

## Election To Treat a Qualified Revocable Trust as Part of an Estate

### Part I Estate (or Filing Trust) Information

|                                                                                                       |                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name of estate (or the filing trust, if applicable (see instructions))                                | <b>Employer identification number</b><br>(see instructions)                                                                                                                                                         |
| Name of executor (or the filing trustee, if applicable)                                               | Type of entity prior to the election:<br><br><input type="checkbox"/> Domestic estate <input type="checkbox"/> Foreign estate<br><br><input type="checkbox"/> Domestic trust <input type="checkbox"/> Foreign trust |
| Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address) |                                                                                                                                                                                                                     |
| City or town, state, and ZIP code (if a foreign address, see instructions)                            | Date of executor's appointment                                                                                                                                                                                      |

Under penalties of perjury, I, as executor (or filing trustee):

- Confirm that under applicable local law or the governing document, I have the authority to make this election for the estate (if executor) or trust (if filing trustee) and to agree to the conditions of the election;
- Elect the treatment provided under section 645 for the above-named estate (or filing trust, if applicable);
- Confirm that an agreement has been reached with the trustees of each qualified revocable trust (QRT) joining in the election to allocate the tax burden of the combined electing trusts and related estate, if any, for each tax year during the election period in a manner that reasonably reflects each entity's tax obligation;
- Agree to ensure that the related estate's (or filing trust's, if applicable) share of the tax obligations of the combined electing trust(s) and related estate, if any, is timely paid to the United States Treasury;
- Agree to accept responsibility for filing a complete, accurate, and timely income tax return, when required by law, for the combined electing trust(s) and related estate, if any, for each tax year during the election period;
- (If I am the filing trustee) confirm that if there is more than one QRT making this election, that I have been appointed by the trustees of each QRT making this election to be the filing trustee and I agree to accept the responsibility of filing the appropriate income tax return for the combined electing trust(s) for each tax year during the election period and all other responsibilities of the filing trustee;
- (If I am the filing trustee) represent that no executor has been appointed for a related estate and to the best of my knowledge and belief, one will not be appointed;
- (If I am the filing trustee) agree that, if an executor is appointed for the related estate after this Form 8855 is filed, that I will complete and file an amended Form 8855 if the late appointed executor agrees to the election, and I agree to cooperate with the executor in filing any amended returns required to be filed as a result of the executor's appointment; and
- Confirm to the best of my knowledge and belief, that all information contained in this election and any accompanying statements or schedules is true, correct, and complete.

|                                           |      |
|-------------------------------------------|------|
| Signature of executor (or filing trustee) | Date |
|-------------------------------------------|------|

### Part II Decedent Information

|                  |                     |               |
|------------------|---------------------|---------------|
| Name of decedent | SSN of the decedent | Date of death |
|------------------|---------------------|---------------|

**Part III** Qualified Revocable Trust Information

|               |                                                        |
|---------------|--------------------------------------------------------|
| Name of trust | Employer identification number (see instructions)<br>: |
|---------------|--------------------------------------------------------|

Name of trustee

Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)

City or town, state, and ZIP code (if a foreign address, see instructions)

Under penalties of perjury, I, as trustee of the above-named trust:

- Confirm that under applicable local law or the governing instrument, I have the authority to make this election for the trust and to agree to the conditions of the election;
- Elect the treatment provided under section 645 for this trust;
- Agree to timely provide the executor (or filing trustee if there is no executor) with all the trust information necessary to permit the executor (or filing trustee, if applicable) to file a complete, accurate, and timely Form 1041 (or Form 1040-NR for a foreign estate) for the combined electing trust(s) and the related estate, if any, for each tax year during the election period;
- Confirm that an agreement has been reached with the trustees of each QRT joining in the election, and the executor of the related estate, if any, to allocate the tax burden of the combined electing trust(s) and related estate, if any, for each tax year during the election period in a manner that reasonably reflects each entity's tax obligation;
- Agree to ensure that this trust's share of the tax obligations of the combined electing trust(s) and related estate, if any, is timely paid to the United States Treasury;
- Confirm that if a filing trustee (and not an executor for a related estate) has completed Part I of this Form 8855, the trustee that completed Part I has been appointed the filing trustee, and to the best of my knowledge and belief, an executor has not been appointed to administer a related estate and one will not be appointed;
- Agree that if a filing trustee (and not an executor for a related estate) has completed Part I of this Form 8855 and an executor is appointed for the related estate after this Form 8855 is filed, that I will complete and file an amended Form 8855 if the later appointed executor agrees to the election, and I agree to cooperate with the executor in filing any amended returns required to be filed as a result of the executor's appointment; and
- Confirm to the best of my knowledge and belief, that all information of the electing trust contained in this election and any accompanying statements or schedules is true, correct, and complete.

|                      |      |
|----------------------|------|
| Signature of trustee | Date |
|----------------------|------|

|               |                                                        |
|---------------|--------------------------------------------------------|
| Name of trust | Employer identification number (see instructions)<br>: |
|---------------|--------------------------------------------------------|

Name of trustee

Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)

City or town, state, and ZIP code (if a foreign address, see instructions)

Under penalties of perjury, I, as trustee of the above-named trust:

- Confirm that under applicable local law or the governing instrument, I have the authority to make this election for the trust and to agree to the conditions of the election;
- Elect the treatment provided under section 645 for this trust;
- Agree to timely provide the executor (or filing trustee if there is no executor) with all the trust information necessary to permit the executor (or filing trustee, if applicable) to file a complete, accurate, and timely Form 1041 (or Form 1040-NR for a foreign estate) for the combined electing trust(s) and the related estate, if any, for each tax year during the election period;
- Confirm that an agreement has been reached with the trustees of each QRT joining in the election, and the executor of the related estate, if any, to allocate the tax burden of the combined electing trust(s) and related estate, if any, for each tax year during the election period in a manner that reasonably reflects each entity's tax obligation;
- Agree to ensure that this trust's share of the tax obligations of the combined electing trust(s) and related estate, if any, is timely paid to the United States Treasury;
- Confirm that if a filing trustee (and not an executor for a related estate) has completed Part I of this Form 8855, the trustee that completed Part I has been appointed the filing trustee, and to the best of my knowledge and belief, an executor has not been appointed to administer a related estate and one will not be appointed;
- Agree that if a filing trustee (and not an executor for a related estate) has completed Part I of this Form 8855 and an executor is appointed for the related estate after this Form 8855 is filed, that I will complete and file an amended Form 8855 if the later appointed executor agrees to the election, and I agree to cooperate with the executor in filing any amended returns required to be filed as a result of the executor's appointment; and
- Confirm to the best of my knowledge and belief, that all information of the electing trust contained in this election and any accompanying statements or schedules is true, correct, and complete.

|                      |      |
|----------------------|------|
| Signature of trustee | Date |
|----------------------|------|

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose

The trustees of each qualified revocable trust (QRT) and the executor of the related estate, if any, use Form 8855 to make a section 645 election. This election allows a QRT to be treated and taxed (for income tax purposes) as part of its related estate during the election period. Once the election is made, it cannot be revoked.

### Definitions

A QRT is any trust (or part of a trust) that, on the day the decedent died, was treated as owned by the decedent under section 676 by reason of a power to revoke that was exercisable by the decedent (determined without regard to section 672(e)).

For this purpose, a QRT includes a trust that was treated as owned by the decedent under section 676 by reason of a power to revoke that was exercisable by the decedent with the consent or approval of a nonadverse party or the decedent's spouse. However, a QRT does not include a trust that was treated as owned by the decedent under section 676 by reason of a power to revoke that was exercisable solely by a nonadverse party or the decedent's spouse and not by the decedent.

An electing trust is a QRT for which a valid section 645 election has been made. Once the QRT makes the election, it is treated as an electing trust throughout the entire election period.

An executor is an executor, personal representative, or administrator that has obtained letters of appointment to administer the decedent's estate through formal or informal appointment procedures. For purposes of this election, an executor does not include a person that has actual or constructive possession of property of the decedent unless that person is appointed or qualified as an executor, administrator, or personal representative. If more than one jurisdiction has appointed an executor, then, for purposes of this election, only the person from the primary or domiciliary proceeding is the executor.

A related estate is the estate of the decedent who was treated as the owner of the QRT on the date of the decedent's death.

A filing trustee is the trustee of an electing trust who, when there is no executor, has been appointed by the trustees of each of the other electing trusts to file the Forms 1041 (or

1040-NR, if applicable) due for the combined electing trust(s) for each tax year during the election period and has agreed to accept that responsibility. If there is no executor and there is only one QRT making the section 645 election, the trustee of that electing trust is the filing trustee.

A filing trust is an electing trust whose trustee was appointed as the filing trustee by all electing trust(s) if there is no executor. If there is no executor and only one QRT is making the election, that QRT is the filing trust.

### Election Period

The election period is the period of time during which an electing trust is treated and taxed as part of its related estate.

The election period begins on the date of the decedent's death and terminates on the earlier of:

- The day on which each electing trust and the related estate, if any, have distributed all of their assets or
- The day before the applicable date.

**Applicable date.** To determine the applicable date, you must first determine whether a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is required to be filed as a result of the decedent's death.

| IS a Form 706 required? | THEN the applicable date is...                                                                                                                                                                     |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Yes                     | The later of: <ul style="list-style-type: none"> <li>● 2 years after the date of the decedent's death or</li> <li>● 6 months after the final determination of liability for estate tax.</li> </ul> |
| No                      | 2 years after the date of the decedent's death.                                                                                                                                                    |

**Final determination of liability.** For purposes of this election only, the date of final determination of liability for the estate tax is the earliest of:

- 6 months after the IRS issues an estate tax closing letter (unless a claim for refund of estate tax is filed within 12 months after the letter is issued);
- The final disposition of a claim for refund that resolves the liability for the estate tax (unless suit is instituted within 6 months after a final disposition of the claim);
- The execution of a settlement agreement with the IRS that determines the liability for the estate tax;
- The issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax (unless a notice of appeal or a petition for *certiorari* is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court); or
- The expiration of the period of limitations for the estate tax.

## When To File

File the election by the due date (including extensions, if any) of the Form 1041 (or Form 1040-NR, if applicable) for the first tax year of the related estate (or the filing trust). This applies even if the combined related estate and electing trust(s) do not have sufficient income to be required to file Form 1041.

In general, the due date for the first income tax return is the 15th day of the 4th month after the close of the first tax year of the related estate. For exceptions, see Regulations section 1.6072-1(c). For the purpose of determining the tax year if there is no executor, treat the filing trust as an estate. If the estate is granted an extension of time to file its income tax return for its first tax year, the due date of the Form 8855 is the extended due date.

For instructions on when to file an amended election, see *Amended Election Needed When an Executor Is Appointed After a Valid Election Is Made* on page 4.

## Where To File

| IF you are located in . . .                                                                                                                                                                                                                                                                | THEN send the election to the . . .                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin | Department of the Treasury<br>Internal Revenue Service Center<br>Cincinnati, OH 45999 |
| Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming                         | Department of the Treasury<br>Internal Revenue Service Center<br>Ogden, UT 84201      |
| A foreign country or a U.S. possession                                                                                                                                                                                                                                                     |                                                                                       |

## Who Must Sign

If there is more than one executor for a related estate or more than one trustee for an electing trust, only one executor or trustee must sign Form 8855 on behalf of the entity, unless otherwise required by applicable local law or the governing document.

## Employer Identification Numbers

The trustee of a QRT **must** obtain a new employer identification number (EIN) for the QRT upon the death of the decedent. Parts I and III require that a trustee enter the EIN obtained by the trustee following the death of the decedent. See Regulations section 301.6109-1.

## Retention of Copy of Form 8855

The executor of the related estate, if any, and the trustee of each electing trust must retain a copy of the completed Form 8855 (and any amended Form 8855 required to be filed) and retain proof that the Form 8855 was timely filed.

## Tax Treatment

During the election period, all electing trusts and the related estate, if any, file one combined income tax return. For purposes of that return, the electing trusts and the related estate are treated as one estate. For example, the electing trust(s) are treated as part of the estate for purposes of adopting a tax year, for determining whether estimated tax payments are required, the set-aside deduction under section 642(c)(2), the S corporation shareholder requirements of section 1361(b)(1), and the special allowance for rental real estate activities under section 469(i)(4).

Note, however, that each electing trust and the related estate are treated as a separate share for purposes of the separate share rules under section 663(c) when the combined entity computes distributable net income and applies the distribution rules.

## Amended Election Needed When an Executor Is Appointed After a Valid Election Is Made

If Form 8855 was filed by the filing trustee because there was no executor and an executor is subsequently appointed, an amended election must be timely made. Otherwise, the election period terminates the day before the executor is appointed.

**How to make an amended election.** The executor and the trustees of each electing trust complete and file a new Form 8855 and write "AMENDED ELECTION" at the top of the form.

**When to file an amended election.** File an amended Form 8855 within 90 days of the appointment of the executor.

**Correction of returns.** See the Instructions for Form 1041 and Regulations section 1.645-1 for information on amending the previously filed returns.

## Other Information

For additional information about the reporting rules for a QRT, an electing trust, or a former electing trust, or information about when it is necessary to obtain a new EIN, see the Instructions for Form 1041 and Regulations section 1.645-1.

## Specific Instructions Part I

The executor of the related estate completes the information requested in this part and attests to the making of this election and the conditions for a valid section 645 election by signing (under penalties of perjury) and dating the form in the space provided.

If there is no executor, the filing trustee completes the information and attests to the making of this election and the conditions for a valid section 645 election by signing (under penalties of perjury) and dating the form in the space provided.

The executor must obtain an EIN for the estate prior to filing this election. A filing trustee must enter the new EIN obtained for the trust after the decedent's death in the space for *Employer identification number* in Part I.

If you have a foreign address, enter the information in the following order: City, province or state, and country. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

## Part II

The executor (or filing trustee if there is no executor) completes this section.

## Part III

The trustee for each QRT that is joining in the election completes the information requested in this part and attests to the making of this election and the conditions for a valid section 645 election by signing (under penalties of perjury) and dating the form in the space provided.

**Caution:** A QRT must get a new EIN following the death of the decedent.

In the space for *Employer identification number*, be sure to enter the new EIN obtained for the trust after the decedent's death.

Space is provided for two QRTs. If more than two QRTs are joining in the election than space provided, use additional Part IIIs. If additional pages of Part III are attached, the executor (or filing trustee) should indicate on the top of the first page of Part III how many additional pages are attached and the total number of QRTs joining in the election.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

|                                                                                  |                |
|----------------------------------------------------------------------------------|----------------|
| <b>Recordkeeping</b> . . . . .                                                   | 3 hr., 21 min. |
| <b>Learning about the law or the form</b> . . . . .                              | 1 hr., 5 min.  |
| <b>Preparing, copying, assembling, and sending the form to the IRS</b> . . . . . | 1 hr., 11 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. *Do not* send the tax form to this address. Instead, see *Where To File* on page 3.