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From:

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To:

Cc:

Subject: Informal Chief Counsel Advice

You have requested our guidance regarding practitioner inquiries as to whether a trustee is required to take an income distribution deduction under § 661 of the Internal Revenue Code. These inquiries were based on an assumption that if the trustee chooses not to take the deduction, the result would be to shift the tax liability for distributions made to beneficiaries to the trust. Our response is that the amount potentially reportable in the gross income of the beneficiary under § 662 is unchanged by the amount of the allowable distribution deduction under § 661, even if the fiduciary chooses not to claim the § 661 deduction on the Form 1041, U.S. Income Tax Return for Estates and Trusts. Any distribution to a beneficiary described in § 661 that is properly paid, credited, or required to be distributed is considered a distribution of the trust or estate's current income to the extent of that trust or estate's distributable net income ("DNI"), as described in § 643(a), that is allocable to such beneficiary in the taxable year. Therefore, the effect of a trustee not claiming the distribution deduction would be to subject the same income to taxation at both the trust and beneficiary levels, not to shift the incidence of taxation. The legislative history surrounding the enactment of § 662 states that the effect of limiting the taxation of a beneficiary to his proportionate share of the DNI serves to avoid to the necessity for tracing of income. The House report states that "[i]nstead of determining whether a particular distribution represents amounts of current or accumulated trust income, this revision, broadly speaking, provides that any distribution is considered a distribution of the trust or estate's current income to the extent of its taxable income for the year." Committee on Ways and Means, Report on H.R. 8300 (1954) at 199. Please contact us with any additional questions.