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## SECTION 645 ELECTION: A QUIETLY POWERFUL TOOL IN ESTATE ADMINISTRATION

After a decedent's death, fiduciaries face income tax decisions that directly affect how quickly assets become available, when tax payments come due, and what returns must be filed. Often, the most meaningful opportunities for tax savings, and the most common missteps, arise not during the planning phase, but during the administration itself. This article focuses on a specific and frequently underutilized administrative tool – the Section 645 election.

When a decedent dies with a funded revocable trust, fiduciaries must promptly determine how that trust will be treated for income tax purposes. The Section 645 election allows the executor and trustee to temporarily combine both the estate and the revocable trust into a single taxable entity. While the election does not affect estate tax liability, valuation, or dispositive outcomes, it can meaningfully simplify income tax compliance and create flexibility in the timing of income, deductions, and tax payments during the administration phase.

#### What Is the Section 645 Election?

The Section 645 election is a joint election made by the executor of an estate and the trustee of a qualified revocable trust (qualified generally meaning a living trust that was revocable by the decedent during his or her life). By making this election, the trust is treated as part of the estate for federal income tax purposes for a limited period following the decedent's death.

In practical terms, this means that any income, deductions, and credits the trust generates after the decedent's death are reported on the estate's Form 1041, rather than on a separate fiduciary return for the trust. The election is made by filing IRS Form 8855, typically with the estate's first fiduciary income tax return. Once made, the election is irrevocable and remains in effect for its entire duration.

Section 645 reflects Congress's recognition that revocable trusts are commonly used as a substitute for a will. Without the election, the trust becomes irrevocable upon the decedent's death and must file its own income tax return as a separate taxpaying entity. Utilizing the election provides a mechanism to streamline tax administration during the early stages of estate settlement.

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### Why Fiduciaries Use the Election in Estate Administration

For estates administered alongside a revocable trust, the Section 645 election often delivers several practical benefits during a period when efficiency and flexibility matter most.

- **One Fiduciary Income Tax Return Instead of Two.**

The most immediate advantage is administrative clarity. Rather than preparing and filing separate Form 1041s for the estate and the trust, fiduciaries file a single combined return during the election period. This reduces duplication, lowers professional fees, and minimizes the risk of inconsistent reporting during a time when records are still being assembled and assets may be transitioning.

- **Fiscal Year Flexibility and Income Deferral.** Estates are permitted to adopt a fiscal year, while trusts are generally required to use a calendar year. By making the Section 645 election, the estate and the trust (as a single combined entity) can take advantage of this flexibility.

This can be particularly helpful when a decedent dies late in the year. Selecting a fiscal year can defer the recognition and payment of income tax on post death income well into the following year, easing cash flow pressures and providing time to evaluate distribution and investment decisions during administration.

- **Relief From Estimated Tax Payments.** Trusts are ordinarily required to make quarterly estimated income tax payments. Estates, by contrast, are exempt from making estimated payments for up to two taxable years following death (note that the estate's taxable year may not line up with the calendar year).

By treating the trust as part of the estate, the Section 645 election extends this exemption to trust income during the election period. For fiduciaries managing illiquid assets or awaiting asset sales, this relief can be a meaningful administrative and liquidity benefit.

- **Expanded Charitable Deduction Rules.** Charitable bequests frequently remain undistributed during the early stages of administration. Under the income tax rules applicable to trusts, deductions are generally limited to amounts actually paid to a charity during the tax year.

Estates are subject to a more flexible "set aside" rule, allowing deductions for amounts permanently designated for charitable purposes even if not yet distributed. The Section 645 election allows the trust, as part of the estate, to access this estate specific deduction during administration.

- **Managing S Corporation Holdings During Administration.** S corporation stock is a common source of post death complexity. Trusts generally must make a Qualifying Subchapter S Trust (QSST) or Electing Small Business Trust (ESBT) election to remain eligible shareholders after a brief grace period.

An estate, however, is an eligible S corporation shareholder during the administration period without a special election. The Section 645 election allows the trust to hold S corporation stock as part of the estate, providing fiduciaries with time to assess long term ownership and distribution options without risking termination of the S election.

### Making the Election: Timing and Mechanics Matter

The benefits of the Section 645 election are largely front loaded, but the rules for making it are strict.

The election must be made by the due date of the estate's first Form 1041, including extensions. Even if income during that initial period falls below the normal filing thresholds, a Form 1041 must be filed to make the election. Missing this window generally forecloses the opportunity to make the election, unless the fiduciaries obtain costly and uncertain relief from the IRS.

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In practice, the deadline is most likely to be missed when fiduciaries are unfamiliar with the election or are primarily focused on probate and asset administration. Determining whether to make the Section 645 election early—ideally at the outset of administration—is critical.

### How Long the Election Lasts

The Section 645 election applies for a limited period beginning on the decedent's date of death and ending on the applicable termination date:

- **If no federal estate tax return (Form 706) is required**, the election ends two years after death.
- **If a Form 706 is required**, the election continues until the later of (i) six months after the final determination of estate tax liability and (ii) two years after the decedent's death.

In estates subject to estate tax proceedings, the election period often extends beyond two years due to audit timelines and the issuance of an estate tax closing letter. The election may terminate earlier if the administration concludes and all assets are distributed.

Once the election period ends, the trust resumes its status as a separate taxpayer and must file stand alone Form 1041s going forward.

### When to Pause Before Automatically Electing

Although the Section 645 election is beneficial in most administrations involving a revocable trust, fiduciaries should evaluate its use on a case-by-case basis rather than electing it automatically.

For very simple estates expected to close within a short period of time, the benefits may be limited. Additionally, in some cases, aggregating estate and trust income on a single return could push the combined entity into higher fiduciary tax brackets, though this is often offset by fiscal year deferral and administrative efficiencies.

It is important to note that the Section 645 election affects income taxation only. It does not affect estate tax liability, asset valuation, basis step up, or how assets are ultimately distributed.

### A Small Election with an Outsized Administrative Impact

For estates that include a funded revocable trust, a timely Section 645 election is often a prudent administrative step. While it does not change who receives assets or how they are valued, the election can consolidate fiduciary income tax filings, defer tax payments, provide relief from estimated tax requirements, and preserve flexibility for handling charitable bequests and S corporation stock. Fiduciaries and their advisors should evaluate the election early in the administration process to ensure the deadline is not missed and the full range of benefits can be realized.

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