



July 7, 2026

The Honorable Kenneth Kies  
Assistant Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, D.C. 20220

Dear Assistant Secretary Kies:

On behalf of the S Corporation Association, we write to further describe the issue we raised earlier regarding the possible application of the 2/37ths itemized deduction reduction under new IRC Section 68 to the income allocation deduction provisions for estates and trusts under IRC Sections 651 and 661 (the “distribution deductions”), as well as our explanation of how it can be resolved in a manner that does not disrupt the tax mechanics for estates and trusts and their beneficiaries.

New IRC Section 68 was enacted because, as stated in the House Report, “the Committee believes that a simpler overall limitation on the benefit of itemized deductions is appropriate, in order to limit the disproportionate benefit that the *highest-income households* receive from these deductions.” Accordingly, “the amount of an *individual’s itemized deductions* otherwise allowable for a taxable year is reduced by 2/37 of the lesser of the amount of itemized deductions otherwise allowable for the year or so much of the taxable income of the taxpayer for the year (determined without regard to the provision and increased by the amount of otherwise allowable itemized deductions) as exceeds that dollar amount at which the 37 percent rate bracket under section 1 begins in respect of the taxpayer.” H Rept. 119-106, Book 2 of 2, May 20, 2025, at 1480-1481 (emphasis added).

There is nothing in the legislative history to suggest that there was any intent to modify the operation of the distribution deduction provisions contained in IRC Sections 651 and 661, which merely allocate income between estates and trusts on the one hand and their respective beneficiaries on the other. In general, IRC Sections 651, 652, 661 and 662 simply provide that income of an estate or trust that is required to be distributed currently or otherwise properly paid or credited to beneficiaries is to be deducted by the estate or trust and “included in the gross income of the beneficiar[y][ies].”

For individuals, the term “itemized deductions” is commonly understood to be those deductions “itemized” on Schedule A of the individual Form 1040 federal income tax return. There is no similar clarity for estates and trusts. IRC Section 67, which deals only with “*miscellaneous*

itemized deductions” and provides that they should only be allowed to the extent they exceed 2% of “adjusted gross income,” specifically provides that the distribution deductions “shall be treated as allowable in arriving at adjusted gross income.” There is no corresponding provision in IRC Section 68, but that is not determinative.

The distribution deductions are not “itemized deductions” in any sense commonly understood, by either legislators or taxpayers. They are merely the nomenclature used to allocate income between estates and trusts and their respective beneficiaries. IRC Section 641(b) provides that “[t]he taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, *except as otherwise provided in this part* [I of Subchapter J of the IRC]” (emphasis added). That “part” includes the distribution deductions.

The above-described statutory language of IRC Sections 68, 641 and 651-662 clearly does not mandate that estates and trusts must disallow 2/37ths of their distribution deductions (i.e., approximately 5.4%) for distributed income when 100% of that distributed income is already included in the taxable income of their respective beneficiaries. In fact, effectively requiring estates/trusts and their beneficiaries to be taxed collectively on 105.4% of their actual distributed income would be entirely inconsistent with “*this part*.” Nor would that be consistent with any obvious or implicit legislative intent. The Regulations should confirm that such overinclusion is not required.

We understand footnote 102 of the Blue Book prepared by the staff of the Joint Committee on Taxation for Public Law 119-21 implies otherwise. It states that “the itemized deductions for an estate or trust include (without limitation) the personal exemption under section 642(b) and the deductions for beneficiary distributions under sections 651 and 661.” The footnote states that IRC Section 641(b) (quoted above) provides “that the taxable income of an estate or trust generally is computed in the same manner as in the case of an individual,” but fails to refer to the critical “*except as otherwise provided in this part*” language also quoted above. The Supreme Court has noted that Blue Books are not legislative history. See *United States v. Woods*, 571 U.S. 31, 47–48 (“Blue Books are prepared by the staff of the Joint Committee on Taxation . . . [and are] . . . written after passage of the legislation and therefore d[o] not inform the decisions of the members of Congress who vot[e] in favor of the [law] . . . [and] [p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation.”).

In short, the Blue Book is simply another secondary authority. That point is acutely important when all of the other secondary authorities, including the American Institute of Certified Public Accountants, the American College of Trust and Estate Counsel, and the New York State Bar Association Tax Section, take an opposite position.

The impact of this issue is particularly significant for closely held businesses (including S corporations) that are frequently owned through trust structures. Trusts play a critical role in facilitating family ownership, succession planning, and long-term stewardship of S corporation

businesses. Moreover, decedent estates often own stock of S corporations when founders and other shareholders die, whether unexpectedly or otherwise. Applying the new IRC Section 68 limitation to trigger taxation of more than 100% of income would increase the effective tax burden on normal pass-through business income and undermine long-standing tax policy favoring a single level of tax for both S corporations and trusts and estates.

We respectfully submit that the Treasury Regulations should confirm that IRC Section 68 does not apply to the distribution deductions under IRC Sections 651 and 661. This would ensure the deduction disallowance would not apply to amounts already includible in the gross income of beneficiaries under Subchapter J. We would welcome the opportunity to work with you to address this issue promptly.

Thank you for your consideration of this important matter.

Sincerely,

Brian Reardon  
President  
S Corporation Association

Thomas J. Nichols  
Chairman of Advisory Committee  
S Corporation Association