

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DANA LATHAM,
Commissioner of Internal Revenue.

Approved January 8, 1959.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

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SECTION 642.—SPECIAL RULES FOR CREDITS AND DEDUCTIONS

26 CFR 1.642(c)-1: Charitable contributions deductions.

Rev. Rul. 59-15

Payments to charity, made by the executor of an estate out of estate income, which payments are attributable to that part of the estate transferred to charity, under the terms of a settlement agreement resulting from the contest of a will, are deductible by the estate as gifts of income to charity under section 642(c) of the Internal Revenue Code of 1954.

Revenue Ruling 55-122, C. B. 1955-1, 390, revoked.

In view of the decision in *Herbert L. Emanuelson Jr., Administrator of the Estate of William D. Fitch v. United States*, 159 Fed. Supp. 34, reconsideration has been given to Revenue Ruling 55-122, C. B. 1955-1, 390.

In Revenue Ruling 55-122 the decedent left two wills. The first will left a portion of the residue of the estate to specified charities, while the second will left the entire residue of the estate to non-charitable legatees. A controversy among the beneficiaries under the two wills was finally resolved by a written compromise which provided for a fractional share of the residue of the estate to pass to the charities named in the first will. Income was earned by the estate during the period the two wills were being contested and during the period immediately following the signing of the compromise agreement. The charities were paid their fractional share of the residue with its aliquot share of the net income earned by the estate during the above-mentioned period. Based upon the above facts, the Revenue Ruling holds that the estate is not allowed a deduction, under section 162(a) of the Internal Revenue Code of 1939 (now section 642(c) of the 1954 Code), which provides for the deduction by an estate of gifts of income to charities, under certain conditions, for any of the money which passed to the charities under the agreement. This follows from the conclusion that the settlement agreement merely provided that the residue of the estate should include net income and did not specifically provide for gifts of "income" to charity as required to satisfy the provisions of the above-cited section of the Internal Revenue Code.

However, in the *Emanuelson* case, under circumstances identical to those considered in Revenue Ruling 55-122, the court held that,

under the compromise agreement, the charities received a right to a portion of the residue which included a right to their pro rata share of the estate income. The court found that the estate administrator was compelled, under the terms of the compromise agreement, to pay to the charities their aliquot share of the estate's income, and therefore, such share was deductible by the estate as gifts of estate income to charity.

Accordingly, payments to charity, made by the executor of an estate out of estate income, which payments are attributable to that part of the estate transferred to charity, under the terms of a settlement agreement resulting from the contest of a will, are deductible by the estate as gifts of income to charity under section 642(c) of the Internal Revenue Code of 1954.

Revenue Ruling 55-122, C. B. 1955-1, 390, is revoked.

26 CFR 1.642(g)-1: Disallowance of double deductions; in general.

Deduction of administration expense attributable to tax-exempt income. See Rev. Rul. 59-32, page 245.

26 CFR 1.642(h)-2: Excess deductions on termination of an estate or trust. Rev. Rul. 59-100
(Also Sections 34, 116, 643, 651, 652; 1.34-1, 1.116-1, 1.643(a)-1, 1.651(a)-1, 1.652(b)-1.)

A beneficiary of a trust may not avail himself of the dividend received credit and the dividend exclusion provided in sections 34 and 116, respectively, of the Internal Revenue Code of 1954, where the trust in its last taxable year has excess deductions within the meaning of section 642(h) (2) of the Code.

Advice has been requested whether a beneficiary of a trust may avail himself of the dividend received credit and the dividend exclusion provided in sections 34 and 116, respectively, of the Internal Revenue Code of 1954, where the trust in its last taxable year has excess deductions within the meaning of section 642(h) (2) of the Code.

Section 642 of the Code, which provides special rules for credits and deductions allowed to a trust, at subsection (h) states, in part as follows:

If on the termination of an estate or trust, the estate or trust has—

* * * * *

(2) for the last taxable year of the estate or trust deductions * * * in excess of gross income for such year, then * * * such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary or his delegate, to the beneficiaries, succeeding to the property of the estate or trust.

Section 1.642(h)-2 of the Income Tax Regulations prescribes, in part, as follows:

* * * The deduction is allowed only in computing taxable income; it is not allowed in computing adjusted gross income. The deduction is allowable only in the taxable year of the beneficiary in which or with which the estate or trust terminates, whether the year of termination of the estate or trust is of normal duration or is a short taxable year * * *