

TAX RETURN REFORM: ENTITY-SPECIFIC FIDUCIARY INCOME TAX RETURNS WOULD BRING SUBSTANCE TO THE FORM

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The Tax Cuts and Jobs Act (the Act) is Congress' most recent attempt to simplify our tax system. Even if the Act's catch phrase promise to "file a return on a postcard" is more hyperbole than reality, it is a rallying cry for an equally important aspect of tax reform—tax return reform. Comprehensive tax reform can only be achieved through a combination of simplifying the Internal Revenue Code and the implementing tax forms. Tax forms and instructions are often poorly designed and disorganized, rendering time-efficient and accurately prepared returns problematic. This includes Form 1041, the two-page fiduciary income tax return for nine entities accompanied by 42 pages of disjointed instructions. On all levels, the form misses the mark because (1) too many entities subject to different tax rules use the form; (2) line items and instructions are not consistently sequential; (3) relevant guidance is not easily accessible to the tax return preparer as it is often scattered illogically throughout the instructions; and (4) the information provided in the instructions is often lacking, incomplete, and misleading. To address these inadequacies, this article advocates meaningful tax return reform by which the Internal Revenue Service (IRS) replaces the "one size fits all" Form 1041 with four entity-specific forms and accompanying instructions focused on each type of entity. If the IRS adopts the forms presented

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in conjunction with this article (or similar versions), the improved forms would be a boon to time-efficient, accurate tax return preparation—a worthy goal of tax return reform.

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INTRODUCTION

The Tax Cuts and Jobs Act¹ (the Act) is Congress' most recent attempt to simplify our overly complicated tax system. In a television interview, the Secretary of the Treasury predicted the Act would make tax preparation for most taxpayers as simple as filling out a "postcard."² Whether the Act accomplishes that degree of simplicity remains to be seen. Even if the Treasury Secretary's prediction is more hyperbole than reality, it is a rallying cry for a second and equally important aspect of tax reform, i.e., *tax return reform*. Comprehensive tax reform can only be achieved through a combination of simplifying the Internal Revenue Code (Code) and the implementing tax forms.

Tax returns are the lifeblood of our tax system. Through voluntary compliance, accurately prepared tax returns generate the tax revenues necessary to fund the government. Ideally, on a well-designed income tax form, relevant and sequential line items are a roadmap guiding the tax return preparer through the computation of taxable income. In some instances, there are necessary detours for entries on line items that require the completion of separate schedules. Working in lockstep with well-written, concise, and informative instructions, a tax return preparer should be able to accurately prepare a return within a reasonable amount of time. On the other hand, a poorly designed tax return, accompanied by poorly organized and incomplete instructions, stymies time-efficient tax return preparation and can often result in a high likelihood of error.

Given the complexity of income taxation of estates and trusts and the multiple entities subject to different rules that file the same two-page form, no form is in greater need of tax return reform than Form 1041, the fiduciary income tax return for estates and trusts.³ Embodied in Subchapter J of the Code,⁴ income taxation of

¹ Pub. L. No. 115-97, 131 Stat. 2054 (2017).

² On Fox News Sunday, December 17, 2017, Secretary of the Treasury, Steven Mnuchin, stated: "Over 90 percent of Americans are going to fill out taxes on that postcard or a virtual electronic postcard." See <https://www.washingtontimes.com/news/2017/dec/17/steve-mnuchin-treasury-secretary-has-no-doubt-tax-/>.

³ The challenge of accurately reporting the fiduciary income tax return dates to the earliest days of U.S. income taxation. For example, one commentator noted: "The appearance of the new fiduciaries' income tax return for calendar year

estates and trusts is arguably one of the most complicated areas of tax law. In fact, the complication is forewarned by the opening stanza of § 641(b): “The taxable income of an estate or trust shall be computed in the same manner as an individual, *except as otherwise provided in this part* (emphasis added).” Those “otherwise provided” exceptions are often significant departures from the general tax principles and rules that apply to individuals.⁵ Additional complications of Subchapter J are the different rules that apply to simple trusts, complex trusts, estates, grantor trusts, and charitable trusts.

Considering the intricacies of Subchapter J, Form 1041—a two-page income tax return accompanied by 42 pages of confusing and disjointed instructions—is unmanageable. Essentially, it is the “one size fits all” version of a fiduciary income tax return for no less than nine types of entities.⁶ Because multiple entities (not necessarily subject to the same rules) are required to file this form, not all line items, schedules, and instructions are applicable to each type of entity. In addition, certain line items are not placed in the appropriate section of the return and information relevant to computational formulas is often scattered illogically throughout the instructions. In some instances, relevant guidance in the instructions is lacking, incomplete, and misleading. Because of the deficiencies of the form and its instructions, the task of preparing an accurate Form 1041 within a reasonable amount of time is problematic.

As a practical solution to these issues, this article advocates that the Internal Revenue Service (IRS) engage in meaningful tax return reform by using its administrative authority in creating time-efficient forms⁷ to scrap the “one size fits all” version of Form 1041

1917, form 1041 (revised January, 1918) is not likely to clear the confusion entirely . . . what seem to be the present requirement imposed by law and regulations on those who act as trustees, executor . . . and in similar capacities.” George E. Holmes, *Income Tax Problems of the Fiduciary*, 6 GEO. L.J. 1, 1 (1917-18).

⁴ I.R.C. §§ 641-692.

⁵ Some tax provisions are applied to individuals and estates and trusts in the same way. For example, the Act suspended miscellaneous itemized deductions for both individuals and estates and trusts for taxable years 2018 through 2025. I.R.C. § 67(g).

⁶ The following types of entities are listed in Form 1041, Section A: decedents’ estates, simple trusts, complex trusts, qualified disability trusts, ESBTs (S portion only), grantor type trusts, bankruptcy estates-Ch. 7, bankruptcy estates-Ch. 11, and pooled income funds.

⁷ Pursuant to § 7801, the Secretary of the Treasury has the authority to administer and enforce the internal revenue laws. Additionally, as part of the Department of the Treasury, the IRS is bound by 44 U.S.C. § 3506(b)(1) “to reduce information collection burdens on the public.” Thus, each form issued by the IRS should be designed to make its completion as minimally burdensome as possible.

and replace it with four entity-specific Forms 1041. These forms would encourage time-efficient, accurate tax return preparation by (a) clearly delineating on the face of the form the fiduciary income tax return applicable to a particular entity; (b) eliminating the time wasted by tax return preparers in navigating through inapplicable line items and pages of irrelevant instructions; (c) improving the organization of the current instructions and forms by providing sequential guidance and alerts of relevant special rules, elections, etc., on the face of the form and in the accompanying instructions; and (d) more generally, revising certain line items on Form 1041 to carry over to the new entity-specific Forms 1041.

The four entity-specific Forms 1041 presented and proposed in conjunction with this article are as follows:

1. Form 1041-ST (Simple Trust) for simple trusts and simple trusts treated as partial grantor trusts.
2. Form 1041-EST/NCCT (Estates/Noncharitable Trust) for decedents' estates, noncharitable complex trusts (including qualified disability trusts and electing small business trusts (ESBTs)), and noncharitable complex trusts treated as partial grantor trusts.
3. Form 1041-TCT (Taxable Charitable Trust) for charitable lead trusts, charitable income trusts, pooled income funds, and charitable lead trusts treated as partial grantor trusts.
4. Form 1041-BE (Bankruptcy Estate) for chapter 7 and chapter 11 bankruptcy estates.

Part I of this article is a forensic analysis and critique of the current Form 1041, including recommendations to revise certain line items that would carry over to the entity-specific forms. The analysis also addresses the significance and effect of the Act's suspension of miscellaneous itemized deductions for estates and trusts on the preparation of fiduciary income tax returns. Part II provides detailed explanations of each recommended entity-specific Form 1041. Appendices A, B, C, and D are drafts of the entity-specific Forms 1041 presented and proposed in conjunction with this article. Given the complexity of income taxation of estates and trusts as well as different rules applicable to different types of trusts, the article concludes that the entity-specific Forms 1041 (to be accompanied by precise and cogent instructions) would greatly enhance time-efficient and accurate tax return preparation.

I. FORENSIC ANALYSIS AND CRITIQUE OF FORM 1041

In line with the purpose of any income tax return to compute taxable income, the design of tax returns should follow the general taxable income model. Sequentially, the entry of items of income are followed by items of deductions in arriving at taxable income. Finally, the resulting tax is computed and entered on the return. Certain line items of income and deductions require separate schedules, computations and/or are subject to special rules. When necessary to complete a particular line item accurately, the words “see instructions” should direct the tax return preparer to concise and informative guidance set forth in one easy-to-locate section of the instructions.

A tax return designed based on this model would foster time-efficient, accurate tax return preparation. However, Form 1041 does not reflect this model. The following discussion critiques the separate sections of Form 1041 sequentially and addresses the shortcomings of each.

A. *General Information*

Section A, the first of the general information boxes at the top of the first page of Form 1041, lists nine types of entities from which the tax return preparer is to “check all that apply.” Although this suggests that the box for more than one type of entity could be checked, doing so would be problematic. The listed entities are decedent’s estate, simple trust, complex trust, qualified disability trust, ESBT (S portion only), grantor type trust, bankruptcy estate-Ch.7, bankruptcy estate-Ch. 11, and pooled income fund.

Of the entities listed, only a decedent’s estate, the two bankruptcy estates, and a simple trust are easily identifiable distinct entities. All the other listed entities are types of complex trusts. To this point, a decedent’s estate comes into existence upon death and bankruptcy estates come into existence upon the filing of a bankruptcy petition.⁸ These estates of limited duration are terminated once the executor/administrator or the trustee/debtor-in-possession completes the administrative tasks. Unlike estates, a simple trust can exist indefinitely. Differing from the more versatile

⁸ Despite being labeled an “estate,” a bankruptcy estate is not subject to Subchapter J rules. A bankruptcy estate files a Form 1040 and is taxed in the same manner as a married individual filing separately. I.R.C. § 1398(c). Only the tax computed on a bankruptcy estate’s Form 1040, the tax payments made, and the amount owing or overpayment are entered on the Tax and Payments section on page 1 of Form 1041; no other computational section of the form is completed by a bankruptcy estate.

complex trust (discussed in the following paragraph), a simple trust has limited functions; it distributes all its income currently and does not make mandatory or discretionary distributions of principal or charitable contributions.⁹

On the other hand, a complex trust is a more amorphous entity as it is defined as any trust *other than* a simple trust.¹⁰ In fact, each of the other listed entities (other than a grantor type trust) is a version of a complex trust. Since those entities are listed separately, however, it may not be apparent that a qualified disability trust, an ESBT, and a pooled income fund are versions of a complex trust. Presumably they are listed separately in Section A because they are subject to special rules. For example, in lieu of the \$100 personal exemption of a complex trust, a qualified disability trust is entitled to the same personal exemption as an unmarried individual is entitled to prior to the Act.¹¹ A tax return preparer, unaware that a qualified disability trust is a complex trust, may not realize that, other than the personal exemption, it is taxed in the same manner as a complex trust.¹²

An ESBT is another example of a complex trust. It holds S corporation stock and has the flexibility to accumulate or distribute income to one or more of its eligible beneficiaries.¹³ In addition to S corporation stock, an ESBT can hold other income-producing property.¹⁴ The taxation of an ESBT is bifurcated: The non-S portion of trust income, deduction, and credits are reported on Form 1041 (the same as for any complex trust), and the S portion¹⁵ is separately computed (on an attachment to the return) with the resulting tax payable by the trust (rather than the beneficiaries) at the highest trust tax rate as applicable to ordinary income or long-

⁹ I.R.C. § 651(a); Treas. Reg. § 1.651(a)-1.

¹⁰ I.R.C. § 661(a); Treas. Reg. § 1.661(a)-1

¹¹ Because a qualified disability trust does not distribute all its income annually, it would be treated as a complex trust. Although the Act suspends the personal exemption for individuals, it retains the personal exemption for qualified disability trusts in the amount of \$4,150 as indexed for inflation. I.R.C. § 642(b)(2)(C)(iii).

¹² On page 17 of the Instructions for Form 1041 (2017), a “qualified disability trust” is described as “any nongrantor trust” that meets the requirements of a qualified disability trust. Nothing in the instructions indicates that it is a complex trust.

¹³ As ESBT can be a part of a larger trust. The S corporation stock is held in the S portion of the ESBT and the other assets are held in the non-S portion of the trust. Treas. Reg. §§ 1.641(c)-1(b)(2), 1.641-1(b)(3).

¹⁴ Treas. Reg. § 1.641(c)-1(b)(3).

¹⁵ I.R.C. § 641(c)(2)(A); Treas. Reg. § 1.641(c)-1(e)(1). Items of income, loss, and/or deduction are reported on a Schedule K-1 issued by the S corporation to the ESBT. Such income is not passed through to the beneficiaries of the ESBT. Thus, the ESBT rather than the beneficiaries are obligated to pay the tax.

term capital gains.¹⁶ Despite the separate computations, both tax liabilities are reported on Form 1041. Including “ESBT (S portion only)” as a check box option in Section A is misleading because a tax return preparer could erroneously conclude that *only* the S portion of the trust is reported on Form 1041. A single sentence in the instructions is the sole indication of the dual reporting requirement of an ESBT on Form 1041. Given the complexity and uniqueness of such a trust, the cursory guidance provided in the instructions is inadequate.¹⁷

A taxable charitable trust (also referred to as a “non-exempt trust”)¹⁸ is another type of complex trust. Yet, a pooled income fund is the only taxable charitable trust listed in Section A.¹⁹ This is puzzling because all taxable charitable trusts are required to file Form 1041.²⁰ Because the sole charitable trust listed in Section A is a pooled income fund, it is logical to reach the erroneous conclusion that (a) other taxable charitable trusts must file a different form or (b) a pooled income fund is the only type of taxable charitable trust.²¹

Finally, the listing of “grantor type trust” as one of the potentially applicable entities is confusing because it suggests that it is some type of stand-alone trust. On the contrary, a “grantor trust” is any trust, complex (non-charitable or charitable) or simple, deemed owned by the grantor.²² A grantor who is deemed to own the entire trust (i.e., the principal and income interests) reports all trust income, deduction, and credit on the grantor’s Form 1040 instead of on Form 1041.²³

¹⁶ I.R.C. § 641(c)(2)(A).

¹⁷ Instructions for Form 1041 (2017) at 14.

¹⁸ For income tax purposes, taxable charitable trusts that distribute some but not all of their income are taxed on their undistributed income in the same way as noncharitable complex trusts. *See* Crown Income Charitable Fund v. Comm’r, 98 T.C. 327 (1992).

¹⁹ Not all charitable trusts are taxable. A charitable remainder annuity trust and a charitable remainder unitrust are nontaxable charitable trusts (often referred to as “exempt trusts”). I.R.C. §§ 664(d)(1), 664(d)(2).

²⁰ In addition to pooled income funds, the other taxable charitable trusts (often referred to as nonexempt charitable trusts) required to file Form 1041 are charitable lead trusts and charitable income trusts. Instructions for Form 1041 (2017) at 17.

²¹ Adding to the confusion with respect to taxable charitable trusts as complex trusts is Section E, which instructs the tax return preparer to check the applicable box with respect to charitable trusts described in § 4947(a)(1) or § 4947(a)(2). This is curious because those types of charitable trusts (other than pooled income funds) singled out in Section E are not specifically listed in Section A.

²² I.R.C. §§ 671–679.

²³ Although it appears intuitive that the grantor of a grantor trust should report all income, deductions, and credits on his or her Form 1040, the filing protocol

On the other hand, what is referred to as a “grantor type trust” is a trust in which a grantor is deemed to own either the income interest or the principal interest of the trust.²⁴ In such a case, the grantor reports on Form 1040 only the income, deductions, and credits of the deemed ownership interest. As to the nongrantor portion of the trust, the trust reports the income, deductions, and credits on Form 1041. Therefore, a “grantor type trust” is more accurately described as a “partial grantor trust.” The wording “grantor type trust” could lead to the erroneous conclusion that it is a stand-alone trust, i.e., not a portion of a larger trust.

B. *Income and Deductions*

The income and deduction line items are set forth on page 1 of Form 1041 in lines 1-21. Several aspects of the Income and Deductions sections recommended for revision are discussed in extensive detail in items 1 through 7.

1. Tax-Exempt Income and Related Expenses

Trusts with diverse investment portfolios often generate tax-exempt income (e.g., tax-exempt interest and exempt-interest dividends) in addition to taxable investment income (e.g., taxable interest, dividends, and capital gains from the sale of securities). In addition to the tax-exempt income being free from tax, it has additional significant tax relevance. Pursuant to § 265, direct and indirect expenses allocable to tax-exempt income are not deductible. Although the nondeductibility of direct expenses related

is much more involved. For example, if the grantor does not use one of the optional alternate methods of reporting, the trustee files a Form 1041 entering only the entity information on page 1 of the form, with an attached statement setting forth the grantor’s income, deductions, and credits as reported on his or her Form 1040. Treas. Reg. § 1.671-4(a).

Under optional method 1, the grantor completes a Form W-9 and the trustee provides all payors of income attributable to the grantor with the grantor’s name and taxpayer identification number. Thus, the amounts reported on Forms 1099 and other information returns are issued by the payors in the grantor’s name and correspond to the amounts reported on the grantor’s individual Form 1040. Treas. Reg. § 1.671-4(b)(2).

Under optional method 2, the trustee provides the payors of income attributable to the grantor with the trust’s taxpayer identification number. Consequently, the Forms 1099 and other information returns are issued by the payors to the trust that in turn issues the applicable Forms 1099 information returns to the grantor. The amounts reported on those forms correspond to the amounts reported on the grantor’s Form 1040. Treas. Reg. § 1.671-4(b)(3).

²⁴ See I.R.C. § 671.

to tax-exempt income is straightforward,²⁵ an indirect expense relates to all trust income rather than any one specific type of income. Accordingly, the regulations require that a reasonable allocation of indirect expenses to tax-exempt income be made with the resulting amount nondeductible.²⁶

Form 1041 and its instructions address tax-exempt income and related expenses in a disorderly manner. First, there is no income line item for tax-exempt income on page 1 of the form.²⁷ Since tax-exempt income is a necessary component in a formula to allocate indirect expenses to tax-exempt income (for disallowance), a tax-exempt income line item preceding the deduction section would be appropriate and helpful. Inexplicably, the only mention of tax-exempt income on Form 1041 is in response to Question 1 of Other Information (the last section of the return following the computational sections).²⁸

When applying the allocation formula, being able to identify what is an indirect expense is essential because the portion of indirect expenses allocated to tax-exempt income is disallowed and reduces the amount of the otherwise deductible expenses. Although the deduction section of the instructions provides a cursory explanation of the allocation rules, there are no examples of indirect expenses or numeric illustrations of the allocation.²⁹ Instead, examples of indirect expenses are included in the section addressing Schedule K-1 (Beneficiary's Share of Income, Deduction, Credits, etc.), i.e., many pages beyond the deduction section in which those examples would be helpful to the tax return preparer.³⁰

2. Depreciation Deduction

Trusts with trade or business, rental activity, or farming income and deductions (including depreciation) report those items on the same Schedules C, E, and F (Form 1040) used by individual taxpayers. The net income/loss reported on those schedules is

²⁵ For example, the interest expense on amounts borrowed to purchase a tax-exempt security is an expense directly related to tax-exempt interest.

²⁶ The methods for allocating indirect expenses to tax-exempt income are set forth in Regulation §§ 1.652(b)-2, 1.652(c)-3(b), 1.652(c)-4.

²⁷ Compare to Form 1040 on which line 8b is a separate line item for tax-exempt interest.

²⁸ Out of sequence, Question 1 requests the entry of "tax-exempt interest and exempt-interest dividends" received by an estate or trust with a computation of an allocation of expenses (presumably to the tax-exempt income) to be attached to the return.

²⁹ Instructions for Form 1041 (2017) at 21.

³⁰ *Id.* at 37 (listing fiduciary fees, safe deposit rental charges, and personal property taxes as examples of indirect expenses).

entered on the appropriate lines of Form 1041. Unlike individual taxpayers who claim the entire depreciation deduction, however, the depreciation deduction for property held by an estate or trust is apportioned between the entity and beneficiaries.³¹

Although the instructions adequately explain the depreciation apportionment rules,³² there is no mention of these rules on Schedules C, E, and F, or in their respective instructions. Instead, all instructions with respect to these rules are set forth in the Form 1041 instructions. Those instructions direct the tax return preparer to first apportion the overall depreciation deduction between the entity and the beneficiaries with the entity's portion of the depreciation deduction to be entered on the relevant schedule and the beneficiaries' portion then entered on their Schedules K-1 as separately stated items.³³

3. Charitable Deduction

The charitable deduction of an estate or complex trust is entered on line 13, page 1, of Form 1041. Like the depreciation deduction, the charitable deduction for estates and trusts is not the same as it is for individuals. For example, a simple trust cannot claim a charitable deduction. Additionally, the charitable deduction that can be claimed by an estate is not the same as the charitable deduction that can be claimed by a complex trust.³⁴ Finally, as an added twist, the executor or trustee can elect to accelerate the deduction for a charitable contribution made in a subsequent tax year to an earlier tax year.³⁵ These peculiarities of the fiduciary charitable deductions are discussed in more detail in Part I.C.

4. Miscellaneous Itemized Deductions

Prior to and in light of the Act, the significance of miscellaneous itemized deductions to trusts and estates cannot be overstated. The taxable income of an estate or trust is computed in the same manner as an individual by subtracting "above-the-line" deductions from gross income. Most above-the-line deductions relate to a trade or business or rental activity. Since the corpus of the majority of trusts is comprised of investment assets, trusts generally are not likely to be engaged in trades or businesses. Therefore, most trust deductions relate to investment or production

³¹ I.R.C. § 642(e).

³² Instructions for Form 1041 (2017) at 20-21.

³³ Line 9, Code A, Schedule K-1 (Form 1041).

³⁴ Compare I.R.C. § 642(c)(1) with I.R.C. § 642(c)(2).

³⁵ I.R.C. § 642(c)(1).

of income, which are itemized deductions (i.e., “below-the-line” deductions).³⁶

Most investment/production of income deductions are miscellaneous itemized deductions.³⁷ Prior to the Act, only miscellaneous deductions in excess of two percent of adjusted gross income were deductible. For estates and trusts, there was (and still is) a significant exception that treats an expense that is otherwise characterized as a miscellaneous itemized deduction as an above-the-line deduction. The exceptions, set forth in § 67(e)(1), provide that deductible expenses in connection with the administration of an estate or trust that would not have been incurred if the property were not held in a trust or estate are *above-the-line deductions*. Under prior law, the characterization of a deduction as an above-the-line deduction or a miscellaneous itemized deduction was the difference between full or partial deductibility. With the enactment of the Act, however, the stakes are even higher for estates and trusts. Since the Act suspends the deductibility of miscellaneous itemized deductions,³⁸ an expense not treated as an above-the-line deduction is not deductible.

The rules for determining which expenses qualify under § 67(e)(1) as above-the-line deductions are set forth in the regulations.³⁹ The general test is whether the expense is peculiar to an estate or trust. Thus, any expense commonly or customarily incurred by a hypothetical individual owning the same property as an estate or trust is considered a miscellaneous itemized deduction.⁴⁰

On Form 1041, the specific deduction line items within the purview of the regulations for estate and trust administration expenses include fiduciary fees, return preparer fees, attorney fees, and accounting fees.⁴¹ Of those expenses, fiduciary fees and return preparer fees are clearly above-the-line deductions. On the other hand, some or all of a trust or estate’s attorney and accounting fees

³⁶ Since estates and trusts are not entitled to a standard deduction, all below-the-line deductions are itemized. I.R.C. § 63(c)(6)(D).

³⁷ A miscellaneous itemized deduction is any otherwise deductible expense *other than* those listed in § 67(b). Notable deductible expenses not treated as miscellaneous itemized deductions include interest (I.R.C. § 163) and taxes (I.R.C. § 164).

³⁸ I.R.C. § 67(g).

³⁹ Treas. Reg. § 1.67-4.

⁴⁰ Treas. Reg. § 1.67-4(b).

⁴¹ On line 14 of Form 1041, attorney, accountant, and return preparer fees are aggregated in a single line item.

would likely be characterized as miscellaneous itemized deductions.⁴²

Considering the importance of this issue, the haphazard manner in which it is treated on Form 1041 and its instructions is perplexing. Both Line 12, fiduciary fees, and line 14, attorney, accountant, and return preparer fees, of Form 1041 state: “if a portion is subject to the 2% floor, see instructions.”⁴³ Although attorney and accounting fees are potentially subject to the two-percent floor, fiduciary fees and tax return preparer fees are clearly above-the-line deductions. Yet the instruction’s list of deductions *not* considered miscellaneous deductions does not include fiduciary fees or tax return preparer fees.⁴⁴ Based on the misinformation on the face and in the instructions of the return, a tax return preparer could erroneously conclude that fiduciary fees and tax return preparer fees are miscellaneous itemized deductions (i.e., nondeductible post-2017).

Beyond items 1 through 4, describing non-miscellaneous itemized deductions, the instructions provide no guidance with respect to other investment type deductions that potentially qualify as above-the-line deductions.⁴⁵ Given the complexity of these rules and the tax significance of the characterization of a deduction as an above-the-line or a miscellaneous itemized deduction under the Act, greater clarity on the form itself, as well as a concise comprehensive explanation of the rules (including an example) in the instructions, is essential to assure accurate tax return preparation.

⁴² Because routine attorney and accounting fees are commonly or customarily incurred by a hypothetical individual, they would be characterized as miscellaneous itemized deductions. Conversely, if all or part of an attorney fee or accounting fee is attributable to advice given with respect to an unusual trust or estate objective or the need for a specialized balancing of the interests of various beneficiaries, such amount would be deductible as an above-the-line deduction. *See* Treas. Reg. § 1.67-4(b)(4).

⁴³ The suspension of miscellaneous itemized deductions pursuant to the Act is for tax years beginning after December 31, 2017, and before January 1, 2016. I.R.C. § 67(g).

⁴⁴ Instructions for Form 1041 (2017) at 24. The instructions refer generically to fiduciary fees by listing “expenses paid or incurred in connection with the administration of the estate or trust that wouldn’t have been incurred if the property were not held in the estate or trust.” On the other hand, a direct mention of fiduciary fees and tax return preparation fees would be helpful.

⁴⁵ In fact, the only reference to § 67(e) regulations is on page 1 of the instructions directing the tax return preparer to the full text of the regulations located on the IRS website.

5. Income Distribution Deduction

The income distribution deduction of an estate or trust (simple and complex) is computed on Schedule B, page 2, of Form 1041 and is entered on line 18 on page 1. The specifics of this deduction are discussed in Part I.D.

6. Personal Exemption

The de minimis personal exemptions of trusts and estates are unaffected by the Act.⁴⁶ More significantly, despite the suspension of the personal exemption for individuals, the Act did not suspend the personal exemption of a qualified disability trust, which is the same amount as the personal exemption for an unmarried individual prior to the suspension of the exemption by the Act.⁴⁷ Because a tax return preparer might not realize that the personal exemption for a qualified disability trust was not suspended, it is important that instructions clearly state the amount and the availability of the personal exemption to a qualified disability trust.

7. Deductibility of Unused Loss Carryovers and Excess Deductions by Beneficiaries on the Termination of an Estate or Trust

Upon the termination of an estate or trust, any unused loss carryovers (net operating loss and capital loss carryovers) are passed through to the beneficiaries who succeed to the property of the estate or trust.⁴⁸ Prior to enactment of the Act, upon the termination of the entity, excess nonbusiness deductions (other than the charitable deduction) were also passed through to the beneficiaries as miscellaneous itemized deductions. Since miscellaneous itemized deductions are no longer deductible, the beneficiaries of an estate or trust will lose a potentially valuable deduction the year the entity is terminated. Therefore, to avoid claiming miscellaneous itemized deductions post 2017, it is imperative that the instructions provide an adequate explanation of this change.

⁴⁶ The personal exemption for an estate is \$600, the personal exemption for a simple trust is \$300 (or any trust that in a given tax year distributes all of its income), and the personal exemption for a complex trust is \$100. None of these exemptions are indexed for inflation. I.R.C. § 642(b).

⁴⁷ I.R.C. § 642(b)(2)(C). For 2017, the exemption is \$4,150 and is indexed for inflation.

⁴⁸ I.R.C. § 642(h).

C. Schedule A – Charitable Deduction⁴⁹

The rules for the charitable deduction of an estate or complex trust are not the same as they are for individuals. In contrast to an individual taxpayer's charitable contribution deduction that is limited to percentages of adjusted gross income, an estate or complex trust's charitable deduction is unlimited.⁵⁰ In addition, whereas individuals are allowed a charitable deduction only for contributions made directly to charitable organizations, estates and complex trusts are also allowed a charitable deduction for contributions made for charitable purposes.⁵¹ Another difference is that estates and some complex trusts are allowed a charitable deduction for amounts permanently set aside for charitable purposes from gross income.⁵²

To qualify for a charitable deduction, the governing instrument (i.e., a will or trust document) must specifically authorize that the charitable contribution be made or set aside from gross income.⁵³ If an estate or trust has tax-exempt income, however, a portion of the charitable contribution is ratably apportioned to such income and is not deductible.

The computation of the charitable deduction of an estate or trust begins on line 1, Schedule A, with the entry of "amounts paid or permanently set aside for charitable purposes from gross income." That wording overstates the allowance of the deduction because not all trusts are entitled to that type of charitable contribution. Although the instructions do provide some explanation of the rules, they are more confusing than helpful.

⁴⁹ Neither a simple trust nor a pooled income fund completes Schedule A.

⁵⁰ Compare I.R.C. § 642(c)(1) (allowing a charitable deduction for a charitable purpose as well as a deduction for a charitable contribution to certain entities) with I.R.C. § 170(b) (percentage limitations for charitable deduction with respect to individuals).

⁵¹ Compare § 642(c)(1) (unlimited charitable deduction for trust and estate) with § 170(c) (limiting the charitable deduction to contributions to certain enumerated types of entities).

⁵² A qualified revocable trust is entitled to this deduction if (a) the trustee and the executor of the grantor's estate made a § 645 election, in which case the trust is taxed as if it was part of the estate; and (b) the trust document specifically authorized that amounts be set aside for charitable purposes from gross income. Other complex trusts eligible for the set aside charitable deduction are those created on or before October 9, 1969, which provided an irrevocable remainder interest to a charitable organization. However, it is unlikely that many such trusts currently exist. I.R.C. § 642(c)(2). Also, a pooled income fund is allowed a charitable deduction for amounts of gross income attributable to long-term capital gains permanently set aside for a charitable purpose. I.R.C. § 642(c)(3).

⁵³ I.R.C. § 642(c).

Line 1 of Schedule A is a curious entry because the charitable deduction for amounts “paid or permanently set aside” from gross income encompasses any type of gross income, including capital gains. In the instructions, the amount of capital gain entered on line 1 is limited to “any capital gains that are attributable to income”⁵⁴ By implication and as verified by the entry on line 4 of the Schedule, capital gains attributable to principal or corpus (included on line 4) are not included on line 1. The separation of capital gains based on whether they originate from income or principal appears unnecessary because the deduction applies to all capital gains regardless of their source. Even though the entry of capital gain in two separate line items makes no difference in the ultimate computation of the charitable deduction, it adds a needless step in tax return preparation.

The allocation of tax-exempt income to charitable contributions is entered on line 2 of Schedule A and the portion of tax-exempt income allocated to the charitable contribution is not deductible. To extract the nondeductible amount, the line 2 entry is subtracted from the line 1 entry and the result is entered on line 3.⁵⁵ The line 4 entry is “capital gains for the tax year allocable to corpus and paid or permanently set aside for charitable purposes,” and the sum of the amounts on lines 3 and 4 is entered on line 5.

The last entry in the charitable deduction computation is on line 6 and is the amount of the § 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. Pursuant to § 1202, 100 percent of capital gain from the sale or exchange of small business stock is excluded from gross income. To prevent an unintended double tax benefit (i.e., a charitable deduction for an amount excluded from gross income), the otherwise allowable charitable deduction is reduced by the amount of the excluded § 1202 gain. The difference entered on line 7, Schedule A, and on line 13 of page 1 is the estate or trust’s charitable deduction.

For the timing of the deduction, if a charitable contribution is paid after the close of the tax year and on or before the last day of the tax year following the close of such tax year, the executor or trustee can elect to claim the charitable deduction in such prior tax year as if it was made in that year.⁵⁶ For example, if a trust makes a charitable contribution in 2018, the trustee can elect any time prior

⁵⁴ Instructions for Form 1041 (2017) at 28. The reference to “income” means that capital gain (usually retained by the trust and not distributed to income beneficiaries) is distributable to income beneficiaries. Capital gain allocable to “principal” or “corpus” refers to capital gain retained in the trust.

⁵⁵ The instructions adequately explain the formula for the allocation that is also set forth in Regulation §§ 1.642(c)-3b, 1.643(a)-5(b), 1.661(b)-2.

⁵⁶ I.R.C. § 642(c) (last two sentences).

to December 31, 2018, to claim the charitable deduction on its 2017 Form 1041. Although the instructions explain the rules regarding this election, there is no indication on line 13 of page 1 or on Schedule A of its availability.

D. *Schedule B - Income Distribution Deduction*

The income distribution deduction computed on Schedule B prevents the double taxation of income distributed to beneficiaries. In other words, to the extent beneficiaries include distributions in their gross incomes, the estate or trust claims a deduction for the same amount. This assures that a trust or estate is taxable only on the income it retains. On Form 1041, the income distribution deduction computed on line 15, Schedule B, is entered on line 18 of page 1 following the line 17 entry, “adjusted taxable income.”

Although the rules for computing the income distribution deduction of a simple trust and an estate/complex trust are vastly different,⁵⁷ both deductions are computed on Schedule B. In fact, the computation of the income distribution deduction of an estate/complex trust is far more involved than the income distribution deduction of a simple trust. The instructions are less than clear in assisting a tax return preparer to make the appropriate entries in the different computations of the income distribution deduction.

1. Simple Trust

For a simple trust, the income distribution deduction is the lesser of the trust’s fiduciary accounting income (FAI) (often referred to as “trust accounting income”)⁵⁸ or distributable net income (DNI),⁵⁹ after reducing each by tax-exempt income.⁶⁰

⁵⁷ Distributions to charities are treated as deductible charitable contributions rather than deductible beneficiary income distributions (charitable contributions cannot be considered as deductible beneficiary distributions). I.R.C. § 663(a)(2). Therefore, taxable charitable trusts, such as charitable lead trusts and charitable income trusts that only make charitable distributions, are not entitled to an income distribution deduction until the year of termination in which the remainder is distributed to a noncharitable beneficiary.

⁵⁸ Generally, FAI is income *derived* from principal. Treas. Reg. § 1.643(b)-1. For example, interest, dividends, and rental income are derived from bonds, stock, and real property, respectively. Conversely, principal income is income triggered by the conversion of one form of principal into another form of principal, such as capital gain from the sale or exchange of securities, in which case, securities (one form of principal) are replaced by money (another form of principal). *Id.*

⁵⁹ Broadly speaking, DNI is the amount of income a trust could potentially distribute to its beneficiaries. Treas. Reg. § 1.643(a)-0. With some exceptions,

In the computation of the DNI of a simple trust, only lines 1, 2, 3, and 6 of Schedule B are applicable as follows:

Line 1: Adjusted total income (from line 17, page 1), which is the taxable income of the trust not including the income distribution deduction and the personal exemption; plus

Line 2: Adjusted tax-exempt interest (including exempt-interest dividends), minus direct and indirect expenses allocable to tax-exempt interest;⁶¹ plus

Line 3: Total net gain from Schedule D (Form 1041),⁶² i.e., capital gain treated as FAI;⁶³ minus

Line 6: All capital gain reported by the trust as a negative number (from line 4, page 1).⁶⁴

Line 7: DNI, combine lines 1 through 6.

The FAI of a simple trust (i.e., the amount required to be distributed currently) is entered on line 9 of Schedule B. The next step is to compare DNI with FAI after reducing both on line 13 and line 14, respectively, by tax-exempt income. The lesser of those two amounts is entered on line 15, Schedule B, and on line 18, page 1, as the simple trust's income distribution deduction.

2. Estate or Complex Trust

The income distribution deduction of an estate or complex trust is also computed on Schedule B. Unlike a simple trust that makes only current FAI distributions to beneficiaries, an estate or a complex trust can also make discretionary distributions of FAI and

DNI does not include capital gain because it is considered principal income rather than FAI (*see supra* note 54) and is thus not distributed to beneficiaries.

⁶⁰ Because tax-exempt income is nontaxable whether it is distributed to beneficiaries or is retained by the trust, it must not be part of the income distribution deduction. Otherwise, a deduction for income never taxed would result in an unwarranted double tax benefit.

⁶¹ I.R.C. § 643(a)(5).

⁶² Schedule D (1041) is the estate and trust equivalent of Schedule D (1040) on which the trust's capital gains and losses are reported.

⁶³ The governing instrument of a trust or local fiduciary law may designate certain capital gains as included in FAI. This means such capital gain income is distributable to a simple trust beneficiary. For this reason, any amount of capital gain so designated as FAI is included on line 3.

⁶⁴ A simple trust's capital gain (reported on line 4, page 1, of Form 1041) not distributed to a beneficiary is taxable to the trust. Therefore, in the computation of DNI, capital gains are excluded. I.R.C. § 643(a)(3). Accordingly, the amount of capital gain distributed to a beneficiary (line 3, Schedule B) is netted against the trust's total capital gain (line 6, Schedule B). The difference, if positive, is the amount of capital gain retained by the trust, and thus excluded from DNI. Treas. Reg. § 1.643(a)-3(b).

principal. Therefore, the income distribution deduction of an estate/complex trust is the lesser of total distributions or DNI. In comparing total distributions to DNI, both are reduced by any tax-exempt income.⁶⁵ In the computation of the DNI of an estate/complex trust on Schedule B, all six line items are applicable.

Line 1: Adjusted total income (from line 17, page 1), which is the taxable income of the estate/trust not including the income distribution deduction and the personal exemption; plus

Line 2: Adjusted tax-exempt interest (including exempt-interest dividends), minus direct and indirect expenses allocable to tax-exempt interest; plus

Line 3: Total net gain from Schedule D (Form 1041), i.e., capital gain treated as FAI; plus

Line 4: The net capital gain from Schedule A, line 4, less any allocable section 1202 exclusion;⁶⁶ plus

Line 5: The capital gains included on Schedule A, line 1,⁶⁷ minus

Line 6: All capital gains reported by the trust as a negative number (line 4, page 1).⁶⁸

Line 7: DNI, combine lines 1 through 6.

DNI is compared to the total amount of beneficiary distributions on line 11 (the sum of lines 9 and 10).⁶⁹ Distributions from a complex

⁶⁵ Because tax-exempt income is never taxed, whether it is distributed to beneficiaries or retained by the trust, it must not be part of the income distribution deduction. Otherwise, a deduction for income never taxed would result in an unwarranted double deduction.

⁶⁶ In computing the DNI of a complex trust/estate, in addition to the exclusion of capital gain treated as FAI, capital gain paid or set aside for charitable purposes is also excluded. I.R.C. § 643(a)(3). Since Schedule A, line 4, includes capital gain (allocated to corpus/principal) paid or permanently set aside for charitable purposes, the amount of such capital gain, less the § 1202 capital gain excluded from gross income, is entered on line 4, Schedule B.

⁶⁷ Like the entry of capital gain on Schedule B, line 4, capital gain allocated to income paid or permanently set aside for charitable purposes (as entered on Schedule A, line 1) is entered on Schedule B, line 5.

⁶⁸ In the computation of DNI of a complex trust or estate, the amount of capital gain distributed to a beneficiary (line 3, Schedule B), plus the amount of capital gain paid or set aside for charitable purposes (the sum of lines 4 and 5, Schedule B), is netted against the trust's total capital gain (line 6, Schedule B). The difference, if positive, is the amount of capital gain retained by the trust, and, thus, excluded from DNI.

⁶⁹ On Schedule B, line 8, there is an entry for the FAI of a complex trust (including the distributed and undistributed FAI). Although the instructions do not indicate the purpose for this entry, there are several ways in which indicating the purpose would help. For example, the depreciation deduction (*see supra* text

trust are either a current Tier 1 distribution⁷⁰ (line 9) or a Tier 2 distribution⁷¹ (line 10).

A necessary sub-step in the computation of the income distribution deduction of an estate/complex trust is determining what a Tier 2 distribution is, as well as the amount of the distribution (if the distribution is of property rather than money, other than a specific bequest or gift of property⁷²), both of which are subject to special rules. The application of these rules determines the amount deemed to be distributed as well as the possible mandatory or elective recognition of gain. Although, intuitively, the amount of a distribution of property should be its fair market value, that is not always the rule. If the distribution of property is made at the convenience of the fiduciary (i.e., property is more readily available for distribution than money), the amount of the distribution is the lesser of the property's fair market value or the entity's basis in the property.⁷³ If the distribution is of appreciated property to satisfy the estate or trust's obligation to make a monetary distribution to the beneficiary, the estate or trust will recognize gain in the amount of the excess of the fair market value of the property over the entity's basis in the property.⁷⁴ In that instance, the amount of the distribution is the fair market value of the property.⁷⁵

Although the instructions lay out these rules, they do not address how the distribution of appreciated property to satisfy a monetary obligation to the beneficiary triggers gain.⁷⁶ Significantly, the executor or trustee can make a § 643(e)(3) election to recognize gain when the fiduciary makes a discretionary distribution of appreciated property.⁷⁷ In making a cursory reference to the availability of a § 643(e)(3) election, the instructions fail to explain

accompanying notes 31-33) is allocated between the trust and the beneficiaries in the same proportion as the FAI is retained by the trust and distributed to the beneficiaries. As another example, qualified dividends are also apportioned between the trust and the beneficiaries. Instructions for Form 1041 (2017) at 20.

⁷⁰ A Tier 1 distribution is any amount of FAI required to be distributed each year (including amount required to be distributed out of FAI or principal to the extent such amount is actually paid out of FAI in a given year). I.R.C. § 661(a)(1).

⁷¹ A Tier 2 distribution is any other amount (i.e., not a Tier 1 distribution) distributed to a beneficiary. I.R.C. § 661(a)(2).

⁷² See *infra* text accompanying notes 79-83.

⁷³ I.R.C. § 643(e)(2).

⁷⁴ Assuming the gain is capital, it is reported on Schedule D (1041) and on line 4, page 1, Form 1041.

⁷⁵ I.R.C. § 643(e)(2).

⁷⁶ Instructions for Form 1041 (2017) at 29.

⁷⁷ If the election is made, the amount of the distribution is the fair market value of the distributed property.

how the election is made. Instead, with no cross reference, that information is set forth five pages later in the instructions.⁷⁸ Even though a fiduciary would likely weigh the tax advantages and disadvantages in deciding whether to make the election (and it is not the role of the IRS to provide tax advice), instructions providing more context for the nuances of the election would be helpful.

As another issue, not all distributions of money or property to beneficiaries are Tier 2 distributions. A specific bequest or gift of identifiable property, or a sum of money⁷⁹ to a legatee or beneficiary (as set forth in a will or trust document), is treated as a tax-free bequest or gift made directly to the legatee or beneficiary.⁸⁰ Therefore, it is not entered on Schedule B because it is not a Tier 2 distribution.⁸¹ Although the form itself is silent with respect to this rule, the instructions for lines 9 and 10, Schedule B, do mention the rule with minimal details (i.e., not sufficient to fully understand its application).⁸² Many pages later, however, in a section dealing with Schedule K-1s issued to beneficiaries, the instructions do provide more context to the rule.⁸³

Once total distributions (Tier 1 and Tier 2) are determined, the next step is to compare DNI with total distributions. In making the comparison, on line 13 and line 14, respectively, total distributions and DNI are reduced by tax-exempt income included in each amount. The lesser of those two amounts is entered on line 15, Schedule B, and line 18, page 1, as the estate/complex trust's income distribution deduction.

3. Separate Share Rule – Estates and Complex Trusts

The separate share rule applies to estates and complex trusts if, per the terms of the governing instrument, the estate or trust principal is divided into separate and independent shares for multiple beneficiaries. Distributions to a beneficiary are made exclusively from his or her separate share. The income distribution deduction of the estate or trust is the sum of the income

⁷⁸ Instructions for Form 1041 (2017) at 34. Question 7 of Other Information and accompanying instructions states: "To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here. See instructions." The instructions simply direct the tax return preparer to check an appropriate box on Schedule D (Form 1041) to make the election.

⁷⁹ By the terms of the will or trust document, a specific bequest or gift of a sum of money must be payable in no more than three installments. I.R.C. § 663(a)(1).

⁸⁰ *Id.*

⁸¹ I.R.C. §§ 102(a), 663(a)(1). This means such distributions are not factored into the income distribution deduction.

⁸² Instructions for Form 1041 (2017) at 29.

⁸³ *Id.* at 37.

distribution deductions attributable to the multiple beneficiaries. Although the instructions describe the rule and direct the tax return preparer to figure the DNI allocable to each beneficiary on a separate sheet attached to the return (presumably to determine the income distribution deduction attributable to each beneficiary), no numeric illustrations are provided. Instead, the tax return preparer is referred to § 663(c) and related regulations.⁸⁴ Given the complexity of the separate share rule, providing a numeric illustration of the computation in the instructions would further assist tax return preparers.

E. *Schedule G - Tax Computation*

On Schedule G, there are line item entries for a variety of tax credits and taxes that could be imposed upon a trust or estate. Conspicuous by its absence is a line item for the tax imposed on the S portion of an ESBT. The overall taxation of an ESBT is bifurcated, with the non-S portion of trust income, deductions, and credits computed in the same manner as for a complex trust, and the S portion of trust income computed separately.⁸⁵

The two separately computed taxes are reported as follows: The tax on the non-S portion of the trust is entered on line 1, Schedule G. The instructions direct the tax return preparer to manually write in the ESBT tax on the S portion of the trust to the left of line 7 (Total tax), preceded by, “Sec. 641(c).”⁸⁶ That amount is included in the overall estate or trust tax on line 7. Given the separate listings of several different taxes on Schedule G, the manual entry of the S portion of the ESBT tax instead of a separate line item is curious.

F. *Other Information*

Other Information, the last section of Form 1041, is comprised of 10 “yes or no” questions. Information and instructions should be situated on the form and in the instructions to correspond with the line items to which they relate. Of the ten questions, six relate to line item computations in previous sections of the form where the information was relevant. Consequently, a tax return preparer who completed the return only to discover relevant instructions and guidance in this section may be compelled to redo one or more computations. Even worse, due to their placement at

⁸⁴ *Id.* at 29.

⁸⁵ I.R.C. § 641(c)(2), *See supra* text accompanying notes 13-17.

⁸⁶ Instructions for Form 1041 (2017) at 14.

the end of the return, they could easily be completely overlooked, resulting in an inaccurately prepared return.

Question 1 relates to tax-exempt income received by an estate or trust to which direct and indirect expenses are allocated for purposes of disallowance.⁸⁷ Since this computation is completed at the beginning of the return preparation, placing this question at this part of the return is questionable. Instead, a tax-exempt income line item (not on the current Form 1041) and the words “see instructions” following certain deduction line items should appear on page 1 of the form. With those entries, the tax return preparer would be prompted to perform the allocation described above.

Question 2 addresses the assignment of income issue (e.g., a grantor assigns his or her rights to salary, wages, and/or other compensation to the trust). Since assignments of income are ineffective, it is a grantor trust type issue because such income is taxed to the grantor. Therefore, this issue should be highlighted on page 1 of the return when a tax return preparer determines whether a trust is a wholly or partially owned grantor trust.

Questions 3 and 4 involve estates or trusts with financial interests in foreign countries. Based on the response to these questions, the entity may be required to file FinCEN Form 114 or Form 3520.⁸⁸ Since these matters relate to separate filings extraneous to tax return preparation, they are legitimate questions to include in the section for Other Information.

Question 5 deals with the special rules concerning the deductibility of qualified residence interest with respect to seller-provided financing. The general rules for qualified residence interest are well covered in the interest deduction section of the instructions.⁸⁹ To the extent the requested information is relevant to the entity’s interest deduction, it should be addressed in that section of the instructions.

Questions 6 and 7 relate to the § 663(b) election (the 65-day rule) and the § 643(e)(3) election (to report gain on a discretionary distribution of appreciated property to a beneficiary), respectively. Both questions are relevant to the income distribution deduction of an estate/complex trust (Schedule B). Therefore, the information pertinent to those elections should be referenced on Schedule B and in the accompanying instructions.

⁸⁷ See *supra* text accompanying notes 26-30.

⁸⁸ FinCen Form 114 (previously Form TD F 90-22.1) is a foreign bank account report filed separately (not with the income tax return) with the Financial Crimes Enforcement Network (FinCEN). Form 3520 (also filed separately) is the Annual Return to Report Transactions with Foreign Trusts and the Receipt of Foreign Gifts.

⁸⁹ Instructions for Form 1041 (2017) at 22.

Question 8 involves an estate that has been open for more than two years. The question instructs the tax return preparer to check a box and explain the reason for the delay in closing the estate. Because there are no Question 8 instructions, a tax return preparer not well-versed in Subchapter J issues would not know the reason for the request.⁹⁰ In any event, this request would be better placed in Section A, below the entry of a decedent's estate with a box to be checked for an estate that has been in existence for more than two years. Accompanying instructions would explain the possible tax ramifications of such a prolonged existence.

Question 9 (asking whether any beneficiary of a trust is a skip person) and Question 10 (asking whether a trust is a specified domestic entity required to file Form 8938⁹¹) are both questions superfluous to the preparation of the return. Therefore, they are appropriate questions to include in the section for Other Information.

II. ENTITY-SPECIFIC FORMS 1041

Based on the forensic analysis and critique of Form 1041, various line items and schedules should be revised and incorporated, as applicable, into the entity-specific Forms 1041 described in the following subparts. In addition to those revisions, the entity-specific Forms 1041 are streamlined to include only line items relevant to the specific entity. If the IRS adopted these forms (or a version of them), the forms would be supplemented with specifically tailored, user-friendly instructions to foster time-efficient, accurate tax return preparation. Drafts of each entity-specific Form 1041 are included as Appendices A, B, C, and D.

⁹⁰ Although the instructions are silent on this point, there are several possible reasons for the request. First, it may relate to an S corporation eligibility issue (i.e., an estate is an eligible S corporation shareholder and maintains that status as long as it is in existence). I.R.C. § 1361(b)(1)(B). On the other hand, a trust that does not qualify as an eligible S corporation shareholder may hold S corporation stock for no more than two years. IRC §§ 1361(c)(2)(A)(ii), 1361(c)(2)(A)(iii). If an estate remains in existence beyond the point that all duties incident to the administration have been completed, the IRS may assert that its status as an estate should not be respected, in which case the estate would be treated as a testamentary trust and would invalidate the S corporation election. *Old Va. Brick Co. v. Comm'r*, 367 F.2d 276 (4th Cir. 1966).

⁹¹ Form 8938 is a Statement of Foreign Financial Assets with respect to which a trust would have an interest.

A. *Form 1041-ST (Simple Trust)*

1. Applicability

Form 1041-ST would be the entity specific form for simple trusts and simple trusts treated as partial grantor trusts. A simple trust is the most basic fiduciary entity because its main function is to make annual distributions of its FAI to its beneficiaries.⁹² After deducting the distribution to the beneficiaries, the taxable income of a simple trust is the amount of its non-FAI income (such as capital gain). Since simple trusts are not permitted to make charitable contributions,⁹³ the Form 1041-ST would not include a charitable deduction line item or Schedule A (Charitable Deduction). Schedule B (Income Distribution Deduction) would include only line items necessary to compute the income distribution deduction of a simple trust. “Yes or no” questions relevant to the computational sections of the form included in the Other Information section of Form 1041 would be integrated in those sections, as appropriate. The questions remaining in Other Information would deal with extraneous matters, such as the disclosure of foreign financial holdings of the trust.

If a simple trust is treated as a partial grantor trust, the nongrantor income, deductions, and credits will be reported on Form 1041-ST. The grantor’s share of income, deductions, and credits reported on his or her Form 1040 will be in accordance with the other filing requirements of partial grantor trusts.⁹⁴

A qualified Subchapter S trust (QSST), which is required to distribute all its FAI currently to a single beneficiary, is an example of a simple trust treated as a partial grantor trust. Subject to certain requirements,⁹⁵ a QSST is a permissible owner of S corporation stock.⁹⁶ Because the beneficiary is treated as the owner of the S corporation portion of the trust, the trust is treated as a partial

⁹² Treas. Reg. § 1.651(a)-1. Distributions of principal are allowed only to the extent necessary to satisfy the trust’s obligation to make a current FAI distribution (i.e., the trust lacks the necessary funds).

⁹³ I.R.C. § 651(a).

⁹⁴ See *supra* notes 23-24 and accompanying text.

⁹⁵ The trust can have only one income beneficiary during the lifetime of the current beneficiary, although there can be multiple beneficiaries provided each beneficiary has a separate and independent share in the trust. In addition, distributions of principal during the current beneficiary’s lifetime can be made only to that beneficiary; the current income beneficiary’s income interest must terminate at the earlier of the current income beneficiary’s death or the termination of the trust; and, if the trust terminates during the current beneficiary’s lifetime, the trust assets must be distributed to that beneficiary. Treas. Reg. § 1.1361-1(j)(1).

⁹⁶ I.R.C. § 1361(d).

grantor trust.⁹⁷ Therefore, the trust's share of S corporation income and deductions flow through to the beneficiary and are reported on his or her Form 1040. The income, deductions, and credits not attributable to the grantor (in this instance the beneficiary) are reported on Form 1041-ST with an attached statement of the beneficiary's portion of income, deductions, and credits (as reported on the Schedule K-1 issued by the S corporation).⁹⁸

2. Overview of Form 1041-ST

In this overview of Form 1041-ST, pertinent line items and schedules are discussed in detail. For greater context, refer to Form 1041-ST, included as Appendix A.

Page 1: Basic Information

Section A

Since Form 1041-ST is exclusively for simple trusts, the only box to check in Section A is for a simple trust treated as a partial grantor trust. The instructions will explain the dual filing requirements of a partial grantor trust (including the grantor's optional methods for reporting his or her share of the income) and make clear that a partial grantor trust is not a stand-alone entity.

No Section E

Section E (Nonexempt charitable and split-interest trusts) on the current Form 1041 will not appear on Form 1041-ST.

Page 1: Income, Lines 1-10

Line 1b: Tax-exempt interest and exempt-interest dividends

Although tax-exempt income is not taxable, it warrants its own line item, line 1b, on page 1, Form 1041-ST. Its presence at the beginning of the form will facilitate the tax return preparer in making the required allocation of direct and indirect expenses to such income. The amount of the otherwise deductible direct and

⁹⁷ I.R.C. § 678(a).

⁹⁸ A QSST cannot use any of the optional alternative methods of filing available to grantor trusts. Instructions for Form 1041 (2017) at 13. *See supra* notes 23-24 and accompanying text for a discussion of the alternative methods of filing with respect to grantor trusts.

indirect expenses as reduced by the nondeductible portion will be entered on the appropriate deduction line items of the form.

Line 2b: Qualified dividends

On the current Form 1041, ordinary dividends (a type of FAI) and qualified dividends are entered on line 2a and line 2b, respectively. This is because a trust or an estate that does not distribute all its FAI to beneficiaries enters qualified dividends distributed to the beneficiaries on line 2b(1) and qualified dividends retained by the trust or estate on line 2b(2). Since a simple trust distributes all its FAI (including qualified dividends) to the beneficiaries, on Form 1041-ST, qualified dividends will be entered on line 2b as a single amount.

Lines 3, 5, and 6: Income/Loss; Schedule C, Schedule E and Schedule F - Depreciation Deduction

The trust's income and loss from Schedules C, E, and F (Form 1040), are entered on lines 3, 5, and 6 of Form 1041, respectively. The depreciation deduction claimed on those schedules is apportioned between the trust and the beneficiaries. Although the instructions for Form 1041 explain the apportionment formula, neither the schedules nor their respective instructions mention it. The new form will include Schedule C (Form 1041), Schedule E (Form 1041), and Schedule F (Form 1041) to replace the Form 1040 versions of those schedules.⁹⁹ On lines Xa and Xb of each form, the trust's and beneficiaries' respective amounts of the apportioned depreciation deduction will be entered.¹⁰⁰ The line Xa amount will be integrated into the appropriate schedules in computing the trust's income/loss, and the Xb amount will be entered on the beneficiaries' Schedules K-1 as a separately stated item to be claimed on their individual income tax returns.

Line 10: Simple trust treated as partial grantor trust

Line 10 will state: "if partial grantor trust, attach statement, see instructions." The instructions will explain the dual reporting requirements of partial grantor trusts, as well as the tax

⁹⁹ The article does not provide drafts of such schedules.

¹⁰⁰ This line item will specifically exclude a § 179 deduction not allowed for a trust or estate. I.R.C. § 179(d)(4).

ramifications of a grantor's assignment of income to the trust, if applicable.

Page 1: Deductions, Lines 11- 20

No line item for charitable deduction

Since simple trusts cannot claim charitable deductions, there is no need for a line item.

Line 11: Interest

Depending on the amount and the type of interest, the interest deduction is subject to different rules. The particulars of these rules will be explained in the instructions.¹⁰¹

Lines 11 (Interest), 13 (Fiduciary fees), 14 (Attorney and accountant fees), Line 15 (Return preparer fees) and 16a (Other deductions not misc. itemized deductions) - Potential Indirect Expenses Allocable to Tax-exempt Income

In conjunction with the 1b line item for tax-exempt interest and the required allocation of direct and apportioned indirect expenses to such income, each deduction line item of a potentially indirect expense will include: "if entry on line 1b, see instructions." The amount of the respective expenses allocated to tax-exempt interest will be subtracted from the otherwise deductible amounts with the difference entered on the appropriate line items. The instructions will provide examples of other types of indirect expenses, as well as guidance in the preparation of the allocation including a numeric illustration.

Lines 14 (Attorney and accountant fees (portion misc. itemized deductions, see instructions)), Line 15 (Return preparer fees) – Miscellaneous Itemized Deductions

On Form 1041, line 14, attorney and accountant fees (grouped with "return preparer fees") are the only specific deductions that could potentially be characterized as miscellaneous

¹⁰¹ For example, investment interest (attributable to indebtedness with respect to investment property) is deductible only to the extent of net investment income. I.R.C. § 163(d). Qualified residence interest is interest paid by an estate or trust with respect to indebtedness secured by the residence of a beneficiary. The amount of the interest deduction is limited. I.R.C. § 163(h)(3).

itemized deductions. Moreover, that deduction line item as it appears on the form also includes return preparer fees that are above-the-line deductions. On Form 1041-ST, attorney and accountant fees will be entered on line 14, directing the tax return preparer to see the instructions for a concise explanation of miscellaneous itemized deduction rules. Below that entry, fully deductible return preparer fees, which are not miscellaneous itemized deductions, will be entered on line 15.

Line 16a: Other deductions not misc. itemized deductions (attach schedule)

On line 16a, other deductions for the production of income that meet the § 67(e)(1) definition of above-the-line deductions will be entered. For example, similar to attorney and accountant fees, certain investment advisory fees attributable to an unusual investment objective or the need for a specialized balancing of interests of various parties (e.g., beneficiaries) may qualify as above-the-line deductions.¹⁰²

Line 22: Taxable income

Prior to the Act, the excess nonbusiness deductions in the final year of a trust passed through to its beneficiaries as a miscellaneous itemized deduction. Since the Act suspended the deductibility of miscellaneous itemized deductions, excess nonbusiness deductions are no longer deductible by beneficiaries. The accompanying instructions will inform the tax return preparer of this change.

Page 2: No Schedule A, Charitable Deduction

Consistent with not having an entry for charitable deductions on page 1 of Form 1041-ST, there is no need for a Schedule A as is included in the current Form 1041.

Page 2: Schedule B, Income Distribution Deduction

Schedule B will include only those line items necessary to compute the income distribution deduction of a simple trust.¹⁰³

¹⁰² Treas. Reg. § 1.67-4(b)(4).

¹⁰³ See *supra* text accompanying notes 58-64 (discussion regarding the income distribution deduction of a simple trust for details on how the deduction will be computed on Form 1041-ST).

Page 2: Other Information

The Form 1041-ST version of “Other Information” will include only those questions on the current Form 1041 that are both extraneous to the preparation of the return and relevant to a simple trust.

B. *Form 1041-EST/NCCT (Estates and Noncharitable Complex Trusts)*

1. Applicability

Estates and noncharitable complex trusts are included in this entity-specific version of Form 1041 because, with some exceptions, the taxation of such entities is subject to the same rules. Although taxable charitable trusts are also complex trusts, the rules applicable to complex trusts differ significantly from rules that apply to charitable trusts enough to warrant their own version of Form 1041 (Form 1041-TCT) discussed in Part II.C.

a. *Decedent's Estate*

Upon the death of a decedent, an estate is created to be administered by an executor or administrator. An estate is an entity of limited duration from which the decedent's debts are paid and the decedent's property is distributed by will or intestacy to legatees or heirs. If an estate remains in existence for more than two years, its continued recognition as an estate may be challenged by the IRS. If the IRS prevails, the estate is characterized as a testamentary trust with potentially adverse tax consequences.

b. *Noncharitable Complex Trust*

A complex trust is more versatile than a simple trust because it can make charitable contributions,¹⁰⁴ accumulate or distribute FAI annually, make discretionary distributions of FAI or principal, and/or any combination of the above.¹⁰⁵ Essentially, any trust other than a simple trust is a complex trust. Some noncharitable complex trusts, such as a qualified disability trust or an ESBT, are subject to special rules. For this reason, they will appear on Section A, not as separate boxes to check, but instead under noncharitable complex trusts to alert the tax return preparer that special rules apply.

¹⁰⁴ Treas. Reg. §1.661(a)-1.

¹⁰⁵ I.R.C. § 661(a).

c. *Qualified Disability Trust*

A qualified disability trust is a complex trust established for a disabled individual under the age of 65.¹⁰⁶ The only difference in the taxation of a conventional complex trust and a qualified disability trust is the exemption amount. Although the Act suspended the personal exemption for individuals, the special personal exemption for a qualified disability trust remains as it was under prior law, i.e., the personal exemption for an unmarried individual with no dependents (subject to phaseout at the applicable adjusted gross income threshold amount).¹⁰⁷

d. *ESBT*

Another complex trust subject to special rules is an ESBT. Listed under noncharitable complex trust, the instructions will explain the special filing rules that apply to such trusts.¹⁰⁸

e. *Noncharitable Complex Trust Treated as Partial Grantor Trust*

If a noncharitable complex trust is treated as a partial grantor trust, the grantor's share of income, deductions, and credits on his or her Form 1040 are reported in accordance with the other filing requirements of partial grantor trusts.¹⁰⁹ A QSST with complex trust provisions would meet the requirements of a QSST provided the trustee currently distributes all its FAI to the income beneficiary even if the terms of the trust did not require such distributions.¹¹⁰

2. Overview of Form 1041-EST/NCCT

The following discussion is limited to line items unique to Form 1041-EST/NCCT and does not repeat line items that appear on both Form 1041-ST and Form 1041-EST/NCCT. For greater

¹⁰⁶ See 42 U.S.C. § 1396p(c).

¹⁰⁷ I.R.C. § 642(b)(2)(C)(i), 642(b)(2)(iii)(I). In 2018, the personal exemption of a qualified disability trust is \$4,150 to be adjusted by inflation in each subsequent tax year. I.R.C. § 642(b)(2)(C)(iii)(II).

¹⁰⁸ See *supra* notes 13-17 and accompanying text for detailed discussion of special filing rules for ESBTs.

¹⁰⁹ See *supra* note 23-24 and accompanying text.

¹¹⁰ Treas. Reg. § 1.1361-1(j)(1)(i); Rev. Rul. 92-20, 1992-1 CB 301. For a more detailed discussion of QSSTs, see *supra* notes 95-98 and accompanying text.

context, refer to Form 1041-EST/NCCT in Appendix B in conjunction with the following discussion.

Page 1: Basic Information

Section A

Section A, page 1, of Form 1041-EST/NCCT, “Check appropriate boxes,” will include “Decedent’s estate,” “Complex trust,” and “Complex trust treated as partial grantor trust.” Underneath the box for decedent’s estate will read: “If estate is open for more than two years, see instructions.” The instructions will request that an explanation for the delay in closing the estate be attached to the return and provide guidance with respect to possible ramifications of an estate with a prolonged existence. Below the box for complex trust will read: “Including Qualified disability trust (see instructions); ESBT (S portion) (see instructions).” The word “including” makes it clear that the latter two trusts are complex trusts. The instructions will provide an explanation of the special rules applicable to those trusts.

No Section E

Since taxable charitable trusts will not file Form 1041-EST/NCCT, Section E (Nonexempt charitable and split-interest trusts) of the current Form 1041 will not be included.

Page 1: Income, Lines 1-10

Lines 2b(1) and 2b(2): Qualified dividends

Complex trusts and estates do not necessarily distribute all their FAI currently to beneficiaries. In some instances, a complex trust may distribute a portion of FAI to beneficiaries and retain a portion of FAI in trust. Typically, qualified dividends are allocated between a complex trust and beneficiaries in proportion to the amount of FAI distributed to the beneficiaries and the amount retained by the trust. The allocation of qualified dividends between beneficiaries and the trust¹¹¹ (lines 2b(1) and (2)) on the current Form 1041) will appear the same way on Form 1041-EST/NCCT.

¹¹¹ During its limited existence, an estate may generate qualified dividend income. If an estate makes a taxable income distribution to a beneficiary, an allocation of qualified dividends between the estate and the beneficiary may be required.

Page 1: Deductions, Lines 11- 21

Line 14: Charitable deduction

Unlike a simple trust, estates and complex trusts are entitled to claim charitable deductions. The amount of the entity's charitable deduction as computed on Schedule A will be entered on line 14. Also, line 14 will include: "(if contribution in later year deducted on this return, see instructions)." The instructions will explain how the fiduciary makes this type of election.

Page 2: Schedule A, Charitable Deduction

Line 1: Amounts paid for charitable purposes from gross income

On line 1 of Schedule A, amounts paid by estates and trusts allowed as a charitable deduction will be entered.

Line 2: Amounts set aside by estates and some trusts for charitable purposes from gross income (see instructions)

On line 2 of Schedule A, amounts set aside for charitable purposes from gross income, which is allowed as a charitable deduction for estates but only certain trusts, will be entered. The instructions will identify which trusts are entitled to claim the deduction.

Page 2: Schedule B, Income Tax Distribution

For greater clarity, in addition to the line items necessary to compute the income distribution deduction, notations on Schedule B will alert the tax return preparer of significant issues related to distributions.

Caption: Trust or estate with beneficiaries having separate shares, see instructions

To inform a tax return preparer of the separate share rule, following "Schedule B Income Distribution Deduction," the caption line of the schedule will read: "trust or estate with multiple beneficiaries having separate shares, see instructions." The instructions will provide an explanation of the rule, including guidance in the computation of the distribution deduction of each beneficiary for purposes of determining the amount of the estate or

trust's overall distribution deduction, as well as the amount of each beneficiary's distribution potentially includible in his or her gross income.

Line 10: Other amounts paid, credited, or otherwise required to be distributed

65-day Rule. By election, an estate or trust can treat a Tier 2 distribution made within 65 days of the close of the tax year as if it were a distribution made on the last day of such year. The availability of this election provides an executor or trustee with the flexibility to engage in post-tax year planning. To alert a tax return preparer of the election, the following will appear after, "Other amounts paid, credited or otherwise required to be distributed": "(if made within 65 days of the close of the tax year, see instructions)." The instructions will explain how the fiduciary makes this election.

Specific Bequests or Gifts. Specific bequests or gifts in the form of money or property are not treated as Tier 2 distributions. Therefore, line 10 will also state: "(if a specific bequest or gift, see instructions)." The instructions will explain the rule and inform the tax return preparer not to include the specific bequest or gift on Schedule B as a Tier 2 distribution.

Distributions of Property. Distributions of property (other than a specific bequest or gift) to beneficiaries are subject to special rules with respect to the amount deemed to be distributed and the possible mandatory or elective recognition of gain. Accordingly, line 10 will also state: "(if distribution of property, see instructions)." The instructions will explain these rules in appropriate detail.

Page 2: Schedule G, Tax Computation

Line 6: Tax on ESBT (S portion only), attach statement, see instructions

In the manner of any complex trust, the non-S portion of an ESBT (income, deductions, and credits) is computed on the current Form 1041. On Form 1041-EST/NCCT, the resulting tax will be entered on line 1a, Schedule G. The separately computed tax on the S portion of income, deduction, and credits will be entered on line 6, Schedule G.

Page 2: Other Information

The Form 1041-EST/NCCT version of “Other Information” will include only those questions on Form 1041 that are both extraneous to the preparation of the return and relevant to estates and noncharitable complex trusts.

C. *Form 1041-TCT (Taxable Charitable Trusts)*

1. Applicability

Charitable trusts are another area of income taxation of trusts and estates that can be confusing. This is because some charitable trusts are taxable and some are tax-exempt;¹¹² some are grantor trusts and some are not; some file Forms 1041 and some do not. Yet, all charitable trusts file Form 5227 (Split-Interest Trust Information Return).

A taxable charitable trust (with the exception of a pooled income fund) does not make distributions to noncharitable beneficiaries until the termination of the trust. Instead, all distributions are made to charities and claimed as charitable deductions. Therefore, until and only in the year of distribution would such a charitable trust complete Schedule B.

a. *Charitable Lead Trust*

There are two types of charitable lead trusts: a charitable lead annuity trust (CLAT) and a charitable lead unitrust (CLUT). A CLAT makes annual distributions of a fixed dollar amount to charities. A CLUT makes annual distributions of a fixed percentage of the value of trust principal (as re-determined each year) to charities. Both types of trusts are subject to tax on their undistributed net income. At the end of the term of either charitable lead trust, the remainder reverts to the grantor or is distributed to other noncharitable beneficiaries.

b. *Charitable Income Trust*

A charitable income trust (sometimes referred to as a nonqualifying, nongrantor charitable lead trust) distributes all its FAI annually to charity. During its term, it is taxable only on the capital gain income it retains. Like a charitable lead trust, at the end

¹¹² Charitable remainder trusts (defined in § 664) are not taxable charitable trusts. Distributions are taxable to noncharitable beneficiaries pursuant to § 664.

of the trust term, the remainder reverts to the grantor or is distributed to other noncharitable beneficiaries.

c. *Pooled Income Fund*

A pooled income fund is a trust created, maintained, and administered by a public charity. Typically, multiple donors contribute money or property to the trust in exchange for a lifetime income interest retained by the donor or other named beneficiary. Those funds are invested in taxable securities¹¹³ with the annual amount of FAI distributed to each donor based on such donor's proportionate share of "units of participation."¹¹⁴ Like a charitable income trust, a pooled income fund is taxable only on the capital gain income it retains. In addition, a pooled income fund is entitled to a charitable deduction for amounts of long-term capital gain set aside for charitable purposes as well as an income distribution deduction for amounts distributed to its noncharitable beneficiaries.

d. *Charitable Lead Trust Treated as Partial Grantor Trust*

Of the taxable charitable trusts, only a charitable lead trust could be a partial grantor trust. Like simple trusts and noncharitable complex trusts, the nongrantor portion of income, deductions, and credits will be reported on Form 1041-TCT. In turn, the grantor reports income, deduction, and credits of the grantor's interest in the trust on Form 1040, attaching a statement of his or her reported income, deduction, and credits to Form 1041-TCT.¹¹⁵

2. Overview of Form 1041-TCT

The following discussion is limited to line items unique to Form 1041-TCT. Therefore, previously discussed line items applicable to Form 1041-ST, Form 1041-EST/NCCT, and Form 1041-TCT are not discussed here.¹¹⁶ For greater context, refer to

¹¹³ A pooled income fund is not permitted to invest in tax-exempt securities. I.R.C. § 642(c)(5)(C).

¹¹⁴ The formula for computing units of participation is set forth in Regulation § 1.642(c)-5(c)(1).

¹¹⁵ If a donor/grantor retains an income interest in a pooled income fund, it is like a partial grantor trust. Subject to special rules, the end result is the same because the donor/grantor is taxable on his or her share of the pooled income fund income.

¹¹⁶ Similar to a noncharitable complex trust, a charitable lead trust that distributes a fixed dollar amount or fixed percentage of the value of trust principal each year does not distribute all its FAI. Because FAI includes

Form-TCT, Appendix C, in conjunction with the following discussion.

Page 1: Basic Information

Section A

Section A, page 1, of Form 1041-TCT will state: “Check appropriate boxes.” The boxes to check will include “Charitable lead trust,” “Charitable income trust,” “Pooled income fund,” and “Charitable lead trust treated as a partial grantor trust.”

Section E

Since 1041-TCT is the entity-specific fiduciary income tax return for charitable trusts, Section E (Nonexempt charitable and split-interest trusts) of the current Form 1041 will also be included on Form 1041-TCT.

Page 1: Deductions, Lines 11-20

Line 14: Charitable deduction

Unlike other taxable charitable trusts, the charitable deduction of a pooled income trust is limited to amounts of long-term capital gain set aside for charitable purposes. Because a pooled income fund is not permitted to invest in tax-exempt securities, it is not required to complete Schedule A. Accordingly, “(if pooled income fund, see instructions)” will be added in line 14, following “Charitable deduction.” The instructions will direct the tax return preparer to attach a statement of the computation of its charitable deduction entered on line 14.

Line 19: Income distribution deduction

Since charitable lead trusts and charitable income trusts make distributions solely to charities, they would not claim an income distribution deduction. In such a trust’s last year, however, distributions to noncharitable beneficiaries are subject to the normal distribution rules of a complex trust. Therefore, Schedule B is completed only in the year of termination of such trusts.

qualified dividends, similar to Form 1041-EST/NCCT, the portion of such qualified dividends distributed to the beneficiar(ies) will be entered on line 2b(1) (beneficiary share) and the portion retained by the charitable lead trust will be entered on line 2b(2).

On the other hand, similar to a simple trust, a pooled income fund makes yearly distributions of FAI to noncharitable beneficiaries and would thus be entitled to an income distribution deduction. In lieu of completing Schedule B of the current Form 1041, a pooled income fund attaches a statement on which it computes the income distribution deduction and enters the amount on line 18, page 1, Form 1041.¹¹⁷ In completing Form 1041-TCT, a pooled income fund will have the option of attaching a statement as it does currently or completing Schedule B.¹¹⁸

Page 2: Schedule A, Charitable Deduction

Caption Line: “Don’t complete for a pooled income fund”

A pooled income fund is not permitted to invest in tax-exempt securities. Therefore, it is not required to complete Schedule A. Following the Schedule A caption and “Charitable Deduction,” the top of page 2 will state: “Don’t complete for a pooled income fund.”

Line 1: Amounts paid for charitable purposes from gross income

Only estates and some trusts, not including taxable charitable trusts, are allowed a charitable deduction for amounts set aside for a charitable purpose. To avoid confusion, the line 1 entry will be limited to amounts paid for charitable purposes.

Page 2: Schedule B, Income Distribution Deduction

Caption Line: “Pooled income fund complete Sch. B or attach statement. Other trusts don’t complete until year of termination.”

Since charitable lead trusts and charitable income trusts only make distributions to charities, such trusts are not entitled to claim the income distribution deduction except in the year of termination. In that year, the remainder is distributed to the noncharitable beneficiaries and thus the distribution is subject to the complex trust distributions rules. Like a simple trust, a pooled income fund distributes all its FAI annually and is therefore entitled to an annual income distribution deduction. Accordingly, on the top of Schedule

¹¹⁷ Instructions for Form 1041 (2017) at 25.

¹¹⁸ See *supra* text accompanying notes 113-114.

B, following the caption “Income Distribution Deduction” will be the following statement: “Pooled income fund complete Sch. B or attach statement. Other trusts do not complete until year of termination.”

Line 2: Adjusted tax-exempt interest

Following “adjusted tax-exempt interest” will be: “if pooled income fund, enter -0-.”

Line 4: Enter amount of Schedule A, line 5 (minus any allocable section 1202 exclusion)

The end of line 4 will state: “if pooled income fund, enter -0-.”

Line 5: Capital gains from the tax year included on Schedule A, lines 1 and 2

The end of line 4 will state: “if pooled income fund, enter -0-.”

Line 8: Enter accounting income for the tax year as determined under the governing instrument and applicable local law

On the current Form 1041 and proposed Form 1041-EST/NCCT, immediately before the word “enter” are the words: “If a complex trust.” Since all charitable trusts are complex trusts, these words are superfluous and thus will not be included in line 8.

Page 2: Schedule G, Tax Computation

Schedule G of Form 1041-TCT is the same as Schedule G of Form 1041-EST/NCCT, with the exclusion of “Tax on ESBT” from the former schedule.

Page 2: Other Information

The Form 1041-TCT version of “Other Information” will include only those questions on the current Form 1041 that are both extraneous to the preparation of the return and relevant to taxable charitable trusts.

D. *Form 1041-BE (Bankruptcy Estate)*

1. Applicability

Upon the filing by a debtor of either a chapter 7 or chapter 11 petition, a bankruptcy estate is created. For income tax purposes, a bankruptcy estate is treated as a separate entity. Why bankruptcy estates file Forms 1041 is unclear because they are not subject to Subchapter J rules. Instead, bankruptcy estates are taxed in the same way as a married individual filing separately. In fact, their income, deduction, credits, and tax are computed on a Form 1040 attached to Form 1041. The bankruptcy estate's tax and payments (including credits) are entered on the appropriate line items in the Tax and Payments section of the form. No other computational section of the form is applicable.

2. Overview of Form 1041-BE

For greater context, refer to Form 1041-BE, Appendix D, in conjunction with the following discussion. Since very little of the current Form 1041 is applicable to bankruptcy estates, the discussion is limited to those sections relevant to Form 1041-BE.

Page 1: Basic Information

Section A of Form 1041-BE will include two boxes to check, i.e., “Bankruptcy estate—Ch. 7” and “Bankruptcy estate—Ch. 11.” Sections B, E, F, and G as they appear on the current Form 1041 are clearly inapplicable to bankruptcy estates and, thus, will not appear on Form 1041-BE.

Page 1: Tax and Payments, the sole “computational” section of Form 1041-BE

“Computational” appears in quotations because the actual computation of the taxable income and tax of a bankruptcy estate is on Form 1040, rather than Form 1041. Using a Form 1040, the taxable income is computed in the same way as a married individual filing separately with a basic standard deduction.¹¹⁹ The Instructions for Form 1041 advise the preparer to “[u]se Form 1041 only as a

¹¹⁹ Prior to enactment of the Act, a bankruptcy estate was required to file a Form 1041 if its taxable income exceeded the sum of the personal exemption and the standard deduction for a married individual filing jointly. Since the Act suspends the personal exemption, a bankruptcy estate with taxable income in excess of the standard deduction (\$12,000) is required to file a return. *See* I.R.C. § 6012(f), added by Pub. L. No. 115-97, § 11041(e), 131 Stat. 2054 (2017).

transmittal for Form 1040. In the top margin of Form 1040 write ‘Attachment to Form 1041. DO NOT DETACH.’”¹²⁰ Form 1041-BE would be a one-page return with a single section titled “Tax and Payments.”

CONCLUSION

The Act is Congress’ most recent attempt to simplify our tax system. However, to achieve comprehensive simplification, tax returns, the life blood of voluntary compliance, must also be simplified. On all levels, Form 1041 is overly complex and cumbersome because (1) multiple entities subject to different tax rules use the form; (2) line items and the corresponding instructions are not consistently sequential; (3) relevant guidance is not easily accessible by tax return preparers as it is often scattered illogically throughout the instructions; and (4) the information provided in the instructions is often lacking, incomplete, and misleading.

To engage in meaningful tax return reform, this article advocates that the IRS scrap the “one size fits all” Form 1041 and replace it with four entity-specific forms. With so many rules and nuances of income taxation of estates and trusts indiscriminately scattered through pages of instructions, these entity specific forms will streamline tax return preparation because the line items and accompanying instructions will singularly focus on each entity. In addition to enhancing more efficient tax preparation, the entity specific Forms 1041 will also provide a valuable educational resource for tax preparers, fiduciaries, and others seeking a better understanding of a very complex area of tax law. Finally, the entity specific Forms 1041 can also serve as a model for simplification of any number of other IRS tax forms.

¹²⁰ Instructions for Form 1041 (2017) at 22.

APPENDIX A: FORM 1041 ST NOT AN OFFICIAL FORM DO NOT FILE

Form

1041
ST

Department of the Treasury—Internal Revenue Service

U.S. Income Tax Return for Simple Trusts

201_

A Check if applicable <input type="checkbox"/> Simple trust treated as partial grantor trust	For calendar year 201_ or fiscal year beginning _____, 201_, and ending _____, 20__	
Name of trust Name and title of fiduciary Number, street, and room or suite no. (If a P.O. box, see the instructions.) City or town, state or province, country, and ZIP or foreign postal code	C Employer identification number _____ D Date entity created _____	

B Number of Schedules K-1 attached (see instructions) ▶	F Check applicable boxes: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return <input type="checkbox"/> Amended return <input type="checkbox"/> Net operating loss carryback <input type="checkbox"/> Change in trust's name <input type="checkbox"/> Change in fiduciary <input type="checkbox"/> Change in fiduciary's name <input type="checkbox"/> Change in fiduciary's address
G Check here if the estate or filing trust made a section 645 election. <input type="checkbox"/> Trust TIN ▶	

Income	1	Interest income	1		
	b	Tax-exempt interest and exempt interest dividends	1b		
	2a	Total ordinary dividends	2a		
	b	Qualified dividends	2b		
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1041)	3		
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4		
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1041)	5		
	6	Farm income or (loss). Attach Schedule F (Form 1041)	6		
	7	Ordinary gain or (loss). Attach Form 4797	7		
	8	Other income. List type and amount	8		
9	Total income. Combine lines 1, 2a, and 3 through 8	9			
10	If a partial grantor trust, attach statement, see instructions				
Deduction	11	Interest. Check if Form 4952 is attached ▶ (if entry on line 1b, see instructions).	11		
	12	Taxes	12		
	13	Fiduciary fees (if entry on line 1b, see instructions)	13		
	14	Attorney and accountant fees (if entry on line 1b or portion misc. itemized deduction, see instructions).	14		
	15	Return preparer fees (if entry on line 1b, see instructions)	15		
	16a	Other deductions not misc itemized deductions (attach schedule) (if entry on line 1b, see instructions)	16a		
	b	Net operating loss deduction. See instructions	16b		
	17	Add lines 11 through 16b	17		
	18	Adjusted total income or (loss). Subtract line 17 from line 9 18	18		
	19	Income distribution deduction (from Schedule B, line 10). Attach Schedules K-1 (Form 1041)	19		
	20	Estate tax deduction including certain generation-skipping taxes (attach computation)	20		
	21	Exemption	21		
22	Add lines 19 through 21	22			
Tax and Payments	23	Taxable income. Subtract line 22 from line 18. If a loss, see instructions	23		
	24	Total tax (from Schedule G, line 7)	24		
	25a	Payments: a 201_ estimated tax payments and amount applied from 201_ return	25a		
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	25b		
	c	Subtract line 25b from line 25a	25c		
	d	Tax paid with Form 7004. See instructions	25d		
	e	Federal income tax withheld. If any is from Form(s) 1099, check <input type="checkbox"/>	25e		
	25h	Other payments: fForm 2439; gForm 4136; Total ▶	25h		
	26	Total payments. Add lines 25c through 25e, and 25h	26		
	27	Estimated tax penalty. See instructions	27		
28	Tax due. If line 27 is smaller than the total of lines 25 and 28, enter amount owed	28			
29	Overpayment. If line 26 is larger than the total of lines 24 and 27, enter amount overpaid	29			
30	Amount of line 29 to be: a Credited to 201_ estimated tax ; b Refunded	30			

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
	Signature of fiduciary or officer representing fiduciary _____	Date _____	EIN of fiduciary if a financial institution _____

May the IRS discuss this return with the preparer shown below (see instr.)? <input type="checkbox"/> Yes <input type="checkbox"/> No
--

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name	Firm's EIN			
	Firm's address	Phone no.			

APPENDIX A: FORM 1041 ST NOT AN OFFICIAL FORM DO NOT FILE

Schedule B Income Distribution Deduction

1	Adjusted total income. See instructions	1	
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	5	
6	Income required to be distributed currently	6	
7	Enter the amount of tax-exempt income included on line 6	7	
8	Tentative income distribution deduction. Subtract line 7 from line 6	8	
9	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	9	
10	Income distribution deduction. Enter the smaller of line 8 or line 9 here and on page 1, line 19	10	

Schedule C Tax Computation (see instructions)

1	Tax: a Tax on taxable income. See instructions	1a			
	b Tax on lump-sum distributions. Attach Form 4972	1b			
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c			
	d Total. Add lines 1a through 1c ▶			1d	
2a	Foreign tax credit. Attach Form 1116	2a			
b	General business credit. Attach Form 3800	2b			
c	Credit for prior year minimum tax. Attach Form 8801	2c			
d	Bond credits. Attach Form 8912	2d			
e	Total credits. Add lines 2a through 2d ▶			2e	
3	Subtract line 2e from line 1d. If zero or less, enter -0-	3			
4	Net investment income tax from Form 8960, line 21	4			
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611	5			
6	Household employment taxes. Attach Schedule H (Form 1040)	6			
7	Total tax. Add lines 3 through 6. Enter here and on page 1, line 24 ▶	7			

Other Information

	Yes	No
1 At any time during calendar year 201_ did the trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country ▶ _____		
2 During the tax year, did the trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the trust may have to file Form 3520. See instructions.		
3 Are any present or future trust beneficiaries skip persons? See instructions.		
4 Was the trust a specified domestic entity required to file Form 8938 for the tax year (see instructions for Form 8938)?		

APPENDIX B: FORM 1041 EST/NCCT NOT AN OFFICIAL FORM DO NOT FILE

Form **1041** U.S. Income Tax Return for Estates and Non-Charitable Complex Trusts **201_**
 Department of the Treasury—Internal Revenue Service
EST/NCCT

A Check all that apply:

Decedent's estate
 If estate open for more than 2 years, check box, see instructions
 Complex trust
 Including
 Qualifying disability trust ESBT (S portion), see instructions
 Complex trust treated as partial grantor trust

For calendar year 20__ or fiscal year beginning __, 20__, and ending __, 20__

Name of estate or trust _____ **C Employer identification number** _____

Name and title of fiduciary _____ **D Date entity created** _____

Number, street, and room or suite no. (If a P.O. box, see the instructions.) _____

City or town, state or province, country, and ZIP or foreign postal code _____

B Number of Schedules K-1 attached (see instructions) * _____

F Check applicable boxes: Initial return Final return Amended return Net operating loss carryback
 Change in trust's name Change in fiduciary Change in fiduciary's name Change in fiduciary's address

G Check here if the estate or filing trust made a section 645 election Trust TIN

Income	1 Interest income	1		
	b Tax-exempt interest and exempt-interest dividends	1b		
	2a Total ordinary dividends	2a		
	b Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust			
	3 Business income or (loss). Attach Schedule C or C-EZ (Form 1041)	3		
	4 Capital gain or (loss). Attach Schedule D (Form 1041)	4		
	5 Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1041)	5		
	6 Farm income or (loss). Attach Schedule F (Form 1041)	6		
	7 Ordinary gain or (loss). Attach Form 4797	7		
	8 Other income. List type and amount	8		
9 Total income. Combine lines 1, 2a, and 3 through 8	9			
10 If partial grantor trust, attach statement, see instructions				
Deductions	11 Interest. Check if Form 4952 is attached (if entry on line 1b, see instructions)	11		
	12 Taxes	12		
	13 Fiduciary fees (if entry on line 1b, see instructions)	13		
	14 Charitable deduction (from Sch A, line 8) (if contribution in later year deducted on this return, see instructions)	14		
	15 Attorney and accountant fees (if entry on line 1b or portion misc. itemized deduction, see instructions)	15		
	16 Return preparer fees (if entry on line 1b, see instructions)	16		
	17a Other deductions not misc. itemized deductions (attach statement) (if entry on line 1b, see instructions)	17a		
	b Net operating loss deduction. See instructions	17b		
	18 Add lines 11 through 17b	18		
	19 Adjusted total income or (loss). Subtract line 18 from line 9	19		
	20 Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	20		
	21 Estate tax deduction including certain generation-skipping taxes (attach computation)	21		
	22 Exemption (if qualified disability trust, see instructions)	22		
23 Add lines 20 through 22	23			
Tax and Payments	24 Taxable income. Subtract line 23 from line 19. If a loss, see instructions	24		
	25 Total tax (from Schedule G, line 8)	25		
	26 Payments: a 201_ estimated tax payments and amount applied from 201_ return	26a		
	b Estimated tax payments allocated to beneficiaries (from Form 1041-T)	26b		
	c Subtract line 26b from line 26a	26c		
	d Tax paid with Form 7004. See instructions <input type="checkbox"/>	26d		
	e Federal income tax withheld. If any is from Form(s) 1099, check <input type="checkbox"/>	26e		
	Other payments: f Form 2439 _____; g Form 4136 _____; Total	26h		
	27 Total payments. Add lines 26c through 26e, and 26h	27		
	28 Estimated tax penalty. See instructions	28		
29 Tax due. If line 27 is smaller than the total of lines 25 and 28, enter amount owed	29			
30 Overpayment. If line 27 is larger than the total of lines 25 and 28, enter amount overpaid	30			
31 Amount of line 30 to be: a Credited to 201_ estimated tax; b Refunded	31			

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of fiduciary or officer representing fiduciary _____ Date _____ EIN of fiduciary if a financial institution _____

May the IRS discuss this return with the preparer shown below? (see instr.) Yes No

Paid Preparer Print/Type preparer's name _____ Preparer's signature _____ Date _____ Check if self-employed PTIN _____

Firm's name _____ Firm's EIN _____

APPENDIX B: FORM 1041 EST/NCCT NOT AN OFFICIAL FORM DO NOT FILE

Schedule A Charitable Deduction.				
1	Amounts paid for charitable purposes from gross income. See instructions	1		
2	Amounts set aside by estates and some trusts for charitable purposes from gross income. See instructions	2		
3	Tax-exempt income allocable to charitable contributions. See instructions.	3		
4	Subtract line 3 from the sum of lines 1 and 2	4		
5	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	5		
6	Add lines 4 and 5	6		
7	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. See instructions	7		
8	Charitable deduction. Subtract line 7 from line 6. Enter here and on page 1, line 14	8		

Schedule B Income Distribution Deduction (trust or estate with multiple beneficiaries with separate shares, see instructions)				
1	Adjusted total income. See instructions	1		
2	Adjusted tax-exempt interest	2		
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3		
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4		
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	5		
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6		
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7		
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8		
9	Income required to be distributed currently	9		
10	Other amounts paid, credited, or otherwise required to be distributed (if made within 65 days of close of tax year, see instructions)(if a specific bequest or gift, see instructions) (if distribution of property, see instructions)	10		
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11		
12	Enter the amount of tax-exempt income included on line 11	12		
13	Tentative income distribution deduction. Subtract line 12 from line 11	13		
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14		
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 20	15		

Schedule C Tax Computation (see instructions)				
1	Tax: a Tax on taxable income. See instructions	1a		
	b Tax on lump-sum distributions. Attach Form 4972	1b		
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c		
	d Total. Add lines 1a through 1c	1d		
2a	Foreign tax credit. Attach Form 1116	2a		
b	General business credit. Attach Form 3800	2b		
c	Credit for prior year minimum tax. Attach Form 8801	2c		
d	Bond credits. Attach Form 8912	2d		
e	Total credits. Add lines 2a through 2d	2e		
3	Subtract line 2e from line 1d. If zero or less, enter -0-	3		
4	Net investment income tax from Form 8960, line 21	4		
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611	5		
6	Tax on ESBT (S portion only) attach statement, see instructions	6		
7	Household employment taxes. Attach Schedule H (Form 1040)	7		
8	Total tax. Add lines 3 through 7. Enter here and on page 1, line 25	8		

Other Information		Yes	No
1	At any time during calendar year 201_, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country		
2	During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions		
3	Are any present or future trust beneficiaries skip persons? See instructions		
4	Was the trust a specified domestic entity required to file Form 8938 for the tax year (see the instructions for Form 8938)?		

APPENDIX C: FORM 1041 TCT NOT AN OFFICIAL FORM DO NOT FILE

Form **1041**
TCT

Department of the Treasury—Internal Revenue Service

U.S. Tax Income Return for Taxable Charitable Trusts

201_

A Check all that apply:	For calendar year 201_ or fiscal year beginning _____, 201_, and ending _____, 20__	
<input type="checkbox"/> Charitable lead trust	Name of trust	C Employer identification number
<input type="checkbox"/> Charitable income trust	Name and title of fiduciary	D Date entity created
<input type="checkbox"/> Pooled income fund	Number, street, and room or suite no. (If a P.O. box, see the instructions.)	E Nonexempt charitable and split-interest trusts, check applicable box(es), see instructions. <input type="checkbox"/> Described in sec. 4947(a)(1). Check here if not a private foundation . . . <input type="checkbox"/> <input type="checkbox"/> Described in sec. 4947(a)(2)
<input type="checkbox"/> Charitable lead trust treated as partial grantor trust	City or town, state or province, country, and ZIP or foreign postal code	
B Number of Schedules K-1 attached (see instructions) *	F Check applicable boxes:	<input type="checkbox"/> Net operating loss carryback
	<input type="checkbox"/> Initial return <input type="checkbox"/> Final return <input type="checkbox"/> Amended return	<input type="checkbox"/> Change in fiduciary's address
	<input type="checkbox"/> Change in trust's name <input type="checkbox"/> Change in fiduciary	<input type="checkbox"/> Change in fiduciary's name
G Check here if the estate or filing trust made a section 645 election <input type="checkbox"/>	<input type="checkbox"/> Trust TIN ▶	

Income	1	Interest income	1		
		b	Tax-exempt interest and exempt-interest dividends	1b	
		2a	Total ordinary dividends	2a	
		b	Qualified dividends allocable to: (1) Beneficiaries (2) Trust		
		3	Business income or (loss). Attach Schedule C or C-EZ (Form 1041)	3	
		4	Capital gain or (loss). Attach Schedule D (Form 1041)	4	
		5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1041)	5	
		6	Farm income or (loss). Attach Schedule F (Form 1041)	6	
		7	Ordinary gain or (loss). Attach Form 4797	7	
		8	Other income. List type and amount	8	
	9	Total income. Combine lines 1, 2a and 3 through 8	9		
	10	If partial grantor trust, attach statement, see instructions			
Deductions	11	Interest. Check if Form 4952 is attached ▶ (if entry on line 1b, see instructions)	11		
	12	Taxes	12		
	13	Fiduciary fees (if entry on line 1b, see instructions)	13		
	14	Charitable deduction (from Schedule A, line 7) (if contribution in later year deducted on this return, see instructions) (if pooled income fund, attach statement, see instructions)	14		
	15	Attorney and accountant fees (if entry on line 1b or portion misc. itemized deduction, see instructions)	15		
	16	Return preparer fees (if entry on line 1b, see instructions)	16		
	17a	Other deductions not misc itemized deduction (attach statement) if entry on line 1b, see instructions)	17a		
	b	Net operating loss deduction. See instructions	17b		
	18	Add lines 11 through 17b ▶	18		
	19	Adjusted total income or (loss). Subtract line 18 from line 9 19	19		
	20	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	20		
	21	Estate tax deduction including certain generation-skipping taxes (attach computation)	21		
	22	Exemption	22		
23	Add lines 20 through 22 ▶	23			
Tax and Payments	24	Taxable income. Subtract line 23 from line 19. If a loss, see instructions	24		
	25	Total tax (from Schedule G, line 7)	25		
	26	Payments: a 201_ estimated tax payments and amount applied from 201_ return	26a		
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	26b		
	c	Subtract line 26b from line 26a	26c		
	d	Tax paid with Form 7004. See instructions	26d		
	e	Federal income tax withheld. If any is from Form(s) 1099, check ▶	26e		
		Other payments: fForm 2439; gForm 4136; Total ▶	26h		
	27	Total payments. Add lines 26c through 26e, and 26h ▶	27		
	28	Estimated tax penalty. See instructions	28		
29	Tax due. If line 27 is smaller than the total of lines 25 and 28, enter amount owed	29			
30	Overpayment. If line 27 is larger than the total of lines 25 and 28, enter amount overpaid	30			
31	Amount of line 30 to be: a Credited to 201_ estimated tax ▶ ; b Refunded ▶	31			

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
	Signature of fiduciary or officer representing fiduciary	Date	EIN of fiduciary if a financial institution
	May the IRS discuss this return with the preparer shown below (see instr.)? <input type="checkbox"/> Yes <input type="checkbox"/> No		
	Firm's name ▶	Firm's EIN ▶	Text
	Firm's address ▶	Phone no.	

APPENDIX C: FORM 1041 TCT NOT AN OFFICIAL FORM DO NOT FILE

Schedule A Charitable Deduction. Don't complete for a pooled income fund.				
1	Amounts paid or permanently set aside for charitable purposes from gross income. See instructions	1		
2	Tax-exempt income allocable to charitable contributions. See instructions	2		
3	Subtract line 2 from line 1	3		
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4		
5	Add lines 3 and 4	5		
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. See instructions	6		
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 14	7		

Schedule B Income Distribution Deduction (Pooled income fund complete Schedule B or attach statement. Other trusts don't complete until year of termination)

1	Adjusted total income. See instructions	1		
2	Adjusted tax-exempt interest (if pooled income fund, enter -0-)	2		
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3		
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion) (if pooled income fund, enter -0-)	4		
5	Capital gains for the tax year included on Schedule A, line 1. See instructions (if pooled income fund, enter -0-)	5		
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6		
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7		
8	Enter accounting income for the tax year as determined under the governing instrument and applicable local law	8		
9	Income required to be distributed currently	9		
10	Other amounts paid, credited, or otherwise required to be distributed	10		
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11		
12	Enter the amount of tax-exempt income included on line 11	12		
13	Tentative income distribution deduction. Subtract line 12 from line 11	13		
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14		
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18, if pooled income fund attaching statement, enter income distribution deduction here and on page 1, line 18	15		

Schedule G Tax Computation (see instructions)				
1	Tax: a Tax on taxable income. See instructions	1a		
	b Tax on lump-sum distributions. Attach Form 4972	1b		
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c		
	d Total. Add lines 1a through 1c	1d		
2a	Foreign tax credit. Attach Form 1116	2a		
b	General business credit. Attach Form 3800	2b		
c	Credit for prior year minimum tax. Attach Form 8801	2c		
d	Bond credits. Attach Form 8912	2d		
e	Total credits. Add lines 2a through 2d	2e		
3	Subtract line 2e from line 1d. If zero or less, enter -0-	3		
4	Net investment income tax from Form 8960, line 21	4		
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611	5		
6	Household employment taxes. Attach Schedule H (Form 1040)	6		
7	Total tax. Add lines 3 through 6. Enter here and on page 1, line 23	7		

Other Information			
		Yes	No
1	At any time during calendar year 201_ did the trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country		
2	During the tax year, did the trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions		
3	Are any present or future trust beneficiaries skip persons? See instructions		
4	Was the trust a specified domestic entity required to file Form 8938 for the tax year (see the Instructions for Form 8938)?		

APPENDIX D: FORM 1041 BE NOT AN OFFICIAL FORM DO NOT FILE

Form **1041**
BE

Department of the Treasury—Internal Revenue Service

U.S. Income Tax Return for Bankruptcy Estates

201_

A Check one <input type="checkbox"/> Bankruptcy estate - ch 7 <input type="checkbox"/> Bankruptcy estate - ch 11	For calendar year 201_ or fiscal year beginning _____, 201-, and ending _____, 20____	
	Name of bankruptcy estate _____ Name and title of fiduciary _____ Number, street, and room or suite no. (If a P.O. box, see the instructions.) _____ City or town, state or province, country, and ZIP or foreign postal code _____	C Employer identification number _____ D Date entity created _____

ATTACH FORM 1040 TO THIS FORM (SEE INSTRUCTIONS)

Tax and payments	1 Taxable income. (from line __, Form 1040)	1		
	2 Total tax (from line __, Form 1040)	2		
	3 Payments: (from line __, Form 1040)	3		
	4 Tax due. if line 3 is smaller than the amount on line 2, enter amount owed	4		
	5 Overpayment. If line 3 is larger than amount on line 2, enter the amount overpaid	5		
	6 Amount of line 28 to be: a Credited to 201_ estimated tax ▶ _____ ; b Refunded ▶ _____	6		

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
	Signature of fiduciary or officer representing fiduciary _____	Date _____	EIN of fiduciary if a financial institution _____

May the IRS discuss this return with the preparer shown below (see instr.)? <input type="checkbox"/> Yes <input type="checkbox"/> No
--

Paid Preparer Use Only	Print/Type preparer's name _____	Preparer's signature _____	Date _____	Check <input type="checkbox"/> if self-employed	PTIN _____
	Firm's name ▶ _____	Firm's EIN ▶ _____			
	Firm's address ▶ _____	Phone no. _____			

Form **1041 BE**