

**CHAPTER 16. Subchapter III.**

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**§ 1631. Imposition of tax.**

The tax imposed by Chapter 11 of this title on individuals shall apply to the taxable income of estates and trusts.

*72 Del. Laws, c. 467, § 1.;*

**§ 1632. Computation and payment.**

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual pursuant to Chapter 11 of this title, except as otherwise provided by this subchapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

*72 Del. Laws, c. 467, § 1.;*

**§ 1633. Tax not applicable.**

The following persons shall not be subject to tax under Chapter 11 of this title:

(1) Associations taxable as corporations. -- An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes.

(2) Exempt associations, trusts and organizations. -- An association, trust or other unincorporated organization which by reason of its purpose or activities is exempt from tax on its income under the laws of the United States or this State.

(3) Real estate mortgage investment conduits. -- An entity that is a real estate mortgage investment conduit (as defined in § 860D of the Internal Revenue Code of 1986 [26 U.S.C. § 860D], as amended).

(4) Designated and qualified settlement funds. -- A trust that is a designated or qualified settlement fund (as defined in § 468B of the Internal Revenue Code of 1986 [26 U.S.C. § 468B], as amended, or Treas. Reg. § 1.468B-1 [26 C.F.R. § 1.468B-1]) shall be characterized as a trust for all purposes of this title and shall not be subject to tax under this chapter.

(5) Real estate investment trusts. -- An entity that is a real estate investment trust, as defined in § 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856), as amended.

(6) Pass-through entities. -- An association or other unincorporated organization that is a pass-through entity.

*72 Del. Laws, c. 467, § 1.;*

**§ 1634. Fiduciary adjustment.**

(a) Fiduciary adjustment defined. -- The fiduciary adjustment shall be the net amount of the modifications described in § 1106 of this title (including subsection (c) of § 1106 of this title if the estate or trust is a beneficiary of another estate or trust) which relate to items of income or deduction of an estate or trust.

(b) Shares of fiduciary adjustment. -- The respective shares of an estate or trust and its beneficiaries (including solely for the purpose of this allocation, nonresident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of the federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to the beneficiary's share of the estate or trust income for such year, under local law or the terms of the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such taxable year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

*72 Del. Laws, c. 467, § 1.;*

**§ 1635. Taxable income of resident estate or resident trust.**

(a) The taxable income of a resident estate or resident trust means its federal taxable income modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under § 1634 of this title.

(b) In the case of an electing small business trust as defined in § 1361(e) of the Internal Revenue Code [26 U.S.C. § 1361(e)] there shall be added to the amount calculated pursuant to subsection (a) of this section, to the extent not otherwise included in such amount, the taxable income of the portion of the trust consisting of S corporation stock that is treated as a separate trust pursuant to § 641(c) of the Internal Revenue Code [26 U.S.C. § 641(c)].

*72 Del. Laws, c. 467, § 1; 74 Del. Laws, c. 138, § 2.;*

**§ 1636. Nonresident beneficiary deduction for resident estates or resident trusts.**

(a) Allowance of deduction. -- A resident estate or resident trust shall be allowed a deduction against the taxable income otherwise computed under Chapter 11 of this title for any taxable year for the amount of its federal taxable income, as modified by § 1106 of this title which is, under the terms of the governing instrument, set aside for future distribution to nonresident beneficiaries.

(b) Rules of application. -- The following rules shall apply in determining

whether or to what extent income is set aside for future distribution to nonresident individual beneficiaries:

(1) If all or part of the federal taxable income of the estate or trust, as modified by § 1106 of this title, is distributable in future taxable years (whether or not added in the meantime to estate or trust corpus for estate or trust accounting purposes), to or for the benefit of a named individual beneficiary or beneficiaries, or a class of individual beneficiaries, and if on the last day of the taxable year of the estate or trust, 1 or more of such named individual beneficiaries, or 1 or more members of the first-named class of individual beneficiaries, is living, then the portion of the federal taxable income of the estate or trust, as modified by § 1106 of this title, considered set aside for future distribution to nonresident beneficiaries shall be computed:

a. In the case of a named individual beneficiary or beneficiaries, by first determining the share or shares of each such beneficiary as if the estate or trust had terminated on the last day of the taxable year and then determining the portion of such income realized by the estate or trust during the taxable year while the beneficiary was a nonresident of this State; and

b. In the case of the first-named class of beneficiaries, by first determining who the members of the class would be and the share of each such member if the estate or trust had terminated on the last day of the taxable year and then determining the portion of such income of each such share realized by the estate or trust while such member was a nonresident of this State.

(2) If all or part of the federal taxable income of the estate or trust, as modified by § 1106 of this title, is distributable in future taxable years (whether or not added in the meantime to estate or trust corpus for estate or trust accounting purposes) to or for the benefit of a named individual beneficiary or a class of individual beneficiaries, and if on the last day of the taxable year of the estate or trust no named individual beneficiary or none of the members of the first-named class of individual beneficiaries is then living, then the portion of the federal taxable income of the estate or trust, as modified by § 1106 of this title, considered as set aside for future distribution to nonresident beneficiaries, shall be determined in the manner provided in paragraph (b)(1) section, except that it will be presumed:

a. In the case of a named individual beneficiary or beneficiaries, that each such beneficiary was living and residing in the state where the putative parents resided during the taxable year; and

b. In the case of the first-named class of beneficiaries, that members of the class were living and residing with the person the relationship to whom determines or defines the membership in the class.

(3) For purposes of determining under paragraphs (b)(1) and (2) of this section the share of each beneficiary of an estate or trust in the federal taxable income, as modified by § 1106 of this title, the discretion in any person over the distribution of such income (whether or not acting in a fiduciary capacity and whether or not subject to a standard) shall be presumed not to have been exercised unless such discretion was irrevocably exercised as of the last day of the taxable year.

(4) For purposes of determining under paragraphs (b)(1) and (2) of this section when federal taxable income, as modified by § 1106 of this title, was realized, the following rules shall apply:

a. Interest income shall be considered realized when payable;

b. Dividend income shall be considered realized on the day the dividend is payable;

c. Gains and losses from the sale or exchange of property shall be considered realized or deductible, as the case may be, on the settlement date of the sale or the effective date of the exchange; and

d. Commissions on income or principal shall be deemed deductible on the date charged.

(5) The Director is authorized to establish more detailed rules to apply paragraphs (b)(1) through (4) of this section in any manner not inconsistent with the provisions of such paragraphs.

*72 Del. Laws, c. 467, § 1.;*

### **§ 1637. Credit for income tax of another state.**

A resident estate or resident trust shall be allowed the credit provided under § 1111 of this title for resident individuals, except that references in that section to resident individuals shall for purposes of this section be deemed to refer to a resident estate or resident trust.

*72 Del. Laws, c. 467, § 1.;*

### **§ 1638. Accumulation distribution credit for resident beneficiary of trust.**

(a) Allowance of credit. -- A resident beneficiary of a trust whose taxable income includes all or part of an accumulation distribution by such trust as defined in § 665 of the Internal Revenue Code [26 U.S.C. § 665] shall be allowed a credit, against the tax otherwise due under Chapter 11 of this title, for all or a proportionate part of any tax paid by the trust for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts

specified in § 666 of the Internal Revenue Code [26 U.S.C. § 666].

(b) Limitation on credit. -- The credit under this section shall not reduce the tax otherwise due from the beneficiary to an amount less than would have been due if the accumulation distribution, or the beneficiary's part thereof, were excluded from the beneficiary's taxable income, as modified by § 1106 of this title.

(c) Transition rule. -- The credit under this section shall apply to accumulation distributions defined by § 665 of the Internal Revenue Code [26 U.S.C. § 665] in effect for the applicable taxable period.

*72 Del. Laws, c. 467, § 1.;*

### **§ 1639. Taxable income of a nonresident estate or nonresident trust.**

(a) General rules. -- For purposes of Chapter 11 of this title, in the case of a nonresident estate or nonresident trust:

(1) Items of income, gain, loss and deduction mean those derived from, or connected with, sources in this State.

(2) Items of income, gain, loss and deduction entering into the definition of federal distributable net income include such items from another estate or trust of which the first estate or trust is a beneficiary.

(3) The source of items of income, gain, loss or deduction shall be determined under rules or regulations prescribed by the Director in accordance with the rules of § 1124 of this title, as if the estate or trust were a nonresident individual.

(b) Determination of taxable income. -- For purposes of Chapter 11 of this title, the taxable income of a nonresident estate or nonresident trust consists of:

(1) Its share of items of income, gain, loss and deduction which enter into the federal definition of distributable net income;

(2) Increased or reduced by the amount of any items of income, gain, loss or deduction which are recognized for federal income tax purposes but excluded from the federal definition of the distributable net income of the estate or trust; and

(3) Less the amount of the deduction for its federal exemption.

*72 Del. Laws, c. 467, § 1.;*

**§ 1640. Share of a nonresident estate, nonresident trust or its beneficiaries in income from sources within this State.**

The share of a nonresident estate or nonresident trust, and the share of a nonresident beneficiary of any estate or trust, of items of estate or trust income, gain, loss and deduction for purposes of § 1124 of this title shall be determined as follows:

(1) To the amount of items of income, gain, loss and deduction which enter into the definition of distributable net income, there shall be added or subtracted, as the case may be, the modifications described in § 1106 of this title to the extent they relate to items of income, gain, loss and deduction which also enter into the definition of distributable net income. No modification shall be made under this section which has the effect of duplicating an item already reflected in the definition of distributable net income.

(2) The amount determined under paragraph (1) of this section shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income. The amounts so allocated shall have the same character as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust or incurred in the same manner as if incurred by the estate or trust.

(3) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under paragraph (1) of this section shall be in proportion to such beneficiary's share of the estate or trust income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

*72 Del. Laws, c. 467, § 1.;*