life expectancy](#) period as an annuity under a joint and survivor [annuity contract](#) to the extent included in [gross income](#) under section 72. See section 691(d).

(d) *Examples.* Paragraphs [\(a\)](#) and [\(b\)](#) of this section may be illustrated by the following examples:

EXAMPLE 1.

X, an attorney who kept his books by use of the cash receipts and disbursements method, was entitled at the date of his death to a fee for services rendered in a case not completed at the time of his death, which fee was valued in his estate at \$1,000, and to accrued bond interest, which was valued in his estate at \$500. In all, \$1,500 was included in his gross estate in respect of income described in section 691(a)(1). There were deducted as claims against his estate \$150 for business expenses for which his estate was liable and \$50 for taxes accrued on certain property which he owned. In all, \$200 was deducted for claims which represent amounts described in section 691(b) which are allowable as deductions to his estate or to the beneficiaries of his estate. His gross estate was \$185,000 and, considering deductions of \$15,000 and an exemption of \$60,000, his taxable estate amounted to \$110,000. The estate tax on this amount is \$23,700 from which is subtracted a \$75 credit for State death taxes leaving an

estate tax liability of \$23,625. In the year following the closing of X's estate, the fee in the amount of \$1,200 was collected by X's son, who was the sole beneficiary of the estate. This amount was included under section 691(a)(1)(C) in the son's gross income. The son may deduct, in computing his taxable income for such year, \$260 on account of the estate tax attributable to such income, computed as follows:

(1) (i) Value of income described in section 691(a)(1) included in computing gross estate - \$1,500
(ii) Deductions in computing gross estate for claims representing deductions described in § 691(b) - \$200
(iii) Net value of items described in section 691(a)(1) – \$1,300
(2) (i) Estate tax - \$23,625
(ii) Less: Estate tax computed without including \$1,300 (item (1)(iii)) in gross estate - \$23,236
(iii) Portion of estate tax attributable to net value of items described in section 691(a)(1) - \$390
(3) (i) Value in gross estate of items described in section 691(a)(1) received in taxable year (fee) - \$1,000
(ii) Value in gross estate of all income items described in section 691(a)(1) (item (1)(i)) - \$1,500
(iii) Part of estate tax deductible on account of receipt of \$1,200 fee (1,000/1,500 of \$390) - \$260

Although \$1,200 was later collected as the fee, only the \$1,000 actually included in the gross estate is used in the above computations. However, to avoid distortion, section 691(c) provides that if the value included in the gross estate is greater than the amount finally collected, only the amount collected shall be used in the above computations. Thus, if the amount collected as the fee were only \$500, the estate tax deductible on the receipt of such amount would be 500/1,500 of \$390, or \$130. With respect to taxable years ending before January 1, 1964, see paragraph (d)(3) of [§ 1.421-5](#) for a similar example involving a restricted stock option. With respect to taxable years ending after December 31, 1963, see paragraph (c)(3) of [§ 1.421-8](#) for a similar example involving a stock option subject to the provisions of part II of subchapter D.

EXAMPLE 2.

Assume that in example 1 the fee valued at \$1,000 had been earned by prior decedent Y and had been inherited by X who died before collecting it. With regard to the son, the fee would be considered income in respect of a prior decedent. Assume further that the fee was valued at \$1,000 in Y's estate, that the net value in Y's estate of items described in section 691 (a)(1) was \$5,000 and that the estate tax imposed on Y's estate attributable to such net value was \$550. In such case, the portion of such estate tax attributable to the fee would be 1,000/5,000 of \$550, or \$110. When the son collects the \$1,200 fee, he will receive for the same taxable year a deduction of \$110 with respect to the estate tax imposed on the estate of prior decedent Y as well as the deduction of \$260 (as computed in example 1) with respect to the estate tax imposed on the estate of decedent X.

§ 1.691(c)-2 Estates and trusts.

(a) In the case of an estate or [trust](#), the deduction prescribed in section 691(c) is determined in the same manner as described in [§ 1.691\(c\)-1](#), with the following exceptions:

(1) If any [amount](#) properly paid, credited, or required to be [distributed](#) by an estate or [trust](#) to a [beneficiary](#) consists of [income](#) in respect of a decedent received by the estate or [trust](#) during the taxable year:

(i) Such [income](#) shall be excluded in determining the [income](#) in respect of the decedent with respect to which the estate or [trust](#) is entitled to a deduction under section 691(c), and

(ii) Such [income](#) shall be considered [income](#) in respect of a decedent to such [beneficiary](#) for [purposes](#) of [allowing](#) the deduction under section 691(c) to such [beneficiary](#).

(2) For [determination](#) of the [amount](#) of [income](#) in respect of a decedent received by the [beneficiary](#), see sections 652 and 662, and [§§ 1.652\(b\)-2](#) and 1.662(b)-2. However, for this [purpose](#), [distributable net income](#) as [defined](#) in section 643 (a) and the regulations thereunder shall be computed without taking into [account](#) the estate tax deduction provided in section 691(c) and this section. [Distributable net income](#) as modified under the preceding sentence shall be applied for other relevant [purposes](#) of subchapter J, chapter 1 of the Code, such as the deduction provided by section 651 or 661, or subpart D, part I of subchapter J, relating to excess [distributions](#) by [trusts](#).

(3) The [rule stated](#) in subparagraph (1) of this paragraph does not apply to [income](#) in respect of a decedent which is properly allocable to corpus by the [fiduciary](#) during the [taxable year](#) but which is [distributed](#) to a [beneficiary](#) in a subsequent [year](#). The deduction provided by section 691(c) in such a case is allowable only to the estate or [trust](#). If any [amount](#) properly paid, credited, or required to be [distributed](#) by a [trust](#) qualifies as a [distribution](#) under section 666, the fact that a portion thereof constitutes [income](#) in respect of a decedent shall be disregarded for the [purposes](#) of determining the deduction of the [trust](#) and of the beneficiaries under section 691(c) since the deduction for estate taxes was taken into consideration in computing the [undistributed net income](#) of the [trust](#) for the preceding [taxable year](#).

(b) This section shall apply only to [amounts](#) properly paid, credited, or required to be [distributed](#) in [taxable years](#) of an estate or [trust](#) beginning after December 31, 1953, and ending after August 16, 1954, except as otherwise provided in [paragraph \(c\)](#) of this section.

(c) In the case of an estate or [trust](#) heretofore taxable under the provisions of the [Internal Revenue Code of 1939](#), [amounts](#) paid, credited, or to be [distributed](#) during its first [taxable year](#) subject to the [Internal Revenue Code of 1954](#) which would have been treated as paid,

credited, or to be [distributed](#) on the last day of the preceding [taxable year](#) if the [Internal Revenue Code of 1939](#) were still applicable shall not be subject to the provisions of section 691(c)(1)(B) or this section. See section 683 and the regulations thereunder.

(d) The provisions of this section may be illustrated by the following [example](#), in which it is assumed that the estate and the [beneficiary](#) make their [returns](#) on the calendar [year](#) basis:

EXAMPLE.

(1) The fiduciary of an estate receives taxable interest of \$5,500 and income in respect of a decedent of \$4,500 during the taxable year. Neither the will of the decedent nor local law requires the allocation to corpus of income in respect of a decedent. The estate tax attributable to the income in respect of a decedent is \$1,500. In his discretion, the fiduciary distributes \$2,000 (falling within sections 661(a) and 662(a)) to a beneficiary during that year. On these facts the fiduciary and beneficiary are respectively entitled to estate tax deductions of \$1,200 and \$300, computed as follows:

(2) [Distributable net income](#) computed under section 643(a) without regard to the estate tax deduction under section 691(c) is \$10,000, computed as follows:

Taxable interest - \$5,500
Income in respect of a decedent - \$4,500
Total - \$10,000

(3) Inasmuch as the distributable net income of \$10,000 exceeds the amount of \$2,000 distributed to the beneficiary, the deduction allowable to the estate under section 661(a) and the amount taxable to the beneficiary under section 662(a) is \$2,000.

(4) The [character](#) of the amounts [distributed](#) to the [beneficiary](#) under section 662 (b) is shown in the following table:

	Taxable interest	IRD	Total
Distributable net income	\$5,500	\$4,500	\$10,000
Amount deemed distributed under section 662(b)	1,100	900	\$ 2,000

(5) Accordingly, the beneficiary will be entitled to an estate tax deduction of \$300 ($900/4,500 \times \$1,500$) and the estate will be entitled to an estate tax deduction of \$1,200 ($3,600/4,500 \times \$1,500$).

(6) The [taxable income](#) of the estate is \$6,200, computed as follows:

Gross income - \$10,000
Less:
Distributions to the beneficiary: - \$2,000
Estate tax deduction under section 691(c) - \$1,200
Personal exemption - \$600
Taxable income - \$620

§ 1.691(d)-1 [Amounts](#) received by surviving [annuitant](#) under joint and survivor [annuity contract](#).

(a) *In general.* Under section 691(d), annuity [payments](#) received by a surviving [annuitant](#) under a joint and survivor [annuity contract](#) (to the extent indicated in [paragraph \(b\)](#) of this section) are treated as [income](#) in respect of a decedent under section 691(a) for the [purpose](#) of [allowing](#) the deduction for estate tax provided for in section 691(c)(1)(A). This section applies only if the deceased [annuitant](#) died after December 31, 1953, and after the [annuity starting date](#) as [defined](#) in section 72(c)(4).

(b) *Special value for surviving annuitant's payments.* Section 691(d) provides a special [value](#) for the surviving [annuitant's](#) [payments](#) to determine the [amount](#) of the estate tax deduction provided for in section 691(c)(1)(A). This special [value](#) is determined by multiplying:

(1) The excess of the [value](#) of the annuity at the date of death of the deceased [annuitant](#) over the total [amount](#) excludable from the [gross income](#) of the surviving [annuitant](#) under section 72 during his [life expectancy](#) period (see [paragraph \(d\)\(1\)\(i\)](#) of this section)

by

(2) A fraction consisting of the [value](#) of the annuity for estate tax [purposes](#) over the [value](#) of the annuity at the date of death of the deceased [annuitant](#).

This special [value](#) is used for the [purpose](#) of determining the net [value](#) for estate tax [purposes](#) (see section 691(c)(2)(B) and paragraph (a)(1) of [§ 1.691\(c\)-1](#)) and for the [purpose](#) of determining the portion of estate tax attributable to the survivor's annuity (see paragraph (a) of [§ 1.691\(c\)-1](#)).

(c) Amount of deduction. The portion of estate tax attributable to the survivor's annuity (see paragraph (a) of [§ 1.691\(c\)-1](#)) is allowable as a deduction to the surviving [annuitant](#) over his [life expectancy](#) period. If the surviving [annuitant](#) continues to receive annuity [payments](#) beyond this period, there is no further deduction under section 691(d). If the surviving [annuitant](#) dies before expiration of such period, there is no compensating adjustment for the unused deduction.

(d) Definitions.

(1) For [purposes](#) of section 691(d) and this section:

(i) The term **life expectancy period** means the period beginning with the first day of the first period for which an [amount](#) is received by the surviving [annuitant](#) under the [contract](#) and ending with the close of the [taxable year](#) with or in which falls the [termination](#) of the [life expectancy](#) of the surviving [annuitant](#).

(ii) The [life expectancy](#) of the surviving [annuitant](#) shall be determined as of the date of death of the deceased [annuitant](#), with reference to actuarial [Table I](#) set forth in [§ 1.72-9](#) (but without making any adjustment under paragraph (a)(2) of [§ 1.72-5](#)).

(iii) The [value](#) of the annuity at the date of death of the deceased [annuitant](#) shall be the entire [value](#) of the survivor's annuity determined by reference to the principles set forth in section 2031 and the regulations thereunder, relating to the [valuation](#) of [annuities](#) for estate tax [purposes](#).

(iv) The [value](#) of the annuity for estate tax [purposes](#) shall be that portion of the [value](#) determined under subdivision (iii) of this subparagraph which was includible in the deceased [annuitant's](#) [gross estate](#).

(2) The [determination](#) of the "life expectancy period" of the survivor for [purposes](#) of section 691(d) may be illustrated by the following example:

EXAMPLE.

H and W file their income tax returns on the calendar year basis. H dies on July 15, 1955, on which date W is 70 years of age. On August 1, 1955, W receives a monthly payment under a joint and survivor annuity contract. W's life expectancy determined as of the date of H's death is 15 years as determined from Table I in [§ 1.72-9](#); thus her life expectancy ends on July 14, 1970. Under the provisions of section 691(d), her life expectancy period begins as of July 1, 1955, and ends as of December 31, 1970, thus giving her a life expectancy period of 15 1/2 years.

(e) Examples. The [application](#) of section 691(d) and this section may be illustrated by the following examples:

EXAMPLE 1.

(1) H and W, husband and wife, purchased a joint and survivor annuity contract for \$203,800 providing for monthly payments of \$1,000 starting January 28, 1954, and continuing for their joint lives and for the remaining life of the survivor. H contributed \$152,850 and W contributed \$50,950 to the cost of the annuity. As of the annuity starting date, January 1, 1954, H's age at his nearest birthday was 70 and W's age at her nearest birthday was 67. H dies on January 1,

1957, and beginning on January 28, 1957, W receives her monthly payments of \$1,000. The value of the annuity at the date of H's death is \$159,000 (see [paragraph \(d\)\(1\)\(iii\)](#) of this section), and the value of the annuity for estate tax purposes (see [paragraph \(d\)\(1\)\(iv\)](#) of this section) is \$119,250 (152,850/203,800 of \$159,000). As of the date of H's death, W's age is 70 and her life expectancy period is 15 years (see [paragraph \(d\)](#) of this section for method of computation). Both H and W reported income by use of the cash receipts and disbursements method and filed income tax returns on the calendar year basis.

(2) The following [computations](#) illustrate the [application](#) of section 72 in determining the excludable portions of the annuity [payments](#) to W during her [life expectancy](#) period:

Amount of annuity payments per year ($12 \times \$1,000$) - \$12,000

Life expectancy of H and W as of the annuity starting date (see section 72(c)(3)(A) and Table II of [§ 1.72-9](#) (male, age 70; female, age 67) - 19.7

Expected return as of the annuity starting date, January 1, 1954 ($\$12,000 \times 19.7$ as determined under section 72(c)(3)(A) and paragraph (b) of [§ 1.72-5](#)) - \$236,400

Investment in the contract as of the annuity starting date, Jan. 1, 1954 (see section 72(c)(1) and paragraph (a) of [§ 1.72-6](#)) - \$203,800

Exclusion ratio ($203,800/236,400$ as determined under section 72(b) and [§ 1.72-4](#)) (percent) - 86.2

Exclusion per year under section 72 ($\$12,000 \times 86.2$ percent) - \$10,344

Excludable during W's life expectancy period ($\$10,344 \times 15$) - \$155,160

(3) For the purpose of computing the deduction for estate tax under section 691(c), the value for estate tax purposes of the amounts includible in W's gross income and considered income in respect of a decedent by virtue of section 691(d)(1) is \$2,880. This amount is arrived at in accordance with the formula contained in section 691(d)(2), as follows:

Value of annuity at the date of H's death - \$159,000

Total amount excludable from W's gross income under section 72 during W's life expectancy period
(see subparagraph (2) of this example) - \$155,160

Excess - \$3,840

Ratio which value of annuity for estate tax purposes bears to value of annuity at date of H's death
(119,250/159,000) (percent) - 75

Value for estate tax purposes (75 percent of \$3,840) - \$2,880

This amount (\$2,880) is included in the items of income under section 691(a)(1) for the purpose of determining the estate tax attributable to each item under section 691(c)(1)(A). The estate tax determined to be attributable to the item of \$2,880 is then allowed as a deduction to W over her 15-year life expectancy period (see example 2 of this paragraph).

EXAMPLE 2.

Assume, in addition to the facts contained in example 1 of this paragraph, that H was an attorney and was entitled at the date of his death to a fee for services rendered in a case not completed at the time of his death, which fee was valued at \$1,000, and to accrued bond interest, which was valued at \$500. Taking into consideration the annuity payments of example 1, valued at \$2,880, a total of \$4,380 was included in his gross estate in respect of income described in section 691(a)(1). There were deducted as claims against his estate \$280 for business expenses for which his estate was liable and \$100 for taxes accrued on certain property which he owned. In all, \$380 was deducted for claims which represent amounts described in section 691(b) which are allowable as deductions to his estate or to the beneficiaries of his estate. His gross estate was \$404,250 and considering deductions of \$15,000, a marital deduction of \$119,250 (assuming the annuity to be the only qualifying gift) and an exemption of \$60,000, his taxable estate amounted to \$210,000. The estate tax on this amount is \$53,700 from which is subtracted a \$175 credit for State death taxes, leaving an estate tax liability of \$53,525. W may deduct, in computing her taxable income during each year of her 15-year life expectancy period, \$14.73 on account of the estate tax attributable to the value for estate tax purposes of that portion of the annuity payments considered income in respect of a decedent, computed as follows:

(1)(i) Value of income described in section 691(a)(1) included in computing gross estate - \$4,380

(ii) Deductions in computing gross estate for claims representing deductions described in section 691(b) - \$380

(iii) Net value of items described in section 691(a) (1) - \$4,000

(2)(i) Estate tax – \$53,525

(ii) Less: estate tax computed without including \$4,000 (item (1) (iii)) in gross estate and by reducing marital deduction allowed as a marital deduction) - \$53,189

(iii) Portion of estate tax attributable to net value of income items - \$236

(3)(i) Value in gross estate of income attributable to annuity payments - \$4,616

(ii) Value in gross estate of all income items described in section 691(a)(1) (item (1)(i)) - \$4,380

(iii) Part of estate tax attributable to annuity income (2,880/4,380 of \$336) – \$221

(iv) Deduction each year on account of estate tax attributable to annuity income ($\$220.93 \div 15$ (life expectancy period)) - \$14.73

§ 1.691(e)-1 [Installment obligations](#) transmitted at death when [prior law](#) applied.

(a) *In general* -

(1) **Application of prior law.** Under section 44(d) of the [Internal Revenue Code of 1939](#) and corresponding provisions of [prior law](#), gains and [losses](#) on [account](#) of the transmission of [installment obligations](#) at the death of a [holder](#) of such [obligations](#) were required to be

reported in the return of the decedent for the [year](#) of his death. However, an [exception](#) to this [rule](#) was provided if there was filed with the Commissioner a [bond](#) assuring the return as [income](#) of any [payment](#) in satisfaction of these [obligations](#) in the same proportion as would have been returnable as [income](#) by the decedent had he lived and received such payments. [Obligations](#) in respect of which such [bond](#) was filed are referred to in this section as “obligations assured by bond”.

(2) Application of present law. Section 691(a)(4) of the [Internal Revenue Code of 1954](#) (effective for [taxable years](#) beginning after December 31, 1953, and ending after August 16, 1954) in effect makes the [exception](#) which under [prior law](#) applied to [obligations](#) assured by [bond](#) the [general rule](#) for [obligations](#) transmitted at death, but contains no [requirement](#) for a [bond](#). Section 691(e)(1) provides that if the [holder](#) of the [installment obligation](#) makes a proper [election](#), the provisions of section 691(a)(4) shall apply in the case of [obligations](#) assured by [bond](#). Section 691(e)(1) further provides that the estate tax deduction provided by section 691(c)(1) is not allowable for any [amount](#) included in [gross income by reason of](#) filing such an [election](#).

(b) Manner and scope of election -

(1) In general. The [election](#) to have [obligations](#) assured by [bond](#) treated as [obligations](#) to which section 691(a)(4) applies shall be made by the filing of a [statement](#) with respect to each [bond](#) to be released, containing the following information:

(i) The [name](#) and address of the decedent from whom the [obligations](#) assured by [bond](#) were transmitted, the date of his death, and the internal revenue district in which the last [income](#) tax return of the decedent was filed.

(ii) A schedule of all [obligations](#) assured by the [bond](#) on which is listed -

(a) The [name](#) and address of the obligors, face [amount](#), date of maturity, and manner of [payment](#) of each [obligation](#),

(b) The [name](#), [identifying number](#) (provided under section 6109 and the regulations thereunder), and address of each [person](#) holding the obligations, and

(c) The [name](#), [identifying number](#), and address, of each [person](#) who at the time of the [election](#) possesses an [interest](#) in each [obligation](#), and a [description](#) of such [interest](#).

(iii) The total [amount](#) of [income](#) in respect of the [obligations](#) which would have been reportable as [income](#) by the decedent if he had lived and received such [payment](#).

(iv) The [amount](#) of [income](#) referred to in subdivision (iii) of this subparagraph which has previously been included in [gross income](#).

(v) An unqualified [statement](#), signed by all [persons](#) holding the [obligations](#), that they elect to have the provisions of section 691(a)(4) apply to such [obligations](#) and that such [election](#) shall be binding upon them, all current beneficiaries, and any [person](#) to whom the [obligations](#) may be transmitted by gift, bequest, or inheritance.

(vi) A declaration that the [election](#) is made under the [penalties](#) of perjury.

(2) Filing of statement. The [statement](#) with respect to each [bond](#) to be released shall be filed in duplicate with the [district director](#) of internal revenue for the district in which the [bond](#) is maintained. The [statement](#) shall be filed not later than the time prescribed for

filing the return for the first [taxable year](#) (including any extension of time for such filing) to which the [election](#) applies.

(3) Effect of election. The [election](#) referred to in subparagraph (1) of this paragraph shall be irrevocable. Once an [election](#) is made with respect to an [obligation](#) assured by [bond](#), it shall apply to all [payments](#) made in satisfaction of such [obligation](#) which were received during the first [taxable year](#) to which the [election](#) applies and to all such [payments](#) received during each [taxable year](#) thereafter, whether the recipient is the [person](#) who made the [election](#), a current [beneficiary](#), or a [person](#) to whom the [obligation](#) may be transmitted by gift, bequest, or inheritance. Therefore, all [payments](#) received to which the [election](#) applies shall be treated as [payments](#) made on [installment obligations](#) to which section 691(a)(4) applies. However, the estate tax deduction provided by section 691(c) is not allowable for any such [payment](#). The [application](#) of this subparagraph may be illustrated by the following example:

EXAMPLE.

A, the holder of an installment obligation, died in 1952. The installment obligation was transmitted at A's death to B who filed a bond on Form 1132 pursuant to paragraph (c) of [§ 39.44-5](#) of Regulations 118 ([26 CFR part 39, 1939](#) ed.) for the necessary amount. On January 1, 1965, B, a calendar year taxpayer, filed an election under section 691(e) to treat the obligation assured by bond as an obligation to which section 691(a)(4) applies, and B's bond was released for 1964 and subsequent taxable years. B died on June 1, 1965, and the obligation was bequeathed to C. On January 1, 1966, C received an installment payment on the obligation which had been assured by the bond. Because B filed an election with respect to the obligation assured by bond, C is required to treat the proper proportion of the January 1, 1966, payment and all subsequent payments made in satisfaction of this obligation as income in respect of a decedent. However, no estate tax deduction is allowable to C under section 691(c)(1) for any estate tax attributable to the inclusion of the value of such obligation in the estate of either A or B.

(c) Release of bond. If an [election](#) according to the provisions of [paragraph \(b\)](#) of this section is filed, the [liability](#) under any [bond](#) filed under section 44(d) of the 1939 Code (or the corresponding provisions of prior law) shall be released with respect to each [taxable year](#) to which such [election](#) applies. However, the [liability](#) under any such [bond](#) for an earlier [taxable year](#) to which the [election](#) does not apply shall not be released until the [district director](#) of internal revenue for the district in which the [bond](#) is maintained is assured that the proper portion of each installment [payment](#) received in such [taxable year](#) has been reported and the tax thereon paid.