

IN THE SUPREME COURT OF OHIO

KEITH A. BROWN AND NOEL P. BROWN (deceased)	) ) )	Case No. 2007-1718
Appellants,	)	Appeal From The Ohio Board of Tax Appeals
WILLIAM W. WILKINS, Tax Commissioner	) )	Board of Tax Appeals Case No. 2006-R-1041
Appellee.	) )	

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**MERIT BRIEF OF APPELLANTS  
KEITH A. BROWN AND NOEL P. BROWN**

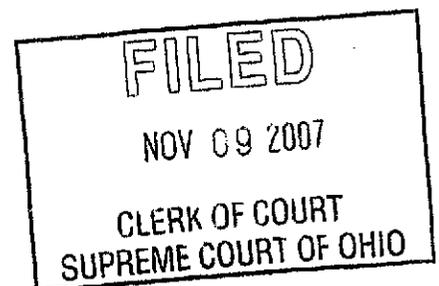
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## I. INTRODUCTION

This case is about the Board of Tax Appeals (1) denying all discovery to the Appellants Keith and Noel Brown (hereafter, "Browns" or "Taxpayers"); (2) failing to enforce its order to the Tax Commissioner to respond to the Taxpayers' discovery requests; (3) denying any hearing whatsoever to the Taxpayers on their appeal; (4) summarily dismissing the Taxpayers' appeal based on cases that are factually distinguishable and incorrectly decided; and (5) compounding the unauthorized actions of the Tax Commissioner by adding to them a procedure that is completely devoid of due process and appropriate consideration of the Taxpayers' rights.

This case is also about the Tax Commissioner (1) being frustrated with a change in federal tax law that created a planning opportunity for Ohio taxpayers; (2) failing for three years running to convince the Ohio General Assembly to change the Ohio tax laws to eliminate this planning opportunity; (3) then taking matters into his own hands by deciding to ignore the binding federal tax law that forms the basis for the application of the Ohio tax laws; (4) reversing completely his theory on why he felt that he could ignore the federal tax laws, by changing well established and binding federal interpretations of federal tax law to suit his purpose and goal of eliminating this planning opportunity; (5) creating a fictional addition to taxable income on the Ohio income tax return to carry out this program; and (6) purporting to create, by an unauthorized executive-branch-of-government edict, a fundamental change in the Ohio tax laws, and one that could have been properly made only by the Ohio General Assembly or by a change in the underlying federal law.

## II. STATEMENT OF FACTS

### **The ESBT at Issue - Factual Background.**

During all times relevant to this matter, the Taxpayers were Ohio residents. On May 29, 1986, the Keith A. Brown Revocable Living Trust (the "Trust") was formed. Over a number of years, Keith A. Brown transferred to the Trust shares of stock in several S corporations<sup>1</sup> (collectively, the "Corporations"). Pursuant to 26 U.S.C. §1361(e)(3) and in accordance with the procedures set forth in Notice 97-12, 1997-1 C.B. 385, on March 11, 1998 the trustee of the Trust filed with the Internal Revenue Service ("IRS") an election to qualify the Trust as an "electing small business trust" ("ESBT"), a special type of trust that was eligible under the Internal Revenue Code to be a shareholder of an S corporation. On April 10, 1998, the IRS accepted this election for the Trust to become an ESBT.<sup>2</sup>

#### **1. The ESBT at Issue – Pre-Assessment Years.**

For the tax year ending December 31, 1998, the income from the Corporations constituted income of the Trust. Accordingly, the Trust paid federal taxes on that income at the highest marginal tax rate (39.6%) applicable to trusts. Prior to 2002, Ohio did not tax the income of trusts. Therefore, the Trust did not pay any Ohio tax on its 1998 income.

The Trust followed this same procedure for the tax year ending on December 31, 1999. The Trust followed the same procedure for the following year (2000) until December 27, 2000 when the Trust's final taxable year concluded.

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<sup>1</sup> An "S corporation" is a corporation with respect to which an election is made under 26 U.S.C. §1362(a). To be eligible to make the election, the corporation may have as shareholders only individuals, estates, and/or certain types of trusts. 26 U.S.C §§1361(b)(1) and 1361(c)(2). The effect of making the election is that the corporation is not required to pay income taxes on its net income; rather, the net income is allocated to the shareholders and is taxable to the shareholders.

<sup>2</sup> See IRS notice of acceptance, attached hereto as Exhibit 1.

The IRS never challenged the ESBT election filed on behalf of the Trust, during any of those years or at any time thereafter. The IRS never questioned the manner in which the income was reported or the amount of federal tax that was paid. The IRS never reduced, refunded or abated the taxes paid by the Trust. The IRS never challenged the Browns' personal federal income tax returns for any of these years.

**2. The Termination of the Trust.**

On December 28, 2000, the Trust was terminated, and the stock in the Corporations was distributed out of the Trust. A final income tax return was filed with the IRS on behalf of the Trust reflecting a year end of December 27, 2000.<sup>3</sup>

**3. The Assessment.**

By Notice of Assessment dated March 16, 2005, the Ohio Department of Taxation (the "DoT") made an assessment in the amount of \$1,092,569.68 against the Browns for the calendar year 2000. Although the exact same tax reporting procedures were followed by the Trust for the tax years ending on December 31, 1998 and December 31, 1999, the DoT did not make any assessment against the Browns for those years. The assessment was computed by adding all of the Corporations' income that was taxable to the Trust that year for federal tax purposes to the Browns' 2000 personal Ohio taxable income. The DoT's position was that the Trust was a grantor trust and therefore the grantor of the Trust, rather than the Trust itself, was subject to Ohio income tax on the income of the Trust.

The DoT affirmed the assessment and the Browns filed a petition for reassessment pursuant to Ohio Rev. Code § 5747.13. On June 15, 2006, the Tax Commissioner issued a Final Determination denying the Browns' petition.

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<sup>3</sup> See the Trust's 2000 US income tax return, attached hereto as Exhibit 2.

#### 4. The Browns' Appeal to the Board of Tax Appeals.

The Browns filed a notice of appeal with the Board of Tax Appeals (the "Board") on August 10, 2006. On September 22, 2006, the Browns served discovery requests on counsel for the DoT. Rather than respond, the DoT moved to stay the Taxpayers' appeal because a supposedly similar case (*Knust v. Wilkins*, 111 Ohio St.3d 331, 2006-Ohio-5791) was then pending before this Court. The Browns opposed the motion to stay, and renewed their request for discovery. On November 3, 2006, the Board denied the DoT's motion to stay and ordered the DoT to respond to the Browns' discovery requests.<sup>4</sup> Specifically, the Board stated, "the Tax Commissioner is expected to respond to the appellants' discovery within the dictates of the discovery rules."<sup>5</sup>

The Tax Commissioner ignored the Board's order that he respond to the discovery. On December 8, 2006, the Board issued to the Browns' an order to show cause why their case should not be dismissed based on this Court's decision in *Knust v. Wilkins*. On December 14, 2006, counsel for the Browns' and counsel for the DoT conducted a telephone conference with the Board's Attorney Examiner in this case to discuss the show cause order and the DoT's failure to respond to discovery. The parties and the Board agreed that they would table both issues until the Board scheduled a subsequent telephone conference to discuss them.

Subsequently, the Board's Attorney Examiner scheduled a conference call to discuss the DoT's failure to respond to discovery. At the appointed time, counsel for the DoT failed to appear for the conference call and was unavailable when the Attorney Examiner tried to contact him. Shortly thereafter, the Attorney Examiner again scheduled a conference call to discuss

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<sup>4</sup> See Denial of the Tax Commissioner's Request to Hold this Matter in Abeyance, attached hereto as Exhibit 3.

<sup>5</sup> *Id at 3.*

these issues, and notified all parties. At the appointed time, counsel for the DoT again failed to appear and again was unavailable when the Attorney Examiner tried to contact him. At no time did counsel for the DoT give any advance notice that he would not appear for the scheduled conferences.<sup>6</sup>

On March 19, 2007, without having resolved or even discussed the DoT's failure to provide discovery during the six months that had passed after the discovery requests were served, the Board's Attorney Examiner informed the Taxpayers that the Board required them to answer the show cause order. The Browns filed a comprehensive response to the Board's order to show cause. On August 17, 2006, the Board, without permitting discovery or a hearing, dismissed the Browns' appeal, citing this Court's decision in *Knust*. As a result, the Browns filed the instant appeal with this Court pursuant to Ohio Rev. Code § 5717.04.

The Browns' first two assignments of error relate to the Board's failure to follow its own rules by denying the Browns their rights to discovery and a hearing. The Browns' other two assignments of error are directed to the Board's erroneous reliance on this Court's decision in the *Knust* case to dismiss their appeal when: (1) this Court's decisions in the *Knust* case and its progeny wrongly condone actions by the Tax Commissioner that were beyond his constitutional and statutory authority; and (2) the facts in this case are distinguishable in a critically important respect from *Knust* and other ESBT cases decided by this Court. Either of those assignments of error provides a proper basis on which this Court should reverse the Board's decision and rule favorably on the Taxpayers' appeal.

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<sup>6</sup> These facts, and other relevant facts, are confirmed by the Affidavit of Attorney Kismet R. Wunder, attached hereto as Exhibit 4.

### III. ARGUMENT

#### PROPOSITION OF LAW NO. 1

**THE BOARD OF TAX APPEALS IS REQUIRED TO ALLOW A PARTY THE OPPORTUNITY TO CONDUCT DISCOVERY, PURSUANT TO BOARD OF TAX APPEALS RULE OF PRACTICE AND PROCEDURE 5717-1-11, PRIOR TO A RULING ON THE MERITS OF AN APPEAL.**

Rule 5717-1-11 of the Board's Rules of Practice and Procedure permits taxpayers to conduct discovery and requires an exchange of discoverable information. As evidenced by the Browns' September 22, 2007 discovery requests, the Browns attempted to conduct fundamental discovery. The DoT openly defied not only its discovery obligations under the Board's Rules but also the Board's specific order to the DoT to respond to the Browns' discovery requests. The DoT repeatedly refused to respond to the Browns' discovery requests and the Board's order, and simply ignored them. The Browns received absolutely no documents or information responsive to their discovery requests. Had the DoT complied with the Board's Rules, or complied with the Board's order, the Taxpayers, upon receipt of responses to written discovery, would have proceeded to the deposition phase of discovery. The Taxpayers were denied the opportunity to take depositions and to otherwise conduct discovery.

Moreover, as a result of the Board's summary dismissal of the Taxpayers' appeal, without enforcing its order to compel the Tax Commissioner to respond to the Taxpayers' discovery requests, the Taxpayers currently are faced with the prospect of having to demonstrate why this Court should either distinguish this case from its prior decision in *Knust* or reverse its decision in *Knust* without the Taxpayers having had access to all relevant documents and information. Moreover, the Board's *sua sponte* dismissal of the Browns' appeal denied them the

opportunity to have a hearing before the Board and to present evidence that would then be part of the record in this case.

**PROPOSITION OF LAW NO. 2**

**PURSUANT TO OHIO REV. CODE §5717.02, THE BOARD OF TAX APPEALS IS REQUIRED, UPON THE APPLICATION OF ANY INTERESTED PARTY, TO ORDER THE HEARING OF ADDITIONAL EVIDENCE PRIOR TO A RULING ON THE MERITS OF AN APPEAL.**

By letter dated December 8, 2006, the Board ordered the Taxpayers to show cause as to why the Board should not affirm the assessment being made against them, based upon this Court's decision in *Knust*. Subsequently, on March 19, 2007, as set forth in the Statement of Facts above, without having resolved or even discussed the DoT's failure to provide discovery, the Board's Attorney Examiner informed the Taxpayers that the Board required them to answer the show cause order. This order from the Board condoned the DoT's failure to respond to discovery, rewarded the DoT for unabashedly ignoring the litigation process, summarily denied all discovery to the Taxpayers, prevented the Browns from developing their defenses, and set the table for the Board's then inevitable and perfunctory denial of the Taxpayers' appeal.

Ohio Rev. Code §5717.02 gives Ohio taxpayers the right to appeal final determinations made by the Tax Commissioner. By virtue of the Browns' appeal to the Board, they exercised this right and were entitled to be heard before the Board made its ruling. The record certified by the Board in this matter does not contain all relevant information, primarily because the Tax

Commissioner failed to respond to the Browns' discovery requests.<sup>7</sup> Nevertheless, Ohio Rev. Code §5717.02, in addition to giving the right to appeal, states:

The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board *shall* order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.  
(Emphasis added).

The Browns were an interested party and duly requested a hearing before the Board and the opportunity to conduct discovery and to present additional evidence. The Browns were entitled to a hearing and an opportunity to present evidence. But the Board, after allowing the DoT to evade all discovery, denied the Browns their right to a hearing. The Board's conduct has made a mockery of due process. Despite a mandatory right to a hearing, and a still outstanding but ignored order to provide discovery, this case has reached this Court without ever having been heard.

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<sup>7</sup> The certified record does not contain a complete copy of the Browns' 2000 Ohio Tax Return. A copy is attached hereto as Exhibit 5.

**PROPOSITION OF LAW NO. 3**

**THE TAX COMMISSIONER HAD NO LEGAL AUTHORITY TO ASSESS AN INCOME TAX ON THE INCOME EARNED BY AN ELECTING SMALL BUSINESS TRUST DURING ITS FINAL TAXABLE YEAR ENDING ON OR BEFORE DECEMBER 28, 2000, AND THEREFORE NEITHER THE TRUST NOR THE GRANTOR OF THE TRUST WAS SUBJECT TO OHIO INCOME TAX ON THAT INCOME.**

**A. Legal Background.**

**1. The Taxation of Trusts in Ohio and under Federal Law.**

Prior to 2002, and therefore at all times relevant to this case, Ohio did not impose an income tax on trusts. *See* Ohio Rev. Code § 5747.02(D). Regardless of whether it was a complex or simple trust, a funded or unfunded trust, an *inter vivos* or testamentary trust, a gift trust, a marital trust, a family trust, a charitable trust, or any other type of trust, Ohio did not tax trusts.

Federal law was very different. At all times relevant to this case, as a general rule, trusts were subject to federal income tax. *See* 26 U.S.C. § 641(a). Under federal law, generally, trusts pay tax based on graduated tax rates applied to the income earned by the trust. Under federal law, if a trust had income during 2000 (the year relevant to this case) of, for example, \$300,000, the trust paid tax on the income as follows:

15% on the first \$1,500

28% on the next \$2,000

31% on the next \$2,000

36% on the next \$2,000

39.6% on any amount in excess of \$7,500<sup>8</sup>

Applying those rate brackets to \$300,000 of income yields a total federal tax of \$117,955.

Under federal law, there is one exception to the rule that trusts are separate taxpaying entities obligated to pay tax on their income. That exception relates to trusts that are classified as "grantor trusts." Because of how they are structured (usually with a meaningful measure of control retained by the grantor), grantor trusts are generally not taxable as trusts. Rather, the net income or loss of such trusts flows through the trust to the individual grantor. *See* 26 U.S.C. § 671, *et seq.* Under federal law, if a grantor trust has income of, for example, \$300,000, the trust does not pay tax on that income. Rather, the \$300,000 is income that is includible on the grantor's personal federal income tax return and in 2000 would have been subject to a federal income tax of at least \$91,468.<sup>9</sup>

That difference under federal tax law between grantor trusts and all other types of trusts is also significant for Ohio income tax purposes. Income that flows through to the grantor becomes part of the grantor's "adjusted gross income" ("AGI") for federal tax purposes. Ohio's income tax system for individuals uses federal AGI as the starting point for computing "Ohio adjusted gross income." *See* Ohio Rev. Code §5747.01(A). So, income passing through a grantor trust to the individual was also subject to Ohio income tax.

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<sup>8</sup> *See* 26 U.S.C. §1(e). It is important to note that the tax rates applicable to trusts rise much faster than do the rates for individuals. For example, married taxpayers filing jointly in 2000 paid tax at the highest rate (39.6%) only on income in excess of \$288,350, and their federal tax liability on taxable income of \$300,000 would have been \$91,468 (or \$26,487 less than a trust would have paid). So, obviously, income earned by a trust is taxed more heavily than is income earned by individuals. *See* 26 U.S.C. §1(a).

<sup>9</sup> *See* footnote 8.

## 2. The Authorization for and Establishment of ESBTs.

An ESBT is a type of trust created by a 1996 federal tax act. 26 U.S.C. §641(c). Prior to that enactment, trusts that were eligible to be S corporation shareholders were a very limited group. An S corporation was generally considered by tax practitioners and lawyers to be an entity of choice for new business ventures. The restriction against many types of trusts being shareholders of S corporations was, however, a drawback in using this type of entity.

The federal tax act that was passed in 1996 added an ESBT as a type of trust that would be permitted to be a shareholder in an S corporation (*See* 26 U.S.C. §1361(c)(2)(A)(v)). As a result, ESBTs became popular starting in 1997. The requirements that must be met for a trust to qualify as an ESBT are set forth in 26 U.S.C. § 1361(e)<sup>10</sup>. They are very liberal. Those requirements do not prohibit a grantor trust from electing to become, or converting to, an ESBT.

When the federal law that created ESBTs was enacted, it specified that the ESBT was a separate taxpaying entity. In fact, this federal law created a special tax rate for ESBTs. *See* 26 U.S.C. § 641(c)(2)(A). Instead of an ESBT paying federal income tax at the graduated rates

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<sup>10</sup> Pursuant to Internal Revenue Code Section 1361(e), (26 U.S.C. §1361(e)), the term "electing small business trust" means any trust if:

- (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) certain types of organizations that are eligible to be recipients under Code Section 170 of deductible charitable contribution.
- (ii) no interest in such trust was acquired by purchase; and
- (iii) an election under this subsection applies to such trust.

The term "electing small business trust" shall not include:

- (i) any qualified subchapter S trust;
- (ii) any trust exempt from tax under this subtitle, and
- (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in Section 664(d)).

applicable to other trusts, ESBTs were required to pay federal income tax at the highest rate applicable to trusts, on all of their income. In other words, ESBTs were not given the benefit of graduated tax rates; rather, they paid tax at the highest rate on all income from the first dollar to the last. In the year 2000 (the year at issue in this case) this rate was 39.6%. *See* 26 U.S.C. §§ 641(c) and 1(e). As stated above, a non-ESBT trust with taxable income of \$300,000 in the year 2000 had to pay federal tax of \$117,955. If that trust had made an ESBT election, its tax liability on \$300,000 of income would have been \$118,800 because of the loss of graduated rates.

Because ESBTs were separate taxpaying entities, the tax on the income of ESBTs was paid by the trusts (at the highest rate), not by the individuals who created the ESBTs. Accordingly, the income from an ESBT was not reportable on an individual's personal federal income tax return. Because the income from the ESBT was not reportable on a personal federal income tax return, it was not a part of the individual's AGI. Because the income from the ESBT was not part of any individual's AGI, it was not reportable on any individual Ohio income tax return. In other words, an ESBT was the type of trust that, during all times relevant to this case, Ohio did not tax.

### **3. Taxation of Individuals under Ohio Law.**

Under Ohio law, a tax is imposed on an individual's "Ohio adjusted gross income." Ohio Rev. Code §5747.02. Under Ohio Rev. Code §5747.01(A), "Ohio adjusted gross income" means "federal adjusted gross income, as defined and used in the Internal Revenue Code," with a limited number of specific adjustments, none of which is relevant to this case. Accordingly, the key substantive issue in this case is whether income earned by the Browns' ESBT between January 1, 2000 and December 27, 2000, when the trust's final taxable year ended, was properly excluded from the Browns' AGI on their federal income tax return.

What is includible in AGI is based exclusively on federal tax law. There is an Internal Revenue Code section the sole purpose of which is to define "adjusted gross income." *See* 26 U.S.C. § 62. The Ohio personal income tax system starts with, and is completely dependent upon, federal AGI. Ohio, of course, is powerless to change or alter the definition of AGI in the Internal Revenue Code. While the Ohio General Assembly could, by passing new legislation, change the basis on which taxable income will be computed for Ohio income tax purposes, the Supremacy Clause in the U.S. Constitution prevents the General Assembly from changing the definition of AGI in the Internal Revenue Code or changing the federal interpretation of AGI. *See* U.S. Const. Art. VI.

**B. The Tax Commissioner's Unauthorized Creation of Law.**

**1. The Tax Commissioner's Dilemma.**

During all years relevant to this case, Ohio law did not impose any income tax on trusts. In 1996, a change in federal tax law created a new type of trust, the ESBT, and it was a separate taxpaying entity. A grantor trust was eligible to become an ESBT under federal law. The IRS approved elections of ESBT status by grantor trusts, accepted the income taxes paid by those trusts, did not contend that the income belonged on any personal tax returns, and did not disturb any of these actions by grantor trusts turned ESBTs during 1997, 1998, 1999, and 2000. The Tax Commissioner obviously appreciated that Ohio was not capturing any income tax on the income earned by the ESBTs. As a result, the Tax Commissioner set out on a course of action to capture what he perceived as a lost opportunity to collect more income tax.

**2. The Initial Lack of Formal Pronouncements.**

In order to appreciate the context in which the Tax Commissioner's unauthorized legislative action took place, the background, the mounting frustrations, and the inconsistencies

must be described. The ESBT planning technique was in use by Ohio taxpayers in 1997. The Tax Commissioner made no public pronouncements about it in 1997, and he took no action against and made no assessments against the taxpayers who were taking advantage of it. The ESBT planning technique was in full swing and gaining in popularity in 1998. Again, the Tax Commissioner made no public pronouncements about it in 1998, and he took no action against and made no assessments against the taxpayers who were taking advantage of it during that year. The ESBT planning technique grew in popularity each year. In 1999, the Tax Commissioner again made no public pronouncements about it made no assessments against taxpayers who were taking advantage of it.

### **3. Lobbying for Legislative Help.**

The lack of a public pronouncement by the Tax Commissioner is significant. The lack of an information release from the Tax Commissioner pronouncing that income from ESBTs was subject to Ohio income tax is more significant. While the Tax Commissioner was publicly silent and not taking action to assess taxes against any taxpayers using this technique, legislation was introduced in Ohio to impose income tax on income from ESBTs. Obviously, there would have been no need for legislation to do this if the Tax Commissioner had the power to pronounce that ESBT income was subject to Ohio income tax.

On July 13, 1998, H.B. 802 was introduced in the Ohio House by State Representative Jerse and others.<sup>11</sup> The analysis that accompanied that bill is very instructive. Under the heading "Current Ohio tax treatment," the analysis states as follows:

Currently, trusts are not subject to the state's personal income tax; only individuals and estates are taxed. Since, under federal law, the federal adjusted gross income of a beneficiary of an electing small business trust does not

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<sup>11</sup> See copy of proposed H.B 802, attached hereto as Exhibit 6.

include income from an S corporation that is passed through (or accumulated by) the trust, the beneficiaries do not have to pay Ohio income taxes on that income.

There was a clear recognition by Ohio lawmakers that federal law had created a situation in which certain income was not subject to Ohio income tax and that there was nothing Ohio could do about it except change its law.

The analysis accompanying this bill goes on to describe the nature of the change to Ohio law being proposed in the bill. Under the heading "Proposed Ohio tax treatment," the proposed change is described, in relevant part, as follows:

The bill generally would treat electing small business trusts in the same way they are treated under federal law - - i.e., the portion of the trusts that consist of S corporation stock would be taxed as entities, and the beneficiaries would continue to avoid taxes on S corporation income passed through (or accumulated by) such a trust. All income received by a trust from an S corporation would be taxed at the highest marginal rate, as under federal law, and the trusts could claim all of the business credits that any S corporation shareholder may claim.

What is crystal clear from the foregoing is that, according to the Ohio legislators who proposed H.B. 802: (1) unless Ohio law were amended, beneficiaries of an ESBT, including the Browns, would not be subject to Ohio income tax on income earned by an ESBT; (2) to reach the ESBT income, the bill proposed to mimic 26 U.S.C. § 641(a) by subjecting the ESBT (not the individual taxpayer) to tax at the highest marginal rate; and (3) there was absolutely no distinction made, under the statement of existing law or the proposed new law, between grantor trusts and other forms of trusts that elect to be ESBTs.

The Browns believe that the Tax Commissioner and/or his staff were involved in the drafting of H.B. 802. Even if they were not, they would not have sat idly by and allowed the General Assembly to consider a change in the law that was not necessary. The Tax

Commissioner's behavior, or more precisely his lack of action, evidences beyond any reasonable doubt his recognition that Ohio could not tax ESBT income unless its tax laws were changed. The Tax Commissioner obviously was waiting for the General Assembly to address the situation.

On February 2, 1999, H.B. 139 was introduced in the Ohio House, once again by Representative Edward Jerse and others.<sup>12</sup> Substantively, H.B. 139 was not materially different than H.B. 802, and H.B. 139 was accompanied by an analysis containing the same statements of existing Ohio law and summary of the proposed new law as was H.B. 802. Obviously, therefore, in the six months between the introduction of the two bills, there had been no change in the sponsors' understanding of the issues and their belief that ESBT income was immune from Ohio income tax. These legislative attempts to change the Ohio law did not and could not have taken place without the knowledge of the Tax Commissioner. The Browns have been denied all discovery, preventing them from gathering favorable evidence relating to these issues.

#### **4. The 2000 Information Release.**

Since the enactment of the 1996 federal tax act that gave rise to ESBTs, and throughout 1997, 1998, and 1999, there had been no change to Ohio law that would subject ESBT income to Ohio income taxes. Hundreds of taxpayers were lawfully availing themselves of the ESBT planning technique. Two bills had been introduced in the Ohio General Assembly to change Ohio tax law, but those bills were not enacted. As of December 31, 1999, the ESBT technique had been in use for three tax years and the Ohio General Assembly had not changed the law as the Tax Commissioner wished.

Faced with this situation, the Tax Commissioner issued an "Information Release" dated January 19, 2000, in which he did not simply interpret, or give guidance about, existing Ohio

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<sup>12</sup> See copy of proposed H.B 139, attached hereto as Exhibit 7.

law.<sup>13</sup> Rather, he attempted to enact by edict a significant change to Ohio law. In the Information Release, the Commissioner stated that, effective for taxable years beginning in 2000, "the Income Tax Audit Division will require certain individuals and estates to include in their federal adjusted gross income . . . and Ohio taxable income" all S corporation income that flows through to an ESBT.

The Tax Commissioner's pronouncement is remarkable in at least two fundamental respects. First, he pronounced that income from an ESBT must be included in an individual taxpayer's federal AGI. Federal AGI is defined by federal law. See 26 U.S.C. §62(a). The IRS did not require ESBT income to be included in an individual taxpayer's federal AGI. Neither the Tax Commissioner nor anyone else in Ohio has the power or authority to dictate what must be included in federal AGI. Second, Ohio AGI is based on federal AGI. Ohio AGI is established by statute in Ohio. Ohio Rev. Code §5747.01(A). The Tax Commissioner has no authority to change the law; *i.e.*, to change the definition of Ohio AGI.

The Tax Commissioner had absolutely no legal authority to expand the scope of "Ohio adjusted gross income" which is defined in Ohio Revised Code Section 5747.01(A). That usurpation of legislative constitutional authority is even more galling when one reads in the "Discussion" that was part of the January 2000 Information Release that the source of authority for the Tax Commissioner's proclamation was a collection of obscure commentaries in secondary sources (for example, an article in *The Journal of Taxation* and a letter written by the AICPA to the IRS Chief Counsel).

The Tax Commissioner had to acknowledge that "various tax practitioners have differing interpretations of how the ESBT provisions interplay with the grantor trust provisions of the

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<sup>13</sup> See Ohio Department of Taxation Information Release, dated January 19, 2000, attached hereto as Exhibit 8

Internal Revenue Code," so "in light of the fact that neither the U.S. Treasury Department nor the Internal Revenue Service has issued any guidance in this area, and barring any change in the federal tax law or issuance of new U.S. Treasury regulations to the contrary, the [Ohio] Income Tax Audit Division's position is that a grantor trust cannot make the ESBT election."<sup>14</sup> (Emphasis added). In other words, the Tax Commissioner guessed at what the federal rules might be when and if future guidance were issued at the federal level. He guessed that grantor trusts would not be eligible to elect ESBT status. The federal government, however, never declared that grantor trusts were not eligible to elect ESBT status. Quite to the contrary, it is now clear under federal law that grantor trusts always were and continue to be eligible to be ESBTs. The Tax Commissioner, therefore, guessed wrong. The Tax Commissioner's "position" was wrong. The Tax Commissioner is no longer arguing that grantor trusts are ineligible to make the ESBT election. Therefore, the fundamental theory on which the Tax Commissioner's Information Release was based was incorrect as a matter of law.

#### **5. The New Federal Regulations – December 28, 2000.**

On December 28, 2000, the U.S. Treasury issued federal Regulations that changed the tax treatment of income from ESBTs that were grantor trusts.<sup>15</sup> The change was prospective only, effective for taxable years ending on and after December 29, 2000. The Browns' ESBT was terminated on December 28, 2000, prior to the effective date of these new federal Regulations.<sup>16</sup> The Trust's final tax return was prepared based upon its taxable year ending on December 27, 2000, again before the effective date of these new Regulations. For these reasons, the Trust was irrefutably not affected by the new federal Regulations. All tax years of the Trust

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<sup>14</sup> See Exhibit 8.

<sup>15</sup> See Treas. Reg. §1.641(c)-1, attached hereto as Exhibit 9.

<sup>16</sup> See Exhibit 5.

are governed by the law as it existed before the new federal Regulations became effective on December 29, 2000.

The new federal Regulations provide, in relevant part, that the ESBT income of a grantor trust will no longer be taxable at the *trust* level, but will instead flow through to the *grantor's* tax return. *There was no prohibition against grantor trusts making the election to be an ESBT.* Those trusts are still significant because they are eligible to be shareholders in S corporations. These new federal regulations, however, effectively ended the opportunity for Ohio taxpayers to use the ESBT planning technique for taxable years ending on and after December 29, 2000.

**C. The Inconsistencies of the Tax Commissioner.**

**1. Line 30 of the 2000 Ohio Income Tax Return.**

In the January 19, 2000 Information Release, as well as in making his arguments in the *Knust* case and others, the Tax Commissioner has adopted the position that, for ESBTs that are grantor trusts. As a result, it was *never* proper for an Ohio grantor to exclude ESBT income from his or her federal or Ohio AGI. According to the Tax Commissioner, it was not proper for the grantor of an ESBT to exclude ESBT income from AGI in 1997, 1998, 1999, or 2000. The Tax Commissioner claims that the grantor trust rules override the ESBT rules, and they have since 1996 when the ESBT rules were first enacted. In other words, according to the Tax Commissioner's current "position," despite the fact that a grantor trust has always been eligible to be an ESBT, a grantor trust which elected to be an ESBT never should have followed the ESBT rules (i.e., pay tax at the highest trust tax rate), but instead should have followed the grantor trust rules, which would have caused all income to flow through to the grantor's personal income tax return.

If the Commissioner really believed that to be a technically sound and correct interpretation of federal tax law, as it existed prior to the effective date of the new federal regulations, then he would have informed Representative Jerse and the other sponsors of the tax bills that there was no need to change Ohio law. But, of course, the Commissioner did not do that. Also, if the Commissioner believed in the soundness of his "position," then he would not have added Line 30 to the Ohio income tax return form (Form IT 1040) for the year 2000.<sup>17</sup> Line 1 of the tax return is where the taxpayer lists his or her federal AGI.<sup>18</sup> Lines 28 through 32 are where various "additions" to adjusted gross income are to be set forth.<sup>19</sup> All of those "additions" but one is statutorily mandated under Ohio Rev. Code §5747.01(A).<sup>20</sup> The sole exception, the exception for which there is no statutory basis or authority, is Line 30: "Add income from an electing small business trust." This line was added by the Tax Commissioner in furtherance of his unilateral attempt to change Ohio law, so that Ohio could tax income that was not includible in a grantor's income under federal law.

If the Tax Commissioner had been correct that it was never proper for a grantor trust to pay taxes as an ESBT and if it was never proper for the grantor to exclude ESBT income from his federal adjusted gross income, and if, therefore, ESBT income should already have been included in all grantors' federal AGI, why was Line 30 necessary? It should not have been. But, it was added to the 2000 tax form because the Commissioner *knew* that no other state was applying the ESBT rules in the manner he levied upon Ohio taxpayers under the January 19, 2000 Information Release. Consequently, he manipulated the tax form as part of his plan to change Ohio law by an administrative edict.

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<sup>17</sup> See 2000 Ohio Tax Form IT-1040, attached hereto as Exhibit 10.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Ohio Rev. Code § 5747.01.

## 2. The Commissioner's Arguments in *Knust* and its Progeny.

During all of 1997, 1998, and 1999, the Tax Commissioner was either doing nothing about the ESBT planning technique or trying to help legislators pass bills to amend Ohio law so that ESBT income could be taxed. However, it is undisputed that the Tax Commissioner took no action whatsoever to collect tax on ESBT income for the years 1997, 1998, and 1999.

In 2006, when the Commissioner argued *Knust* and other cases, he claimed, and thereby misinformed this Court, that it has always been true that ESBT income was subject to Ohio income tax, and that the Regulations issued at the end of 2000 merely confirmed the law that was in effect since 1997. That is wrong as a matter of law. If it were correct, why did the Commissioner sit by and not assess any Ohio taxpayers who used the ESBT planning technique in 1997, 1998, and 1999? The reason is clear. The ESBT planning technique was perfectly legitimate. There was nothing the Tax Commissioner could do about it. The only way the ESBT income could be reached was by changing state (Ohio) law or federal law. The Commissioner failed to bring about a lawful change in Ohio law. There ultimately was a change in federal law. That federal change closed the window of planning opportunity for ESBTs, but prospectively only, and not prior to the end of the Trust's final taxable year on December 27, 2000.

The Tax Commissioner strains hard in an effort to make a statutory construction argument fit the result he seeks. But, if such a construction were reasonable and credible, why did the Tax Commissioner himself not cite the same statutory construction as the rationale supporting the January 19, 2000 Information Release? Remember, the Commissioner based his "position" on the claim that grantor trusts were ineligible to be ESBTs, not that the grantor trust rules override the ESBT rules or on any other authority.

When challenged to explain why the IRS accepted all the tax returns filed between 1997 and 1999 by grantor trusts that were ESBTs, the Tax Commissioner's reply is that the IRS had no revenue-raising incentive to decline the opportunity to collect taxes computed at the highest marginal rate. That incredibly cynical position is grounded on the unsupported belief that the IRS would sit idly by and allow taxpayers to misapply the ESBT rules because the taxpayers' error was a good moneymaker for the U.S. Treasury. If the IRS really were that jaded and avaricious, why would the IRS have stopped enjoying the ill-gotten gains by issuing the new Regulations at the end of 2000, informing ESBT grantor trusts that they no longer had to pay taxes at the highest rate on their S corporation income?

The new federal Regulations were accompanied by a section entitled "Summary of Comments and Explanation of Revisions."<sup>21</sup> Nothing in that summary even hints that the Regulations were intended to correct past mistakes being made by taxpayers. The consistent theme in the summary is that the ESBT rules were new, a lot of the territory had been uncharted between 1997 and 2000, a number of commentators had made suggestions about how the Treasury should deal with a number of nuances, and so these Regulations are being adopted to establish rules and give guidance.

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<sup>21</sup> See Exhibit 9 at page 5.

#### PROPOSITION OF LAW NO. 4

**AN ELECTING SMALL BUSINESS TRUST WHOSE FINAL TAXABLE YEAR ENDED ON DECEMBER 27, 2000 WAS NOT AFFECTED BY TREAS. REG. § 1.641(C)-1, AND THEREFORE THIS COURT'S DECISION IN *KNUST V. WILKINS* DOES NOT APPLY TO MAKE SUCH TRUST'S INCOME FOR 2000 SUBJECT TO OHIO INCOME TAX.**

In both *Knust* and *Vestfall v. Wilkins*, (Mar. 2, 2007), BTA No. 2006-T-1054, unreported, the Board had to consider conflicting provisions of the Internal Revenue Code. In those cases, the taxpayers argued that the ESBT rules (26 U.S.C. §641 (c)) prevailed over conflicting grantor trust rules (26 U.S.C. §671, *et seq.*), and the DoT argued to the contrary. Neither side had a clearly superior argument because, in fact, the two statutory schemes are in irreconcilable conflict. Under these circumstances, the Board should have applied the long-standing rule of construction in federal tax cases, which says that any ambiguity in a tax statute should be resolved in the taxpayer's favor.<sup>22</sup> But the Board failed to do that. Instead, in those cases, the Board ruled in favor of the DoT, citing in both instances that the taxpayers had failed to demonstrate that their tax year terminated prior to December 29, 2000, the effective date of new Treasury Regulations promulgated under Section 641 of the Internal Revenue Code (*See* Treas. Reg. § 1.641(c)-1(k)). The Board relied on this fact as a crucial lynchpin to support its decision that the ESBT income was taxable to the individual.

In this case, the Browns terminated their ESBT on December 28, 2000 and filed a final federal income tax return for the Trust for its taxable year ending December 27, 2000.<sup>23</sup> This fact places the Browns in a different light, as the new Regulations unquestionably do not apply to

<sup>22</sup> See, e.g. *Gould v. Gould*, 245 U.S. 151, 153 (1917).

<sup>23</sup> See email from Keith Brown dated December 28, 2000, canceled stock certificates, and the 2000 IRS Form 1041 for the Keith A. Brown ESBT Trust, attached hereto as Exhibits 11, 12, and 2 respectively.

the Trust's 2000 tax return. Because the Board had never considered an ESBT case in which a taxpayer was not subject to the new Regulations, the Browns should have been afforded the opportunity to present their case at a full hearing. They were not.

This factual distinction is important because, prior to the new 2000 federal Regulations, the IRS permitted grantor trusts that elected ESBT status to follow the ESBT rules. Prior to December 29, 2000, the IRS permitted all ESBTs, including grantor trust turned ESBTs, to report trust income on a federal trust tax return and pay tax at the highest rate applicable to trusts. That is what this Court failed to realize in the *Knust* case and its progeny, and it was a critical error. This Court thought that it had to choose between two hyper-technical statutory construction theories, to determine which one was the correct interpretation of the Internal Revenue Code.

The fact is that under federal tax law, between January 1, 1997 and December 28, 2000, either practice was proper—a trust could apply either the ESBT rules or the grantor trust rules, and it was in compliance with federal law. And, therefore, if a trust followed the ESBT rules and no income flowed through to the grantor's personal tax return, such a practice was acceptable and proper for all tax years ending before December 29, 2000. For that reason, *Knust* was wrongly decided. It rewards the Tax Commissioner for having attempted to unlawfully amend Ohio law by edict. It must be reversed or distinguished from the Browns' case.

In fact, under federal law, it was proper for grantor trusts that were ESBTs to follow the ESBT rules, rather than the grantor trust rules, with respect to taxable years ending on or before December 28, 2000. For tax years ending on and after December 29, 2000, a grantor trust would have to follow the rules set forth in the new Regulations and apply the grantor trust rules instead.

But, the Browns' ESBT trust was permitted to follow the ESBT rules because its tax year ended December 27, 2000.

These critical facts distinguish this case from *Knust* and *Vestfall* because there is absolutely no basis for claiming that the Browns' ESBT had to follow the rules set forth in the new Regulations in completing its final income tax return. Therefore, the Board's denial of the Browns' appeal was reversible error.

#### IV. CONCLUSION.

In deciding whether the Board improperly dismissed the Browns' appeal, this Court should discern three things from this brief. First, the Board failed to follow its own rules by denying the Browns their rights to conduct discovery, submit additional evidence, and receive a hearing. Accordingly, the Board was not in a position at the time it ruled on the show cause order to properly evaluate this matter. Second, this Court decided the *Knust* case incorrectly because, as was stated above, it failed to recognize and stop the Tax Commissioner's attempt to exceed his authority by unilaterally changing Ohio law regarding the tax treatment of ESBTs. Third, this Court has not considered a case in which the taxpayer clearly terminated an ESBT before December 29, 2000 and filed a tax return for a tax year ending before December 29, 2000, as the Browns did, and that is a critically important fact that distinguishes this case from *Knust* and its progeny.

For all of the foregoing reasons, the Browns respectfully request that this Court: (1) find the Board improperly denied the Browns their right to discovery and a hearing before the Board; and (2) find the Tax Commissioner exceeded his authority by imposing a tax on ESBT income and/or (3) find that this Court's prior decision in *Knust* does not apply to the Browns' 2000 Ohio

income tax. As a result, the Board's decision should be reversed and judgment entered in the Browns' favor

Respectfully submitted,

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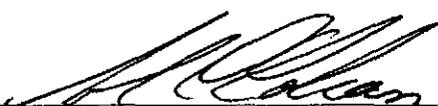
**Attorneys for Appellants Keith A. Brown and  
Noel P. Brown (deceased)**

**CERTIFICATE OF SERVICE**

On the 8<sup>th</sup> day of November, 2007, one copy of the foregoing Merit Brief of Appellants was served via Overnight Federal Express upon the upon the following counsel of record:

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IN THE SUPREME COURT OF OHIO

07-1718

KEITH A. BROWN AND	)	Appeal From The Ohio Board of
NOEL P. BROWN (deceased)	)	Tax Appeals
	)	
Appellants,	)	
	)	
WILLIAM W. WILKINS,	)	Board of Tax Appeals
Tax Commissioner	)	Case No. 2006-R-1041
	)	
Appellee.	)	
	)	

**NOTICE OF APPEAL OF APPELLANTS KEITH A. BROWN AND NOEL P. BROWN**

CAVITCH, FAMILO, DURKIN & FRUTKIN, CO., L.P.A.

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**FILED**  
 SEP 17 2007  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**Notice of Appeal of Appellants Keith A. Brown and Noel P. Brown**

Appellants Keith A. Brown and Noel P. Brown, hereby give notice of their appeal as of right, pursuant to R.C. §5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2006-R-1041 on August 17, 2007. A true and accurate copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

The Appellants complain of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals erred by failing to compel the Tax Commissioner (Appellee) to respond to Appellants' discovery requests, and/or to enforce its Order to Compel, thus depriving the Taxpayers (Appellants) of any discovery whatsoever in the case.
2. The Board of Tax Appeals erred by denying Taxpayers (Appellants) the right to a hearing before the Board.
3. The Board of Tax Appeals erred by affirming a final determination by the Tax Commissioner that was based upon taxing the grantor on the income earned by an ESBT whose tax year ended on December 28, 2000 because the action taken by the Tax Commissioner was beyond his constitutional and statutory authority and it was taken because of the Tax Commissioner's repeated inability to convince the Ohio General Assembly to change the law.
4. The Board of Tax Appeal erred by relying on this Court's decision in *Knust v. Wilkins* to affirm the Tax Commissioner's final determination against

Appellants when important material facts of Appellants' case are distinguishable from the facts in the *Knust* case, and the *Knust* decision is not controlling.

Respectfully submitted,

CAVITCH, FAMILO, DURKIN & FRUTKIN

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*Attorneys for Appellants Keith A. Brown and Noel P. Brown (deceased)*

**CERTIFICATE OF SERVICE**

On the 14<sup>th</sup> day of September, 2007, one copy of the foregoing Appellants Keith A. Brown's and Noel P. Brown's Notice of Appeal was served via certified mail upon the following counsel of record:

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*Attorneys for Appellee*

By:   
Kismet R. Wunder (0072626)

*One of the Attorneys for Appellants Keith A. Brown and Noel P. Brown.*

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally Van Meter, Board Secretary

GOULD v. GOULD  
U.S. 1917

Supreme Court of the United States  
GOULD  
v.  
GOULD.  
No. 41.

Submitted Nov. 8, 1917.  
Decided Nov. 19, 1917.

In Error to the Supreme Court of the State of New York.

Action by Katherine C. Gould against Howard Gould. To review an adverse judgment (168 App. Div. 900,152 N. Y. Supp. 1114), affirming an order of the trial court, defendant brings error. Affirmed.  
West Headnotes

Internal Revenue 220 3120

220 Internal Revenue

220V Income Taxes

220V(D) Incomes Taxable in General

220k3120 k. Alimony and Family

Allowances. Most Cited Cases

(Formerly 220k306)

Alimony paid to a divorced wife is not income, taxable under Act Oct. 3, 1913, § 2a, subd. 1, and section 2b, 38 Stat. 166.

Internal Revenue 220 3288.1

220 Internal Revenue

220V Income Taxes

220V(I) Deductions

220V(I)1 In General

220k3288 Alimony or Separate  
Maintenance Payments

220k3288.1 k. In General. Most

Cited Cases

(Formerly 220k519)

The net income of a divorced husband, subject to taxation under Act Oct. 3, 1913, 38 Stat. 114, is not decreased by the payment of alimony under the order of the court.

Statutes 361 245

361 Statutes

361VI Construction and Operation

361VI(B) Particular Classes of Statutes

361k245 k. Revenue Laws. Most Cited

Cases

Statutes levying taxes are not extended by implication beyond clear import of language used, and in case of doubt are construed most strongly against government.

\*\*53\*152 Mr. Martin W. Littleton, of New York City, for plaintiff in error.

Mr. John L. McNab, of San Francisco, Cal., for defendant in error.

Mr. Justice McREYNOLDS delivered the opinion of the Court.

A decree of the Supreme Court for New York county entered in 1909 forever separated the parties to this proceeding, then and now citizens of the United States, from bed and board; and further ordered that plaintiff in error pay to Katherine C. Gould during her life the sum of \$3,000 every month for her support and maintenance. The question presented is whether such monthly payments during the years 1913 and 1914 constituted parts of Mrs. Gould's income within the intendment of the act of Congress approved October 3, 1913 (38 Stat. 114, 166, c. 16), and were subject as such to the tax prescribed therein. The court below answered in the negative; and we think it reached the proper conclusion.

Pertinent portions of the act follow:

'Section II, A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided. \* \* \*

'B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions,

vocations, business, trade, commerce, \*153 or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent. \* \* \*

The judgment of the court below is affirmed.

U.S. 1917  
Gould v. Gould  
245 U.S. 151, 38 S.Ct. 53, 62 L.Ed. 211, 1 USTC P 13, 3 A.F.T.R. 2958

END OF DOCUMENT

In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen. United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690; American Net & Twine Co. v. Worthington, 141 U. S. 468, 474, 12 Sup. Ct. 55, 35 L. Ed. 821; Benziger v. United States, 192 U. S. 38, 55, 24 Sup. Ct. 189, 48 L. Ed. 331.

As appears from the above quotations, the net income upon which subdivision 1 directs that an annual tax shall be assessed, levied, collected and paid is defined in division B. The use of the word itself in the definition of 'income' causes some obscurity, but we are unable to assert that alimony paid to a divorced wife under a decree of court falls fairly within any of the terms employed.

In Audubon v. Shufeldt, 181 U. S. 575, 577, 578, 21 Sup. Ct. 735, 736 (45 L. Ed. 1009), we said:

'Alimony does not arise from any business transaction, but from the relation of marriage. It is not founded on a contract, express or implied, but on the natural and legal duty of the husband to support the wife. The general obligation to support is made specific by the decree of the court of appropriate jurisdiction. \* \* \* Permanent alimony is regarded rather as a portion of the husband's estate to which the wife is equitably entitled, than as strictly a debt; alimony from time to time may be regarded as a portion of his current income or earnings. \* \* \*

\*154 The net income of the divorced husband subject to taxation was not decreased by payment of alimony under the court's order; and, on the other hand, the sum received by the wife on account thereof cannot be regarded as income arising or accruing to her within the enactment.

**CK** Knust v. Wilkins  
Ohio,2006.

Supreme Court of Ohio.  
KNUST et al., Appellants,  
v.  
WILKINS, Tax Commr., Appellee.  
No. 2005-2084.

Submitted June 6, 2006.  
Decided Nov. 22, 2006.

**Background:** Husband and wife requested that they not be required to pay Ohio personal income tax on income earned by two grantor trusts that they created. The Tax Commissioner and the Board of Tax Appeals (BTA) concluded that the trusts' income passed through the trusts and was taxable to husband and wife themselves. Husband and wife appealed.

**Holding:** The Supreme Court, O'Connor, J., held that income earned by the trusts was taxable to husband and wife themselves, even though they had been designated as "electing small business trusts."

Affirmed.

O'Donnell, J., filed a dissenting opinion.  
West Headnotes

**[1] Internal Revenue 220 ↪3885**

220 Internal Revenue  
220V Income Taxes  
220V(O) Small Business Corporations  
(Subchapter S Corporations)  
220k3885 k. In General. Most Cited Cases  
Subchapter S of the Internal Revenue Code permits the owners of qualifying corporations to elect a special tax status under which the corporation and its shareholders receive conduit-type taxation that is comparable to partnership taxation. 26 U.S.C.A. § 1361 et seq.

**[2] Internal Revenue 220 ↪3896**

220 Internal Revenue  
220V Income Taxes  
220V(O) Small Business Corporations

(Subchapter S Corporations)  
220k3896 k. Income Taxable to Stockholders; Undistributed Income. Most Cited Cases  
For tax purposes, a Subchapter S corporation differs significantly from a normal corporation in that the profits generated through the S corporation are taxed as personal income to the shareholders. 26 U.S.C.A. § 1361 et seq.

**[3] Internal Revenue 220 ↪3885**

220 Internal Revenue  
220V Income Taxes  
220V(O) Small Business Corporations  
(Subchapter S Corporations)  
220k3885 k. In General. Most Cited Cases  
The taxable income of a Subchapter S corporation is computed essentially as if the corporation were an individual. 26 U.S.C.A. § 1361 et seq.

**[4] Taxation 371 ↪3551**

371 Taxation  
371VIII Income Taxes  
371VIII(G) Assessment  
371k3548 Judicial Review  
371k3551 k. Scope and Extent of Review in General. Most Cited Cases  
In reviewing a Board of Tax Appeals (BTA) decision, the Supreme Court must determine whether that decision was reasonable and lawful. R.C. § 5717.04.

**[5] Taxation 371 ↪3551**

371 Taxation  
371VIII Income Taxes  
371VIII(G) Assessment  
371k3548 Judicial Review  
371k3551 k. Scope and Extent of Review in General. Most Cited Cases  
The Supreme Court will not hesitate to reverse a Board of Tax Appeals (BTA) decision that is based on an incorrect legal conclusion.

**[6] Taxation 371 ↪3547**

371 Taxation  
371VIII Income Taxes  
371VIII(G) Assessment  
371k3547 k. Administrative Review. Most  
Cited Cases

**Taxation 371 ↪ 3551**

371 Taxation  
371VIII Income Taxes  
371VIII(G) Assessment  
371k3548 Judicial Review  
371k3551 k. Scope and Extent of  
Review in General. Most Cited Cases  
The Board of Tax Appeals (BTA) is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations, the Supreme Court will affirm them.

**[7] Taxation 371 ↪ 3544**

371 Taxation  
371VIII Income Taxes  
371VIII(G) Assessment  
371k3543 Evidence  
371k3544 k. In General. Most Cited  
Cases  
In proceeding before the Board of Tax Appeals (BTA), the burden of proof rests on the taxpayer to show the manner and extent of the error in the Tax Commissioner's final determination.

**[8] Taxation 371 ↪ 3544**

371 Taxation  
371VIII Income Taxes  
371VIII(G) Assessment  
371k3543 Evidence  
371k3544 k. In General. Most Cited  
Cases  
The Tax Commissioner's findings are presumptively valid, absent a demonstration that those findings are clearly unreasonable or unlawful.

**[9] Taxation 371 ↪ 3493**

371 Taxation  
371VIII Income Taxes  
371VIII(D) Persons Liable  
371k3491 Estates and Trusts  
371k3493 k. Trusts in General. Most  
Cited Cases

Income earned by two grantor trusts created by husband and wife passed through the trusts and was taxable to husband and wife themselves, even though the two trusts had been designated as "electing small business trusts" (ESBTs) at the time they were created. 26 U.S.C.A. §§ 641(c), 1361(c)(2)(A)(v), (e)(1)(A)(i).

**\*\*244** Taft, Stettinius & Hollister, L.L.P., and Stephen M. Nechemias, Cincinnati, for appellants. Jim Petro, Attorney General, Robert C. Maier, Senior Deputy Attorney General, and Barton A. Hubbard, Assistant Attorney General, for appellee.

Corsaro & Associates Co., L.P.A., and Joseph G. Corsaro, Cleveland, in support of neither party, for amici curiae, Rome P. Busa Jr. and Anthony J. Busa. O'CONNOR, J.

**\*331** {¶ 1} A husband and wife contend in this appeal that they should not be required to pay Ohio personal income tax on the income earned by two trusts that they created. The Tax Commissioner and the Board of Tax Appeals ("BTA") concluded, however, that the trusts' income passed through the trusts and was taxable to the husband and wife themselves. That conclusion was a sound one, and we therefore affirm the BTA's decision.

**\*332 Facts and Procedural History**

{¶ 2} The appellants-David G. Knust and Susan Purkrabek-Knust-are a married\*\*245 couple in Cincinnati. They established a corporation in 1983 called Precision Packaging & Services, Inc. As the name suggests, the company provided packaging services, and both David and Susan worked at the company, served as officers of the company, and were its sole shareholders initially.

[1][2][3] {¶ 3} Starting in 1995, David and Susan elected to treat the packaging company as a Subchapter S corporation (often referred to as an "S corporation"). As this court has explained, "Subchapter S of the Internal Revenue Code (Section 1361 et seq., Title 26, U.S.Code) permits the owners of qualifying corporations to elect a special tax status under which the corporation and its shareholders receive conduit-type taxation that is comparable to partnership taxation." Ardire v. Tracy (1997), 77 Ohio St.3d 409, 674 N.E.2d 1155, fn. 1. "For tax purposes, a Subchapter S corporation differs significantly from a normal corporation in that the profits generated through the S corporation are taxed as personal income to the shareholders. The taxable

income of an S corporation is computed essentially as if the corporation were an individual." Id.

{¶ 4} Then, in 1998, David and Susan created separate trusts, which they named the David Knust Grantor Trust and the Susan Purkrabek Grantor Trust. Both David and Susan transferred their shares of the packaging company's stock to their respective trusts.

{¶ 5} David named himself as the sole trustee of his trust, and Susan named herself the sole trustee of her trust. Each of them also chose in 1998 to designate their respective trusts as "electing small business trusts" or "ESBTs" under the Internal Revenue Code. See Section 641(c), Title 26, U.S.Code.

{¶ 6} On February 26, 2000, the two trusts sold their shares of the packaging company to a separate corporate entity in which David and Susan held no interest. Each trust received more than \$16 million for the sale of the company's shares, and both trusts paid federal income tax on those sale proceeds.

{¶ 7} On their joint Ohio income tax return for the year 2000, David and Susan reported the proceeds from the sale as personal income to them, and they paid Ohio income tax on those proceeds in April 2001. They then asked the Tax Commissioner in late April 2001 to refund more than \$2 million of the income taxes that they had just paid for tax year 2000, contending that the income received by the two trusts from the sale of the packaging company's shares should not have been treated by Ohio as taxable personal income to David and Susan themselves.

{¶ 8} The Tax Commissioner issued a final determination in 2004 denying David and Susan's refund claim for tax year 2000. David and Susan then \*333 challenged that decision before the BTA, which held a hearing on the matter in December 2004.

{¶ 9} The BTA agreed with the Tax Commissioner, concluding that the two trusts were "grantor trusts"-that is, they were trusts over which David and Susan, as the creators and trustees of the trusts, retained substantial control-and therefore the income received by the trusts was properly taxable to David and Susan themselves. The ordinary rule for the taxation of a grantor trust-that any income earned by the trust is taxed not to the trust but rather to the grantor himself

or herself-is not changed, according to the BTA, by the fact that the trust has been designated as an "electing small business trust" under the Internal Revenue Code. The BTA therefore affirmed the Tax Commissioner's decision to deny David and Susan's refund claim.

\*\*246 {¶ 10} David and Susan have now appealed to this court.

### Standard of Review

[4][5][6] {¶ 11} In reviewing a BTA decision, this court must determine whether that decision was "reasonable and lawful." Columbus City School Dist. Bd. of Edn. v. Zaino (2001), 90 Ohio St.3d 496, 497, 739 N.E.2d 783;R.C. 5717.04. The court "will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion." Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino (2001), 93 Ohio St.3d 231, 232, 754 N.E.2d 789. But "[t]he BTA is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations," this court will affirm them. Am. Natl. Can Co. v. Tracy (1995), 72 Ohio St.3d 150, 152, 648 N.E.2d 483.

[7][8] {¶ 12} The burden of proof rests on the taxpayer "to show the manner and extent of the error in the Tax Commissioner's final determination." Standards Testing Laboratories, Inc. v. Zaino, 100 Ohio St.3d 240, 2003-Ohio-5804, 797 N.E.2d 1278, ¶ 30. The Tax Commissioner's findings "are presumptively valid, absent a demonstration that those findings are clearly unreasonable or unlawful." Nusseibeh v. Zaino, 98 Ohio St.3d 292, 2003-Ohio-855, 784 N.E.2d 93, ¶ 10.

### Analysis

[9] {¶ 13} We must determine in this case whether the income earned in the year 2000 by David and Susan's trusts was part of David and Susan's own "adjusted gross income" for that year.

{¶ 14} As we previously explained, "Ohio has imposed-in R.C. 5747.02(A)-a tax on the 'adjusted gross income' of individuals and has defined 'adjusted gross income' in R.C. 5747.01(A) as 'federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section.' In other words, the adjusted gross

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income of Ohio residents and those who earn or receive \*334 income in Ohio is taxed, and in calculating each taxpayer's 'adjusted gross income,' Ohio looks to the definition that Congress has given to that term in the Internal Revenue Code." Buckley v. Wilkins, 105 Ohio St.3d 350, 2005-Ohio-2166, 826 N.E.2d 811, ¶ 8.

{¶ 15} An individual taxpayer's adjusted gross income under the Internal Revenue Code includes "gross income" minus certain deductions not at issue in this case, and gross income includes income from various sources, including income received by the taxpayer from a trust. See Sections 61(a)(15) and 62(a), Title 26, U.S.Code.

{¶ 16} The Internal Revenue Code also indicates that income earned by a grantor trust is taxable to the grantor rather than to the trust itself. See Sections 671 to 679, Title 26, U.S.Code. Time and again, federal courts have applied those statutory provisions to grantor trusts. See, e.g., Schulz v. Commr. of Internal Revenue (C.A.7, 1982), 686 F.2d 490, 495 ("The main thrust of the grantor trust provisions is that the trust will be ignored and the grantor treated as the appropriate taxpayer whenever the grantor has substantially unfettered powers of disposition"); Neely v. United States (C.A.9, 1985), 775 F.2d 1092, 1094 ("Under 26 U.S.C. §§ 671-677 (1982), a grantor of a trust who has retained certain powers of disposition which may be exercised without the approval or consent of an adverse party is treated as the owner of the trust and, thus, is taxed individually").

{¶ 17} The Tax Commissioner concluded that the two trusts in question were in fact grantor trusts, and the BTA agreed. That conclusion is a sound one and is not challenged by David or Susan, who were each entitled-according to the trust documents \*\*247 that they signed in 1998-to "sell or exchange, publicly or privately, any assets, real or personal" in their respective trusts. Also, they both expressly designated their trusts as grantor trusts, they both named themselves as the sole trustee of their respective trusts, they were each entitled to reclaim all or part of the trust assets and to receive all net income earned by their respective trusts, and they both reserved the right under the trust agreements to amend or revoke those agreements.

{¶ 18} Even though their trusts were grantor trusts, David and Susan contend that the income earned by

those trusts was not taxable to them personally, because they had designated the trusts as "electing small business trusts" or "ESBTs." That special designation, they claim, changes the basic rule that the income earned by a grantor trust should be treated as taxable income to the grantor himself or herself.

{¶ 19} Congress created the ESBT designation in 1996, Pub.L. No. 104-188, 110 Stat. 1755, and gave trusts that were designated as ESBTs the power to own stock in S corporations. See Section 1361(c)(2)(A)(v), Title 26, U.S.Code. A trust \*335 can qualify as an ESBT if its only beneficiaries are individuals, estates, or certain organizations listed in the Internal Revenue Code. See Section 1361(e)(1)(A)(i), Title 26, U.S.Code.

{¶ 20} There is no dispute in this case that David and Susan designated their trusts as ESBTs when they created those trusts in 1998. And, as the BTA found, both David and Susan undeniably transferred all of the shares of their packaging company-an S corporation-to those trusts in 1998.

{¶ 21} The only question, then, is whether the trusts' status as ESBTs changed the taxability of the income that those grantor trusts earned. We conclude-like the Tax Commissioner and the BTA-that it did not. The income that the trusts earned when they sold the shares of the packaging company in 2000 is properly treated as part of David and Susan's own adjusted gross income for that year.

{¶ 22} According to David and Susan, the income earned by their trusts should be taxed under Section 641(c), Title 26, U.S.Code. That provision explains how taxes are to be calculated on any portion of an ESBT that owns stock in one or more S corporations when an income tax is "imposed by this chapter [Section 1 et seq., Title 26, U.S.Code] on such separate trust." Section 641(c)(1)(A) and (B), Title 26, U.S.Code.

{¶ 23} Title 26 of the U.S.Code, however, does not impose an income tax on grantor trusts. See Ferguson, Freeland & Ascher, Federal Income Taxation of Estates, Trusts, and Beneficiaries (3d Ed.2000) 10-25 to 10-26, Section 10.05 [C] ("If a grantor is treated as owner of an entire trust, \* \* \* the trust has no tax liability to compute. Basically, therefore, the trust is completely ignored for income tax purposes"); Danforth, A Proposal for Integrating

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the Income and Transfer Taxation of Trusts (1999), 18 Va. Tax Rev. 545, 546 (“under the so-called grantor trust rules of [Sections 671 to 679, Title 26, U.S.Code], a trust is not treated as a separate taxable entity if the grantor retains a sufficient degree of control over or beneficial interest in the trust”).

{¶ 24} Instead, the income earned by a grantor trust passes through to the grantor and is taxed to him or her under Sections 671 to 679, Title 26, U.S.Code. See Rev. Rul. 90-7, 1990-1 C.B. 153 (“When a grantor is treated as the owner of an entire trust, the grantor is considered to be the owner of the trust assets for federal income tax purposes”); Ferguson, Freeland\*\*248 & Ascher, supra, at 10-26, Section 10.05[C] (“The grantor takes into account all its items of income, deductions, and credits in computing his or her tax liability”).

{¶ 25} Nothing in the statutory provision cited by David and Susan-Section 641(c), Title 26, U.S.Code-suggests that that principle changes when the grantor trust is designated as an ESBT. That statute simply says that when an income tax is imposed on a trust, that tax is to be calculated in a specified way if the trust is an ESBT. Where, as in this case, no income tax is imposed on the trust, \*336 however, the statute does not come into play. In other words, a grantor trust can elect ESBT status, but that status does not change the ordinary requirement that the grantor trust's income is taxed to the grantor and not to the trust itself. Grantor trusts pay no tax on the income they earn, and therefore the provisions of Section 641(c) concerning the calculation of taxes on an electing-small-business trust do not apply if the ESBT is a grantor trust.

{¶ 26} The BTA reached that same conclusion, explaining that “the determination that an ESBT trust is a grantor trust \* \* \* controls the manner of taxation” for that trust. According to the BTA, there is no support “for the appellants' claim that an ESBT election overrides grantor trust rules.” As explained above, the BTA's decision is consistent with the relevant provisions of the Internal Revenue Code.

{¶ 27} It is notable that the two trusts filed separate federal income tax returns for the year 2000 claiming the income earned by the trusts during that year as taxable to the trusts themselves rather than to David and Susan individually. That is, the appellants failed to include, as part of their own 2000 federal adjusted gross income, the income that their grantor trusts

earned. Yet as the BTA rightly explained, “the Tax Commissioner is not confined to follow” a taxpayer's statement that certain income should be excluded from the taxpayer's federal adjusted gross income.

{¶ 28} Like the Tax Commissioner and the BTA, we conclude that David and Susan should have included on their individual federal income tax returns the income that the grantor trusts earned. The failure of the Internal Revenue Service to insist that the returns be changed to reflect the trust income as personal income-a failure explained, perhaps, by the fact that ESBT trusts pay “the highest rate of tax” under Section 641(c)(2)(A), Title 26, U.S.Code, on any taxable income-does not prevent the Tax Commissioner or this court from applying the federal statutes as they are written.

{¶ 29} The BTA's conclusion is also supported by a federal regulation that amplifies the statutory provisions discussed above. According to Section 1.641(c)-1(c), Title 26, C.F.R., an ESBT that is also a grantor trust is taxed like an ordinary grantor trust: “[t]he grantor \* \* \* includes” in his or her own taxable income those “items of income \* \* \* attributable to \* \* \* the ESBT under [Section 671, Title 26, U.S.Code].”

{¶ 30} Admittedly, that regulation is “applicable for taxable years of ESBTs that end on and after December 29, 2000.” Section 1.641(c)-1(k), Title 26, C.F.R. David and Susan argue that the regulation does not apply to their trusts because the trusts sold the packaging company's shares on February 26, 2000. The taxable year in question for David and Susan's trusts ended on December 31, 2000, however, as is shown on the face of the federal income tax returns that they \*337 filed for those trusts. Even if, as they contend, the ESBT status of their trusts ended once the \*\*249 packaging company's assets were sold by the trusts in February 2000, they have offered no separate tax returns suggesting that they treated the taxable year for the ESBTs as having ended on any date earlier than December 31, 2000. The regulation therefore *does* apply to them, and that regulation reinforces the conclusion that the BTA rightly drew from the relevant statutes: that David and Susan themselves owed state income tax on the income earned by their grantor trusts during tax year 2000.

## Conclusion

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{¶ 31} The BTA's conclusion that income earned by a grantor trust is taxable to the grantor rather than to the trust itself-even if the trust is an ESBT-is supported by the relevant federal statutes. The BTA's decision is reasonable and lawful, and we therefore affirm it.

Decision affirmed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON and LANZINGER, JJ., concur.

O'DONNELL, J., dissents.

O'DONNELL, J., dissenting.

{¶ 32} In 1998, David and Susan Knust created separate grantor trusts funded with shares of their packaging company, Precision Packaging & Services, Inc. At that time, they designated those trusts as "electing small business trusts" ("ESBTs") pursuant to Section 641(c), Title 26, U.S.Code. On February 26, 2000, David and Susan sold their shares of Precision Packaging, which resulted in the termination of both ESBTs as of that date. Because this sale terminated the trusts prior to the applicability of the Treasury Regulation upon which the majority relies, the income earned by the trust is not taxable to David and Susan individually. Accordingly, I respectfully dissent from the decision of the majority to the contrary.

{¶ 33} Section 443(a), Title 26, U.S.Code, provides:

{¶ 34} "A return for a period of less than 12 months (referred to in this section as 'short period') shall be made under any of the following circumstances:

{¶ 35} "(2) When the taxpayer is in existence during only part of what would otherwise be his taxable year." (Emphasis added.)

{¶ 36} The trusts in question terminated on February 26, 2000, and, therefore, their taxable year ended on that date. Treasury Regulation 1.641(c)-1(k), upon which the majority relies, is "applicable for taxable years of ESBTs that end *on and after* December 29, 2000." (Emphasis added.) \*338 Section 1.641(c)-1(k), Title 26, C.F.R. Because the ESBTs had terminated prior to December 29, 2000, the Treasury Regulation does not apply to them. The majority attempts to circumvent this regulation and the plain language of Section 443(a) by stating that David and Susan "offered no separate tax returns suggesting that they

treated the taxable year for the ESBTs as having ended on any date earlier than December 31, 2000." In my view, this point is not persuasive, because Section 443(a) provides that a "short period" tax return "shall be made" when a taxpayer ceases to exist during a tax year. The tax year in question, therefore, terminated when the taxpayer ceased to exist regardless of the date indicated on the tax return.

{¶ 37} Tellingly, the Internal Revenue Service did not demand that the taxpayer alter the ESBT returns to reflect the trust income as personal income. Because this case involves the application of a federal tax statute, and because the Internal Revenue Service did not require David or Susan to amend their tax returns as the \*\*250 Commissioner has, I would hold that the ESBT income is not taxable to David or Susan individually.

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The record before us establishes that the appellants claim that the Tax Commissioner has erroneously included income and gains from their “electing small business trust,” or ESBT, on their 2000 individual income tax return. In *Knust*, supra, the Ohio Supreme Court determined that income earned by a grantor trust is taxable to the grantor rather than to the trust itself, even if the trust is an ESBT.

In their response to the show cause order, the Vestfalls assert that their situation should be distinguished from the one considered in *Knust*, supra. The Vestfalls argue that the ESBT now before us terminated prior to the December 29, 2000 effective date of Section 1.641(c)-1(k), Title 26, C.F.R. Because the Vestfalls assert that their ESBT terminated prior to the effective date of the treasury regulations, they conclude that they owe no income on the grantor trust for tax year 2000. We disagree.

The Vestfalls rely upon Justice O’Donnell’s dissent from the majority opinion in *Knust*, supra. He states in that dissent that “because this sale terminated the trusts prior to the applicability of the Treasury Regulation upon which the majority relies, the income earned by the trusts is not taxable \*\*\* individually.” *Knust*, supra, at ¶ 32. We note, however, that our original *Knust* decision did not rely upon the applicability of the regulations. Instead, we determined that the income earned by a grantor trust is taxable to the grantor pursuant to the applicable statutes. We expressly found that “the regulations themselves do not control our determination herein.” *Knust v. Wilkins* (Oct. 14, 2005), BTA No. 2004-M-533, unreported at 7.

On appeal, the Supreme Court reached a similar conclusion. The majority of the court specified, “The BTA’s conclusion that income earned by a grantor trust is taxable to the grantor rather than to the trust itself – even if the trust is an ESBT – *is supported by the relevant federal statutes.*” *Knust*, supra, at ¶ 32. (Emphasis added.) See, also, *Knust*, at ¶30 (holding that the “regulation reinforces the conclusion that the BTA rightly drew from the relevant statutes”). A review of the court’s opinion, in its entirety, supports the conclusion that its determination is based upon Section 641(c), Title 26, U.S.Code.

We acknowledge that the court also looked to the regulations; nevertheless, the court found that the regulations were supportive of the statutory provisions. *Id.* at ¶ 29. Moreover, the court noted that a taxpayer could not rely upon the effective date of the regulations where the taxpayer filed his or her return for a taxable year ending after the regulations became effective:

“Admittedly, that regulation is ‘applicable for taxable years of ESBTs that end on and after December 29, 2000.’ Section 1.641(c)-1(k), Title 26, C.F.R. David and Susan argue that the regulation does not apply to their trusts because the trusts sold the packaging company’s shares on February 26, 2000. The *taxable year* in question for David and Susan’s trusts ended on December 31, 2000, however, as is shown on the face of the federal income tax returns that they filed for those trusts. Even if, as they contend, the ESBT status of their trusts ended once the packaging company’s assets were sold by the trusts in February 2000, they have offered no separate tax returns suggesting that they treated the taxable year for the ESBTs as having ended on any date earlier than December 31, 2000. The regulation therefore *does* apply to them, and that regulation reinforces the conclusion that the BTA rightly drew from the relevant statutes: that David and Susan themselves

owed state income tax on the income earned by their grantor trusts during tax year 2000.” Id. at ¶ 30.

Although the Vestfalls claim their ESBT was terminated prior to December 29, 2000, they, like the taxpayers in *Knust*, supra, filed their tax returns for 2000 for a tax year ending December 31, 2000. See S.T. at 62-92. There are no tax returns in the record suggesting that the Vestfalls treated the taxable year of the ESBT as having ended prior to December 31, 2000. Thus, the regulation does apply to the Vestfalls. Id. at ¶ 30.

In addition to the application of *Knust*, the Vestfalls argue that the commissioner is without the authority to interpret the applicable federal statutes, and as such, had no power to issue the subject assessment. We disagree. In *Knust*, supra, the court acknowledged that, in making an Ohio income tax assessment, the commissioner has the authority to apply the federal statutes. Id. at ¶ 28. See, also, *Buckley v. Wilkins*, 105 Ohio St.3d 350; 2005-Ohio-2166, in which the court held that 1) the General Assembly, with regard to what constitutes income for Ohio tax purposes, may refer to federal statutes and 2) the commissioner has the statutory authority to question income tax returns and to make assessments based upon any information in his possession.<sup>1</sup> While the Vestfalls essentially argue that the

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<sup>1</sup> To the extent the Vestfalls argue that the commissioner’s actions are unconstitutional, we remind the parties that this board lacks jurisdiction to determine the facts on constitutional issues or to declare a statute unconstitutional. *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229, and *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. See, also, *Valvoline Instant Oil Change, Inc. v. Tracy* (1997), 78 Ohio St.3d 53; *NACCO Industries v. Tracy* (June 7, 1996), BTA No. 1995-K-1210, unreported, affirmed on other grounds (1997), 79 Ohio St.3d 314. Contentions regarding the possible violations of the Equal Protection and Supremacy Clauses have been set out by the parties to preserve the issue for a court’s review, if necessary. *Bd. of Edn. of South-Western City Schools v. Kinney* (1986), 24 Ohio St.3d 184.

commissioner applied an incorrect interpretation to the federal statutes, *Knust*, supra, supports the commissioner's action.

Finally, the Vestfalls argue that the commissioner impermissibly extended the statute of limitations by issuing an assessment on the 2000 tax year but not issuing a final determination on their petition for reassessment until June 15, 2006. The Vestfalls note that their petition for reassessment was filed on June 25, 2002. They had a hearing before the commissioner on September 2, 2003, at which time, the Vestfalls represent, they were informed that a determination would be forthcoming by the end of 2003. Instead, the commissioner's determination was issued nearly three years later. The Vestfalls note that the delay has caused interest to accumulate on the assessment.

Although characterized as a violation of the statute of limitations, the Vestfalls actually seek to apply the doctrine of laches to bar the commissioner's actions.<sup>2</sup> However, the doctrine of laches, like estoppel, does not generally operate to the detriment of the state. *Bd. of Pharmacy v. Frantz* (1990), 51 Ohio St.3d 143; *Dept. of Transportation v. Sullivan* (1988), 35 Ohio St.3d 137. This is so even when state employees make misleading or confusing statements. *Sekerak v. Fairhill Mental Health Ctr.* (1986), 25 Ohio St.3d 38. We have previously found that the doctrine of laches does not operate to prevent the Tax Commissioner from issuing assessments. *Z Corp. v. Tracy* (Oct. 2, 1992), BTA Case No.1991-N-417, unreported. Moreover, the doctrine of laches, like estoppel, is an equitable remedy. We note that the Board of Tax

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<sup>2</sup> There is no question that the assessment itself was issued within the statute of limitations. See R.C. 5747.13.

Appeals has no express or implied equity jurisdiction. *Columbus Southern Lumber Co. v. Peck* (1953), 159 Ohio St. 564. As a creature of statute, we have only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259.

In the instant matter, it appears that the commissioner issued the final determination just after we issued our decision in *Knust*, supra. At about the same time, the commissioner issued a multitude of determinations involving ESBTs. We cannot say that his decision to hold this and other similar cases until the BTA spoke on the ESBT issue was unreasonable. Moreover, although the Vestfalls cite to the interest accumulating on the assessment, they ignore the fact that they could have avoided interest charges by paying the assessment in full and seeking a refund.

In conclusion, upon review of the responses to the show cause order, and in accordance with *Knust*, supra, and the evidence in the record before us, the Board of Tax Appeals affirms the Tax Commissioner's final determination.

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United States Code Annotated Currentness  
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Article VI. Debts Validated--Supreme Law of Land--Oath of Office (Refs & Annos)

→ Clause 1. Debts Validated

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

**Clause 2. Supreme Law of Land**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**Clause 3. Oath of Office; Religious Test Denied**

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

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Effective: December 20, 2006

United States Code Annotated CurrentnessTitle 26. Internal Revenue Code (Refs & Annos)Subtitle A. Income Taxes (Refs & Annos)Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)▣ Subchapter B. Computation of Taxable Income▣ Part I. Definition of Gross Income, Adjusted Gross Income, Taxable Income, Etc.

## → § 62. Adjusted gross income defined

(a) **General rule.**--For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) **Trade and business deductions.**--The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) **Certain trade and business deductions of employees.**--

(A) **Reimbursed expenses of employees.**--The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) **Certain expenses of performing artists.**--The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) **Certain expenses of officials.**--The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) **Certain expenses of elementary and secondary school teachers.**--In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, or 2007, the deductions allowed by section 162 which consist of expenses, not in excess of \$250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) **Certain expenses of members of reserve components of the Armed Forces of the United States.**--The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the

rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

**(3) Losses from sale or exchange of property.**--The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

**(4) Deductions attributable to rents and royalties.**--The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

**(5) Certain deductions of life tenants and income beneficiaries of property.**--In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

**(6) Pension, profit-sharing, and annuity plans of self-employed individuals.**--In the case of an individual who is an employee within the meaning of section 401(c)(1), the deduction allowed by section 404.

**(7) Retirement savings.**--The deduction allowed by section 219 (relating to deduction of certain retirement savings).

**(8) Repealed.** Pub.L. 104-188, Title I, § 1401(b)(4), Aug. 20, 1996, 110 Stat. 1788]

**(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits.**--The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

**(10) Alimony.**--The deduction allowed by section 215.

**(11) Reforestation expenses.**--The deduction allowed by section 194.

**(12) Certain required repayments of supplemental unemployment compensation benefits.**--The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

**(13) Jury duty pay remitted to employer.**--Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term "jury pay" means any payment received by the individual for the discharge of jury duty.

**(14) Deduction for clean-fuel vehicles and certain refueling property.**--The deduction allowed by section 179A.

- (15) **Moving expenses.**--The deduction allowed by section 217.
- (16) **Archer MSAs.**--The deduction allowed by section 220.
- (17) **Interest on education loans.**--The deduction allowed by section 221.
- (18) **Higher education expenses.**--The deduction allowed by section 222.
- (19) **Health savings accounts.**--The deduction allowed by section 223.
- (20) **Costs involving discrimination suits, etc.**--Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code [FNI] or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.
- (21) **Attorneys fees relating to awards to whistleblowers.**--Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblowers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once.

**(b) Qualified performing artist.--**

**(1) In general.**--For purposes of subsection (a)(2)(B), the term "qualified performing artist" means, with respect to any taxable year, any individual if--

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed \$16,000.

**(2) Nominal employer not taken into account.**--An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds \$200.

**(3) Special rules for married couples.--**

**(A) In general.**--Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

**(B) Application of paragraph (1).**--In the case of a joint return--

(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

**(C) Determination of marital status.**--For purposes of this subsection, marital status shall be determined under section 7703(a).

**(D) Joint return.**--For purposes of this subsection, the term "joint return" means the joint return of a husband and wife made under section 6013.

**(c) Certain arrangements not treated as reimbursement arrangements.**--For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a reimbursement or other expense allowance arrangement if--

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

**(d) Definition; special rules.--**

**(1) Eligible educator.--**

**(A) In general.**--For purposes of subsection (a)(2)(D), the term "eligible educator" means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

**(B) School.**--The term "school" means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

**(2) Coordination with exclusions.**--A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.

**(e) Unlawful discrimination defined.**--For purposes of subsection (a)(20), the term "unlawful discrimination" means an act that is unlawful under any of the following:

(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

- (3) The National Labor Relations Act (29 U.S.C. 151 et seq.).
- (4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).
- (5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).
- (6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).
- (7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).
- (8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).
- (9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).
- (10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).
- (11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).
- (12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).
- (13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).
- (14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2, 2000e-3, or 2000e-16).
- (15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).
- (16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).
- (17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.
- (18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law--
  - (i) providing for the enforcement of civil rights, or
  - (ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 17; Oct. 10, 1962, Pub.L. 87-792, § 7(b), 76 Stat. 828; Feb. 26, 1964, Pub.L. 88-272, Title II, § 213(b), 78 Stat. 52; Dec. 30, 1969, Pub.L. 91-172, Title V, § 531(b), 83 Stat. 655; Sept. 2, 1974, Pub.L. 93-406, Title II, §§ 2002(a)(2), 2005(c)(9), 88 Stat. 959, 992; Oct. 26, 1974, Pub.L. 93-483, § 6(a), 88 Stat. 1458; Oct. 4, 1976, Pub.L. 94-455, Title V, § 502(a), Title XV, § 1501(b)(1), Title XIX, § 1901(a)(8), (9), 90 Stat.

1559, 1735, 1765; Nov. 8, 1978, Pub.L. 95-615, Title II, § 203(b), 92 Stat. 3106; Oct. 14, 1980, Pub.L. 96-451, Title III, § 301(b), 94 Stat. 1990; Dec. 28, 1980, Pub.L. 96-608, § 3(a), 94 Stat. 3551; Aug. 13, 1981, Pub.L. 97-34, Title I, §§ 103(b), 112(b)(2), Title III, § 311(h)(1), 95 Stat. 187, 195, 282; Oct. 19, 1982, Pub.L. 97-354, § 5(a)(17), 96 Stat. 1693; July 18, 1984, Pub.L. 98-369, Title IV, § 491(d)(2), 98 Stat. 849; Oct. 22, 1986, Pub.L. 99-514, Title I, §§ 131(b)(1), 132(b)(1), (b)(2), (c), Title III, § 301(b)(1), Title XVIII, § 1875(c)(3), 100 Stat. 2113, 2115, 2116, 2217, 2894; Oct. 13, 1988, Pub.L. 100-485, Title VII, § 702(a), 102 Stat. 2426; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1001(b)(3)(A), Title VI, § 6007(b), 102 Stat. 3349, 3687; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11802(e)(1), 104 Stat. 1388-530; July 3, 1992, Pub.L. 102-318, Title V, § 521(b)(2), 106 Stat. 310; Oct. 24, 1992, Pub.L. 102-486, Title XIX, § 1913(a)(2), 106 Stat. 3019; Aug. 10, 1993, Pub.L. 103-66, Title XIII, § 13213(c)(1), 107 Stat. 474; Aug. 20, 1996, Pub.L. 104-188, Title I, § 1401(b)(4), 110 Stat. 1788; Aug. 21, 1996, Pub.L. 104-191, Title III, § 301(b), 110 Stat. 2048; Aug. 5, 1997, Pub.L. 105-34, Title II, § 202(b), Title IX, § 975(a), 111 Stat. 808, 809, 898; Dec. 21, 2000, Pub.L. 106-554, § 1(a)(7) [Title II, § 202(b)(1)], 114 Stat. 2763, 2763A-629; June 7, 2001, Pub.L. 107-16, Title IV, § 431(b), 115 Stat. 68; Mar. 9, 2002, Pub.L. 107-147, Title IV, § 406(a), (b), 116 Stat. 43; Nov. 11, 2003, Pub.L. 108-121, Title I, § 109(b), 117 Stat. 1341; Dec. 8, 2003, Pub.L. 108-173, Title XII, § 1201(b), 117 Stat. 2476; Oct. 4, 2004, Pub.L. 108-311, Title III, § 307(a), 118 Stat. 1179; Oct. 22, 2004, Pub.L. 108-357, Title VII, § 703(a), (b), 118 Stat. 1546, 1547; Dec. 21, 2005, Pub.L. 109-135, Title IV, § 412(g), 119 Stat. 2638; Dec. 20, 2006, Pub.L. 109-432, Div. A, Title I, § 108(a), Title IV, § 406(a)(3), 120 Stat. 2939, 2959.)

[FN1] So in original. Probably should be followed by a comma.



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United States Code Annotated Currentness

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle A. Income Taxes (Refs & Annos)

Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)

Subchapter J. Estates, Trusts, Beneficiaries, and Decedents (Refs & Annos)

Part I. Estates, Trusts, and Beneficiaries (Refs & Annos)

Subpart A. General Rules for Taxation of Estates and Trusts (Refs & Annos)

→ § 641. Imposition of tax

**(a) Application of tax.**--The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including--

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

**(b) 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, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.

**(c) Special rules for taxation of electing small business trusts.--**

**(1) In general.**--For purposes of this chapter--

**(A)** the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

**(B)** the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

**(2) Modifications.**--For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

(B) The exemption amount under section 55(d) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section 1366.

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

**(3) Treatment of remainder of trust and distributions.**--For purposes of determining--

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust, the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

**(4) Treatment of unused deductions where termination of separate trust.**--If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

**(5) Electing small business trust.**--For purposes of this subsection, the term "electing small business trust" has the meaning given such term by section 1361(e)(1).

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 215; Dec. 30, 1969, Pub.L. 91-172, Title VIII, § 803(d) (3), 83 Stat. 684; Oct. 4, 1976, Pub.L. 94-455, Title VII, § 701(e) (2), 90 Stat. 1579; May 23, 1977, Pub.L. 95-30, Title I, § 101(d) (8), 91 Stat. 134; Aug. 20, 1996, Pub.L. 104-188, Title I, § 1302(d), 110 Stat. 1778; Aug. 5, 1997, Pub.L. 105-34, Title XVI, § 1601(i)(3)(B), 111 Stat. 1093; July 22, 1998, Pub.L. 105-206, Title VI, § 6007(f)(2), 112 Stat. 810; May 25, 2007, Pub.L. 110-28, Title VIII, § 8236(a), 121 Stat. 199.)



Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle A. Income Taxes (Refs & Annos)

Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)

Subchapter J. Estates, Trusts, Beneficiaries, and Decedents (Refs & Annos)

<sup>5</sup> Part I. Estates, Trusts, and Beneficiaries (Refs & Annos)

<sup>5</sup> Subpart E. Grantors and Others Treated as Substantial Owners (Refs & Annos)

→ § 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart.

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United States Code Annotated Currentness

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle A. Income Taxes (Refs & Annos)

Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)

▣ Subchapter S. Tax Treatment of S Corporations and Their Shareholders (Refs & Annos)

▣ Part I. In General

→ § 1361. S corporation defined

**(a) S corporation defined.--**

**(1) In general.--**For purposes of this title, the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

**(2) C corporation.--**For purposes of this title, the term "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year.

**(b) Small business corporation.--**

**(1) In general.--**For purposes of this subchapter, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not--

**(A)** have more than 100 shareholders,

**(B)** have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

**(C)** have a nonresident alien as a shareholder, and

**(D)** have more than 1 class of stock.

**(2) Ineligible corporation defined.--**For purposes of paragraph (1), the term "ineligible corporation" means any corporation which is--

**(A)** a financial institution which uses the reserve method of accounting for bad debts described in section 585,

**(B)** an insurance company subject to tax under subchapter L,

**(C)** a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

**(3) Treatment of certain wholly owned subsidiaries.--**

**(A) In general.--**Except as provided in regulations prescribed by the Secretary, for purposes of this title--

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

**(B) Qualified subchapter S subsidiary.--**For purposes of this paragraph, the term "qualified subchapter S subsidiary" means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if--

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

**(C) Treatment of terminations of qualified subchapter S subsidiary status.--**

(i) **In general.--**For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.

(ii) **Termination by reason of sale of stock.--**If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be treated as if--

(I) the sale were a sale of an undivided interest in the assets of such corporation (based on the percentage of the corporation's stock sold), and

(II) the sale were followed by an acquisition by such corporation of all of its assets (and the assumption by such corporation of all of its liabilities) in a transaction to which section 351 applies.

**(D) Election after termination.--**If a corporation's status as a qualified subchapter S subsidiary terminates, such corporation (and any successor corporation) shall not be eligible to make--

(i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary, or

(ii) an election under section 1362(a) to be treated as an S corporation,

**(E) Information returns.--**Except to the extent provided by the Secretary, this paragraph shall not apply to part III of subchapter A of chapter 61 (relating to information returns).

before its 5th taxable year which begins after the 1st taxable year for which such termination was effective, unless the Secretary consents to such election.

**(c) Special rules for applying subsection (b).--**

**(1) Members of a family treated as 1 shareholder.--**

**(A) In general.--**For purposes of subsection (b)(1)(A), there shall be treated as one shareholder--

- (i)** a husband and wife (and their estates), and
- (ii)** all members of a family (and their estates).

**(B) Members of a family.--**For purposes of this paragraph--

**(i) In general.--**The term "members of a family" means a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant.

**(ii) Common ancestor.--**An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this subparagraph) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

**(iii) Applicable date.--**The term "applicable date" means the latest of--

- (I)** the date the election under section 1362(a) is made,
- (II)** the earliest date that an individual described in clause (i) holds stock in the S corporation, or
- (III)** October 22, 2004.

**(C) Effect of adoption, etc.--**Any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by the individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

**(2) Certain trusts permitted as shareholders.--**

**(A) In general.--**For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

- (i)** A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.
- (ii)** A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.
- (iii)** A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

(v) An electing small business trust.

(vi) In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of the date of the enactment of this clause.

This subparagraph shall not apply to any foreign trust.

**(B) Treatment as shareholders.--**For purposes of subsection (b)(1)--

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each beneficiary of the trust shall be treated as a shareholder.

(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period.

(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.

**(3) Estate of individual in bankruptcy may be shareholder.--**For purposes of subsection (b)(1)(B), the term "estate" includes the estate of an individual in a case under title 11 of the United States Code.

**(4) Differences in common stock voting rights disregarded.--**For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

**(5) Straight debt safe harbor.--**

**(A) In general.--**For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

**(B) Straight debt defined.--**For purposes of this paragraph, the term "straight debt" means any written unconditional promise to pay on demand or on a specified date a sum certain in money if--

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion,

or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.

**(C) Regulations.**--The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

**(6) Certain exempt organizations permitted as shareholders.**--For purposes of subsection (b)(1)(B), an organization which is--

(A) described in section 401(a) or 501(c)(3), and

(B) exempt from taxation under section 501(a),

may be a shareholder in an S corporation.

**(d) Special rule for qualified subchapter S trust.**--

**(1) In general.**--In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)--

(A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i),

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made, and

(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.

**(2) Election.**--

(A) **In general.**--A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) **Manner and time of election.**--

(i) **Separate election with respect to each corporation.**--An election under this paragraph shall be made separately with respect to each corporation the stock of which is held by the trust.

(ii) **Elections with respect to successive income beneficiaries.**--If there is an election under this paragraph with respect to any beneficiary, an election under this paragraph shall be treated as made by each successive beneficiary unless such beneficiary affirmatively refuses to consent to such election.

(iii) **Time, manner, and form of election.**--Any election, or refusal, under this paragraph shall be made in such manner and form, and at such time, as the Secretary may prescribe.

**(C) Election irrevocable.**--An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

**(D) Grace period.**--An election under this paragraph shall be effective up to 15 days and 2 months before the date of the election.

**(3) Qualified subchapter S trust.**--For purposes of this subsection, the term "qualified subchapter S trust" means a trust--

**(A)** the terms of which require that--

**(i)** during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

**(ii)** any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

**(iii)** the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

**(iv)** upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

**(B)** all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

A substantially separate and independent share of a trust within the meaning of section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).

**(4) Trust ceasing to be qualified.**--

**(A) Failure to meet requirements of paragraph (3)(A).**--If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

**(B) Failure to meet requirements of paragraph (3)(B).**--If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

**(e) Electing small business trust defined.**--

**(1) Electing small business trust.**--For purposes of this section--

**(A) In general.**--Except as provided in subparagraph (B), the term "electing small business trust" means any trust if--

**(i)** such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c), or (IV) an organization

**(2) By corporation ceasing to be small business corporation.--**

**(A) In general.--**An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

**(B) When effective.--**Any termination under this paragraph shall be effective on and after the date of cessation.

**(3) Where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits.--**

**(A) Termination.--**

**(i) In general.--**An election under subsection (a) shall be terminated whenever the corporation--

**(I)** has accumulated earnings and profits at the close of each of 3 consecutive taxable years, and

**(II)** has gross receipts for each of such taxable years more than 25 percent of which are passive investment income.

**(ii) When effective.--**Any termination under this paragraph shall be effective on and after the first day of the first taxable year beginning after the third consecutive taxable year referred to in clause (i).

**(iii) Years taken into account.--**A prior taxable year shall not be taken into account under clause (i) unless--

**(I)** such taxable year began after December 31, 1981, and

**(II)** the corporation was an S corporation for such taxable year.

**(B) Gross receipts from the sales of certain assets.--**For purposes of this paragraph--

**(i)** in the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom, and

**(ii)** in the case of sales or exchanges of stock or securities, gross receipts shall be taken into account only to the extent of the gains therefrom.

**(C) Passive investment income defined.--**

**(i) In general.--**Except as otherwise provided in this subparagraph, the term "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, and annuities.

**(ii) Exception for interest on notes from sales of inventory.--**The term "passive investment income" shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

**(iii) Treatment of certain lending or finance companies.--**If the S corporation meets the

requirements of section 542(c)(6) for the taxable year, the term "passive investment income" shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

(iv) **Treatment of certain dividends.**--If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term "passive investment income" shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

(v) **Exception for banks, etc.**--In the case of a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), the term "passive investment income" shall not include--

(I) interest income earned by such bank or company, or

(II) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

[ (D) to (F) Repealed. Pub.L. 110-28, Title VIII, § 8231(a), May 25, 2007, 121 Stat. 196 ]

**(e) Treatment of S termination year.--**

(1) **In general.**--In the case of an S termination year, for purposes of this title--

(A) **S short year.**--The portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation.

(B) **C short year.**--The portion of such year beginning on such 1st day shall be treated as a short taxable year for which the corporation is a C corporation.

(2) **Pro rata allocation.**--Except as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6), the determination of which items are to be taken into account for each of the short taxable years referred to in paragraph (1) shall be made--

(A) first by determining for the S termination year--

(i) the amount of each of the items of income, loss, deduction, or credit described in section 1366(a)(1)(A), and

(ii) the amount of the nonseparately computed income or loss, and

(B) then by assigning an equal portion of each amount determined under subparagraph (A) to each day of the S termination year.

(3) **Election to have items assigned to each short taxable year under normal tax accounting rules.--**

(A) **In general.**--A corporation may elect to have paragraph (2) not apply.

(B) **Shareholders must consent to election.**--An election under this subsection shall be valid only if all

persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election.

**(4) S termination year.**--For purposes of this subsection, the term "S termination year" means any taxable year of a corporation (determined without regard to this subsection) in which a termination of an election made under subsection (a) takes effect (other than on the 1st day thereof).

**(5) Tax for C short year determined on annualized basis.**--

**(A) In general.**--The taxable income for the short year described in subparagraph (B) of paragraph (1) shall be placed on an annual basis by multiplying the taxable income for such short year by the number of days in the S termination year and by dividing the result by the number of days in the short year. The tax shall be the same part of the tax computed on the annual basis as the number of days in such short year is of the number of days in the S termination year.

**(B) Section 443(d)(2) to apply.**--Subsection (d) of section 443 shall apply to the short taxable year described in subparagraph (B) of paragraph (1).

**(6) Other special rules.**--For purposes of this title--

**(A) Short years treated as 1 year for carryover purposes.**--The short taxable year described in subparagraph (A) of paragraph (1) shall not be taken into account for purposes of determining the number of taxable years to which any item may be carried back or carried forward by the corporation.

**(B) Due date for S year.**--The due date for filing the return for the short taxable year described in subparagraph (A) of paragraph (1) shall be the same as the due date for filing the return for the short taxable year described in subparagraph (B) of paragraph (1) (including extensions thereof).

**(C) Paragraph (2) not to apply to items resulting from section 338.**--Paragraph (2) shall not apply with respect to any item resulting from the application of section 338.

**(D) Pro rata allocation for S termination year not to apply if 50-percent change in ownership.**--Paragraph (2) shall not apply to an S termination year if there is a sale or exchange of 50 percent or more of the stock in such corporation during such year.

**(f) Inadvertent invalid elections or terminations.**--If--

**(1)** an election under subsection (a), section 1361(b)(3)(B)(ii), or section 1361(c)(1)(A)(ii) by any corporation--

**(A)** was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

**(B)** was terminated under paragraph (2) or (3) of subsection (d), section 1361(b)(3)(C), or section 1361(c)(1)(D)(iii),

**(2)** the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

**(3)** no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken--

(A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or

(B) to acquire the required shareholder consents, and

(4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be [FN1] during the period specified by the Secretary.

(g) **Election after termination.**--If a small business corporation has made an election under subsection (a) and if such election has been terminated under subsection (d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

#### CREDIT(S)

(Added Pub.L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1672, and amended Pub.L. 98-369, Title I, § 102(d)(2), Title VII, § 721(g), (h), (l), (t), July 18, 1984, 98 Stat. 623, 968, 969, 971; Pub.L. 100-647, Title I, §§ 1006(f)(6), 1007(g)(9), Nov. 10, 1988, 102 Stat. 3406, 3435; Pub.L. 104-188, Title I, §§ 1305(a), (b), 1308(c), 1311(b)(1), Aug. 20, 1996, 110 Stat. 1779, 1780, 1783, 1784; Pub.L. 106-170, Title V, § 532(c)(2)(T), Dec. 17, 1999, 113 Stat. 1931; Pub.L. 108-357, Title II, §§ 231(b), 237(a), 238(a), Oct. 22, 2004, 118 Stat. 1433, 1436; Pub.L. 109-135, Title IV, § 413(b), Dec. 21, 2005, 119 Stat. 2641; Pub.L. 110-28, Title VIII, § 8231(a), May 25, 2007, 121 Stat. 196.)

## R.C. § 5717.02

**C** Baldwin's Ohio Revised Code Annotated Currentness  
Title LVII. Taxation  
Chapter 5717. Appeals (Refs & Annos)

**→ 5717.02 Appeals from final determination of the tax commissioner; procedure; hearing**

Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

(2002 S 200, eff. 9-6-02; 2000 S 287, eff. 12-21-00; 2000 H 612, eff. 9-29-00; 1994 S 19, eff. 7-22-94; 1985 H 321, eff. 10-17-85; 1985 S 124; 1983 H 260; 1981 H 351; 1977 H 634; 1976 H 920; 1973 S 174; 1953 H 1; GC 5611)

## R.C. § 5717.04

Ⓒ Baldwin's Ohio Revised Code Annotated Currentness  
Title LVII. Taxation  
Ⓔ Chapter 5717. Appeals (Refs & Annos)

## → 5717.04 Appeal from decision of board of tax appeals to supreme court

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be certified, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be certified, or by any other person to whom the board certified the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal

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shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

(1987 H 231, eff. 10-5-87; 1983 H 260; 1977 H 634; 1973 S 174; 125 v 250; 1953 H 1; GC 5611-2)

## R.C. § 5747.01

▶ Baldwin's Ohio Revised Code Annotated Currentness  
Title LVII. Taxation  
    ▣ Chapter 5747. Income Tax (Refs & Annos)  
        ▣ General Provisions

## → 5747.01 Definitions

Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

As used in this chapter:

(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:

- (1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.
- (2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.
- (3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.
- (4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.
- (5) Deduct benefits under Title II of the Social Security Act [FN1] and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code. [FN2]
- (6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.

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(7) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code[FN3] not been in effect.

(8) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the interest or interest equivalent is included in federal adjusted gross income.

(9) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent that the loss has been deducted or the gain has been included in computing federal adjusted gross income.

(10) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions to variable college savings program accounts made or tuition units purchased pursuant to Chapter 3334. of the Revised Code.

(11)(a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A)(11) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A)(11)(a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A)(11)(a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received during the taxable year.

(b) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, the amount the taxpayer paid during the taxable year, not compensated for by any insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, and dependents, to the extent the expenses exceed seven and one-half per cent of the taxpayer's federal adjusted gross income.

(c) For purposes of division (A)(11) of this section, "medical care" has the meaning given in section 213 of the Internal Revenue Code, subject to the special rules, limitations, and exclusions set forth therein, and "qualified long-term care" has the same meaning given in section 7702B(c) of the Internal Revenue Code. [FN4]

(12)(a) Deduct any amount included in federal adjusted gross income solely because the amount represents a reimbursement or refund of expenses that in any year the taxpayer had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division (A)(12)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio adjusted gross income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio adjusted gross income in any taxable year.

(13) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for

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that year;

(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year.

(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A)(14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.

(15)(a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;

(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.

(16) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(17) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division (A)(17) of this section.

(18) Beginning in taxable year 2001 but not for any taxable year beginning after December 31, 2005, if the taxpayer is married and files a joint return and the combined federal adjusted gross income of the taxpayer and the taxpayer's spouse for the taxable year does not exceed one hundred thousand dollars, or if the taxpayer is single and has a federal adjusted gross income for the taxable year not exceeding fifty thousand dollars, deduct amounts paid during the taxable year for qualified tuition and fees paid to an eligible institution for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, who is a resident of this state and is enrolled in or attending a program that culminates in a degree or diploma at an eligible institution. The deduction may be claimed only to the extent that qualified tuition and fees are not otherwise deducted or excluded for any taxable year from federal or Ohio adjusted gross income. The deduction may not be claimed for educational expenses for which the taxpayer claims a credit under section 5747.27 of the Revised Code.

(19) Add any reimbursement received during the taxable year of any amount the taxpayer deducted under division (A)(18) of this section in any previous taxable year to the extent the amount is not otherwise included in Ohio adjusted gross income.

(20)(a)(i) Add five-sixths of the amount of depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or indirect ownership interest.

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(ii) Add five-sixths of the amount of qualifying section 179 depreciation expense, including a person's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the person has a direct or indirect ownership. For the purposes of this division, "qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.

The tax commissioner, under procedures established by the commissioner, may waive the add-backs related to a pass-through entity if the taxpayer owns, directly or indirectly, less than five per cent of the pass-through entity.

(b) Nothing in division (A)(20) of this section shall be construed to adjust or modify the adjusted basis of any asset.

(c) To the extent the add-back required under division (A)(20)(a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situated to the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(d) For the purposes of division (A) of this section, net operating loss carryback and carryforward shall not include five-sixths of the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.

(21)(a) If the taxpayer was required to add an amount under division (A) (20)(a) of this section for a taxable year, deduct one-fifth of the amount so added for each of the five succeeding taxable years.

(b) If the amount deducted under division (A)(21)(a) of this section is attributable to an add-back allocated under division (A)(20)(c) of this section, the amount deducted shall be situated to the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(c) No deduction is available under division (A)(21)(a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation resulted in or increased a federal net operating loss carryback or carryforward to a taxable year to which division (A)(20)(d) of this section does not apply.

(22) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.

(23) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as a death benefit paid by the adjutant general under section 5919.33 of the Revised Code.

(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, military pay and allowances received by the taxpayer during the taxable year for active duty service in the United States army, air force, navy,

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marine corps, or coast guard or reserve components thereof or the national guard. The deduction may not be claimed for military pay and allowances received by the taxpayer while the taxpayer is stationed in this state.

(25) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year and not otherwise compensated for by any other source, the amount of qualified organ donation expenses incurred by the taxpayer during the taxable year, not to exceed ten thousand dollars. A taxpayer may deduct qualified organ donation expenses only once for all taxable years beginning with taxable years beginning in 2007.

For the purposes of division (A)(25) of this section:

(a) "Human organ" means all or any portion of a human liver, pancreas, kidney, intestine, or lung, and any portion of human bone marrow.

(b) "Qualified organ donation expenses" means travel expenses, lodging expenses, and wages and salary forgone by a taxpayer in connection with the taxpayer's donation, while living, of one or more of the taxpayer's human organs to another human being.

(B) "Business income" means income, including gain or loss, arising from transactions, activities, and sources in the regular course of a trade or business and includes income, gain, or loss from real property, tangible property, and intangible property if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.

(C) "Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.

(D) "Compensation" means any form of remuneration paid to an employee for personal services.

(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.

(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(G) "Individual" means any natural person.

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(I) "Resident" means any of the following, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter:

(1) An individual who is domiciled in this state, subject to section 5747. 24 of the Revised Code;

(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.

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(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.

For the purposes of division (I)(3) of this section:

(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:

(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;

(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;

(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year. If a trust document or instrument became irrevocable upon the death of a person who at the time of death was domiciled in this state for purposes of this chapter, that person is a person described in division (I)(3)(a)(iii) of this section.

(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code. [FNS]

(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.

(d) For the purposes of division (I)(3)(a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows:

(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related liabilities.

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the qualifying ratio last computed without regard to the subsequent transfer, and (2) the fair market value of the subsequently transferred assets at the time transferred, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the revised qualifying ratio is the fair market value of all the trust's assets immediately after the subsequent transfer, net of any related liabilities.

(iii) Whether a transfer to the trust is by or from any of the sources enumerated in division (I)(3)(a) of this section

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shall be ascertained without regard to the domicile of the trust's beneficiaries.

(e) For the purposes of division (I)(3)(a)(i) of this section:

(i) A trust is described in division (I)(3)(e)(i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(ii) A trust is described in division (I)(3)(e)(ii) of this section if the transfer is a qualifying transfer described in any of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state for purposes of this chapter during all or some portion of the trust's current taxable year.

(f) For the purposes of division (I)(3)(e)(ii) of this section, a "qualifying transfer" is a transfer of assets, net of any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following:

(i) The transfer is made to a trust, created by the decedent before the decedent's death and while the decedent was domiciled in this state for the purposes of this chapter, and, prior to the death of the decedent, the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.

(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.

(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(iv) The transfer is made to a trust on account of a contractual relationship existing directly or indirectly between the transferor and another person who at the time of the decedent's death was domiciled in this state for purposes of this chapter.

(v) The transfer is made to a trust on account of the will of a testator.

(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.

(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.

(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.

(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.

(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required.

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(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.

(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.

(O) "Dependents" means dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return.

(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed.

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:

(1) "Subdivision" means any county, municipal corporation, park district, or township.

(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution.

(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.

(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows:

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;

(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.

(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;

(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S)(1)(a) or (b) of this section;

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(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(7) Add any loss or deduct any gain resulting from sale, exchange, or other disposition of public obligations to the extent that such loss has been deducted or such gain has been included in computing either federal taxable income or income of the S portion of an electing small business trust for the taxable year;

(8) Except in the case of the final return of an estate, add any amount deducted by the taxpayer on both its Ohio estate tax return pursuant to section 5731.14 of the Revised Code, and on its federal income tax return in determining federal taxable income;

(9)(a) Deduct any amount included in federal taxable income solely because the amount represents a reimbursement or refund of expenses that in a previous year the decedent had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable treasury regulations. The deduction otherwise allowed under division (S)(9)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer or decedent deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio taxable income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio taxable income in any taxable year, but only to the extent such amount has not been distributed to beneficiaries for the taxable year.

(10) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's taxable income or the decedent's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year.

(b) It does not otherwise reduce the taxpayer's taxable income or the decedent's adjusted gross income for the current or any other taxable year.

(11) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that the amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal taxable income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is

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required to report as farm income on its federal income tax return, but only if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income.

Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S)(12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.

(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code[FN6] to the extent that amount is not included in federal taxable income.

(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.

(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.

(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.

(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.

(Y) "Month" means a calendar month.

(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.

(AA)(1) "Eligible institution" means a state university or state institution of higher education as defined in section 3345.011 of the Revised Code, or a private, nonprofit college, university, or other post-secondary institution located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code or a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.

(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary education. If the individual is a part-time student, "qualified tuition and fees" includes tuition and fees paid for the academic equivalent of the first two years of post-secondary education during a maximum of five taxable years, not exceeding a total of five thousand dollars. "Qualified tuition and fees" does not include:

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(a) Expenses for any course or activity involving sports, games, or hobbies unless the course or activity is part of the individual's degree or diploma program;

(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction;

(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.

(BB)(1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any.

(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied:

(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust.

(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.

Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.

(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment income is not otherwise part of modified business income.

(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions (BB)(4)(a) to (c) of this section:

(a) The fraction, calculated under section 5747.013, and applying section 5747.231 of the Revised Code, multiplied by the sum of the following amounts:

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in section 5747.012 of the Revised Code, but only to the extent the qualifying investment income does not otherwise constitute modified business income and does not otherwise constitute a qualifying trust amount.

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount, and the denominator of which is the sum of the book value of the qualifying investee's total physical assets everywhere on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount. If, for a taxable year, the trust recognizes a qualifying trust amount with respect to more than one qualifying investee, the amount described in division (BB)(4)(b) of this section shall equal the sum of the products so computed for each such qualifying investee.

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(c)(i) With respect to a trust or portion of a trust that is a resident as ascertained in accordance with division (I)(3)(d) of this section, its modified nonbusiness income.

(ii) With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code, except as otherwise provided in division (BB)(4)(c)(ii) of this section. With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the trust's portion of modified nonbusiness income recognized from the sale, exchange, or other disposition of a debt interest in or equity interest in a section 5747.212 entity, as defined in section 5747.212 of the Revised Code, without regard to division (A) of that section, shall not be allocated to this state in accordance with section 5747.20 of the Revised Code but shall be apportioned to this state in accordance with division (B) of section 5747.212 of the Revised Code without regard to division (A) of that section.

If the allocation and apportionment of a trust's income under divisions (BB)(4)(a) and (c) of this section do not fairly represent the modified Ohio taxable income of the trust in this state, the alternative methods described in division (C) of section 5747.21 of the Revised Code may be applied in the manner and to the same extent provided in that section.

(5)(a) Except as set forth in division (BB)(5)(b) of this section, "qualifying investee" means a person in which a trust has an equity or ownership interest, or a person or unit of government the debt obligations of either of which are owned by a trust. For the purposes of division (BB)(2)(a) of this section and for the purpose of computing the fraction described in division (BB)(4)(b) of this section, all of the following apply:

(i) If the qualifying investee is a member of a qualifying controlled group on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, then "qualifying investee" includes all persons in the qualifying controlled group on such last day.

(ii) If the qualifying investee, or if the qualifying investee and any members of the qualifying controlled group of which the qualifying investee is a member on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, separately or cumulatively own, directly or indirectly, on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount, more than fifty per cent of the equity of a pass-through entity, then the qualifying investee and the other members are deemed to own the proportionate share of the pass-through entity's physical assets which the pass-through entity directly or indirectly owns on the last day of the pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount.

(iii) For the purposes of division (BB)(5)(a)(iii) of this section, "upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity.

An upper level pass-through entity, whether or not it is also a qualifying investee, is deemed to own, on the last day of the upper level pass-through entity's calendar or fiscal year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's calendar or fiscal year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's calendar or fiscal year in which or with which ends the calendar or fiscal year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower pass-through entity is not available to the upper level pass-through entity, then solely for purposes of ascertaining if a gain or loss constitutes a qualifying trust amount, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-

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through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's calendar or fiscal year. Nothing in division (BB)(5)(a)(iii) of this section shall be construed to provide for any deduction or exclusion in computing any trust's Ohio taxable income.

(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:

(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.

(ii) Such gain or loss constitutes nonbusiness income.

(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.

(CC) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.

(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(EE)(1) For the purposes of division (EE) of this section:

(a) "Qualifying person" means any person other than a qualifying corporation.

(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.

(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.

(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:

(1) "Trust" does not include a qualified pre-income tax trust.

(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division (FF)(3) of this section.

(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust.

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(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:

- (a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;
- (b) The trust became irrevocable upon the creation of the trust; and
- (c) The grantor was domiciled in this state at the time the trust was created.

(2007 H 119, eff. 6-30-07;2006 H 73, eff. 4-4-07;2006 H 530, eff. 3-30-06 (See Historical and Statutory Notes); 2005 H 66, eff. 6-30-05;2004 H 362, eff. 12-30-04;2003 H 127, eff. 12-11-03;2003 H 95, eff. 9-26-03;2002 H 675, eff. 12-13-02;2002 S 266, eff. 4-3-03;2002 S 261, eff. 6-5-02;2000 S 161, § 3, eff. 7-1-00;2000 S 161, § 1, eff. 6-8-00;1999 H 471, eff. 7-1-00;1999 H 4, eff. 10-14-99;1999 H 282, eff. 9-28-99;1998 H 770, eff. 9-16-98;1997 H 408, eff. 10-1-97;1997 H 215, eff. 9-29-97;1996 H 627, eff. 12-2-96;1996 H 179, eff. 10-1-96;1994 S 74, eff. 7-1-94;1993 S 123, eff. 10-29-93;1993 H 152;1992 H 478;1990 S 223, H 286; 1989 H 111, H 61; 1988 S 386; 1987 H 171; 1986 H 428; 1985 S 121; 1984 S 307, H 250; 1983 H 291; 1981 H 694; 1980 H 653; 1974 H 971; 1973 H 95; 1972 S 464, S 472; 1971 H 475)

## R.C. § 5747.02

▶ Baldwin's Ohio Revised Code Annotated Currentness  
 Title LVII. Taxation  
 ◀ Chapter 5747. Income Tax (Refs & Annos)  
 ◀ General Provisions

## → 5747.02 Rates of taxation; exemption

(A) For the purpose of providing revenue for the support of schools and local government functions, to provide relief to property taxpayers, to provide revenue for the general revenue fund, and to meet the expenses of administering the tax levied by this chapter, there is hereby levied on every individual, trust, and estate residing in or earning or receiving income in this state, on every individual, trust, and estate earning or receiving lottery winnings, prizes, or awards pursuant to Chapter 3770. of the Revised Code, and on every individual, trust, and estate otherwise having nexus with or in this state under the Constitution of the United States, an annual tax measured in the case of individuals by Ohio adjusted gross income less an exemption for the taxpayer, the taxpayer's spouse, and each dependent as provided in section 5747.025 of the Revised Code; measured in the case of trusts by modified Ohio taxable income under division (D) of this section; and measured in the case of estates by Ohio taxable income. The tax imposed by this section on the balance thus obtained is hereby levied as follows:

(1) For taxable years beginning in 2004:

OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS) OR MODIFIED OHIO TAXABLE INCOME (TRUSTS) OR OHIO TAXABLE INCOME (ESTATES)	TAX
\$5,000 or less	.743%
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$260.05 plus 3.715% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000
More than \$200,000	\$11,506.20 plus 7.5% of the amount in excess of \$200,000

(2) For taxable years beginning in 2005:

OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS) OR	TAX
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## R.C. § 5747.02

MODIFIED OHIO TAXABLE INCOME (TRUSTS) OR OHIO TAXABLE INCOME (ESTATES)	
\$5,000 or less	.712%
More than \$5,000 but not more than \$10,000	\$35.60 plus 1.424% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$106.80 plus 2.847% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$249.15 plus 3.559% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$427.10 plus 4.27% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,281.10 plus 4.983% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$3,274.30 plus 5.693% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$4,412.90 plus 6.61% of the amount in excess of \$100,000
More than \$200,000	\$11,022.90 plus 7.185% of the amount in excess of \$200,000

## (3) For taxable years beginning in 2006:

OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS) OR MODIFIED OHIO TAXABLE INCOME (TRUSTS) OR OHIO TAXABLE INCOME (ESTATES)	TAX
\$5,000 or less	.681%
More than \$5,000 but not more than \$10,000	\$34.05 plus 1.361% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$102.10 plus 2.722% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$238.20 plus 3.403% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$408.35 plus 4.083% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,224.95 plus 4.764% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$3,130.55 plus 5.444% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$4,219.35 plus 6.32% of the amount in excess of \$100,000
More than \$200,000	\$10,539.35 plus 6.87% of the amount in excess of \$200,000

## (4) For taxable years beginning in 2007:

OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS) OR MODIFIED OHIO TAXABLE INCOME	TAX
--	-----

## R.C. § 5747.02

(TRUSTS) OR OHIO TAXABLE INCOME (ESTATES)	
\$5,000 or less	.649%
More than \$5,000 but not more than \$10,000	\$32.45 plus 1.299% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$97.40 plus 2.598% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$227.30 plus 3.247% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$389.65 plus 3.895% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,168.65 plus 4.546% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$2,987.05 plus 5.194% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$4,025.85 plus 6.031% of the amount in excess of \$100,000
More than \$200,000	\$10,056.85 plus 6.555% of the amount in excess of \$200,000

## (5) For taxable years beginning in 2008:

OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS) OR MODIFIED OHIO TAXABLE INCOME (TRUSTS) OR OHIO TAXABLE INCOME (ESTATES)	TAX
\$5,000 or less	.618%
More than \$5,000 but not more than \$10,000	\$30.90 plus 1.236% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$92.70 plus 2.473% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$216.35 plus 3.091% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$370.90 plus 3.708% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,112.50 plus 4.327% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$2,843.30 plus 4.945% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$3,832.30 plus 5.741% of the amount in excess of \$100,000
More than \$200,000	\$9,573.30 plus 6.24% of the amount in excess of \$200,000

## (6) For taxable years beginning in 2009 or thereafter:

OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS) OR MODIFIED OHIO TAXABLE INCOME (TRUSTS) OR OHIO TAXABLE INCOME	TAX
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## R.C. § 5747.02

(ESTATES)	
\$5,000 or less	.587%
More than \$5,000 but not more than \$10,000	\$29.35 plus 1.174% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$88.05 plus 2.348% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$205.45 plus 2.935% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$352.20 plus 3.521% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,056.40 plus 4.109% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$2,700.00 plus 4.695% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$3,639.00 plus 5.451% of the amount in excess of \$100,000
More than \$200,000	\$9,090.00 plus 5.925% of the amount in excess of \$200,000

In July of each year, beginning in 2010, the tax commissioner shall adjust the income amounts prescribed in this division by multiplying the percentage increase in the gross domestic product deflator computed that year under section 5747.025 of the Revised Code by each of the income amounts resulting from the adjustment under this division in the preceding year, adding the resulting product to the corresponding income amount resulting from the adjustment in the preceding year, and rounding the resulting sum to the nearest multiple of fifty dollars. The tax commissioner also shall recompute each of the tax dollar amounts to the extent necessary to reflect the adjustment of the income amounts. The rates of taxation shall not be adjusted.

The adjusted amounts apply to taxable years beginning in the calendar year in which the adjustments are made. The tax commissioner shall not make such adjustments in any year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment in the preceding year.

(B) If the director of budget and management makes a certification to the tax commissioner under division (B) of section 131.44 of the Revised Code, the amount of tax as determined under division (A) of this section shall be reduced by the percentage prescribed in that certification for taxable years beginning in the calendar year in which that certification is made.

(C) The levy of this tax on income does not prevent a municipal corporation, a joint economic development zone created under section 715.691, or a joint economic development district created under section 715.70 or 715.71 or sections 715.72 to 715.81 of the Revised Code from levying a tax on income.

(D) This division applies only to taxable years of a trust beginning in 2002 or thereafter.

(1) The tax imposed by this section on a trust shall be computed by multiplying the Ohio modified taxable income of the trust by the rates prescribed by division (A) of this section.

(2) A credit is allowed against the tax computed under division (D) of this section equal to the lesser of (1) the tax paid to another state or the District of Columbia on the trust's modified nonbusiness income, other than the portion of the trust's nonbusiness income that is qualifying investment income as defined in section 5747.012 of the Revised Code, or (2) the effective tax rate, based on modified Ohio taxable income, multiplied by the trust's modified nonbusiness income other than the portion of trust's nonbusiness income that is qualifying investment income. The credit applies before any other applicable credits.

(3) The credits enumerated in divisions (A)(1) to (13) of section 5747.98 of the Revised Code do not apply to a trust subject to

## R.C. § 5747.02

this division. Any credits enumerated in other divisions of section 5747.98 of the Revised Code apply to a trust subject to this division. To the extent that the trust distributes income for the taxable year for which a credit is available to the trust, the credit shall be shared by the trust and its beneficiaries. The tax commissioner and the trust shall be guided by applicable regulations of the United States treasury regarding the sharing of credits.

(E) For the purposes of this section, "trust" means any trust described in Subchapter J of Chapter 1 of the Internal Revenue Code, excluding trusts that are not irrevocable as defined in division (I)(3)(b) of section 5747.01 of the Revised Code and that have no modified Ohio taxable income for the taxable year, charitable remainder trusts, qualified funeral trusts and preneed funeral contract trusts established pursuant to section 1111.19 of the Revised Code that are not qualified funeral trusts, endowment and perpetual care trusts, qualified settlement trusts and funds, designated settlement trusts and funds, and trusts exempted from taxation under section 501(a) of the Internal Revenue Code[FNI].

(2005 H 66, eff. 6-30-05; 2003 H 95, eff. 9-26-03; 2002 H 675, eff. 12-13-02; 2002 S 261, eff. 6-5-02; 1997 H 215, § 1, eff. 9-29-97; 1997 H 215, § 208, eff. 6-30-97; 1996 H 442, eff. 7-9-96; 1996 S 310, § 41, eff. 6-30-98; 1996 S 310, § 1, eff. 7-1-96; 1995 H 269, eff. 11-15-95; 1995 H 117, eff. 9-29-95; 1994 H 715, eff. 7-22-94; 1992 H 904, eff. 12-22-92; 1990 H 174; 1989 H 111; 1988 H 708; 1986 S 417; 1985 H 238; 1983 H 291, H 100; 1982 S 530; 1974 H 1476, H 1013; 1973 H 95; 1971 H 475)

**SCHEDULE D**

(Form 1041)

**Capital Gains and Losses**

OMB No. 1545-0092

**2000**

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1041 (or Form 5227). See the separate instructions for Form 1041 (or Form 5227).

Name of estate or trust

**KEITH A. BROWN ESBT  
TRUST DATED 5/29/86**

Employer identification number

**34-7070118**

Note: Form 5227 filers need to complete only Parts I and II.

**Part I Short-Term Capital Gains and Losses-Assets Held One Year or Less**

(a) Desc. of prop. (Ex., 100 shares 7% prfd. of "Z" Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see page 27)	(f) Gain or (Loss) (col. (d) less col.(e))	
1						
2	Short-term capital gain or (loss) from Forms 4684, 6252, 6781, and 8824				2	
3	Net short-term gain or (loss) from partnerships, S corporations, and other estates or trusts				3	
4	Short-term capital loss carryover. Enter the amount, if any, from line 9 of the 1999 Capital Loss Carryover Worksheet				4	
5	Net short-term gain or (loss). Combine lines 1 through 4 in column (f). Enter here and on line 14 below				5	

**Part II Long-Term Capital Gains and Losses-Assets Held More Than One Year**

(a) Desc. of prop. (Ex., 100 shares 7% prfd. of "Z" Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see page 27)	(f) Gain or (Loss) (col. (d) less col.(e))	(g) 28% Rate Gain or (Loss) (see instr. below)
6						
7	Long-term capital gain or (loss) from Forms 2439, 4684, 6252, 6781, and 8824				7	
8	Net long-term gain or (loss) from partnerships, S corp., and other estates or trusts				8	
9	Capital gain distributions				9	
10	Gain from Form 4797, Part I				10	
11	Long-term capital loss carryover. Enter in both columns (f) and (g) the amount, if any, from line 14, of the 1999 Capital Loss Carryover Worksheet				11	1,301
12	Combine lines 6 through 11 in column (g)				12	-1,301
13	Net long-term gain or (loss). Combine lines 6 through 11 in column (f). Enter here and on line 15 below				13	-1,301

\*28% rate gain or loss includes all "collectibles gains and losses" (as defined on page 28 of the instructions) and up to 50% of the eligible gain on qualified small business stock (see page 26 of the instructions).

**Part III Summary of Parts I and II**

	(1) Beneficiaries' (see page 28)	(2) Estate's or trust's	(3) Total
14 Net short-term gain or (loss) (from line 5 above)	14		
15 Net long-term gain or (loss):			
a 28% rate gain or (loss) (from line 12 above)	15a	-1,301	-1,301
b Unrecaptured section 1250 gain (see line 17 of the worksheet on page 29)	15b		
c Total for year (from line 13 above)	15c	-1,301	-1,301
16 Total net gain or (loss). Combine lines 14 and 15c	16	-1,301	-1,301

Note: If line 16, column (3), is a net gain, enter the gain on Form 1041, line 4. If lines 15c and 16, column (2), are net gains, go to Part V, and do not complete Part IV. If line 16, column (3), is a net loss, complete Part IV and the Capital Loss Carryover Worksheet, as necessary.

For Paperwork Reduction Act Notice, see the Instructions for Form 1041.

Schedule D (Form 1041) 2000

**Part IV Capital Loss Limitation**

<b>17</b> Enter here and enter as a (loss) on Form 1041, line 4, the smaller of:			
a The loss on line 16, column (3) or			
b \$3,000			
	<b>17</b>		<b>1,301</b>

If the loss on line 16, column (3), is more than \$3,000, or if Form 1041, page 1, line 22, is a loss, complete the Capital Loss Carryover Worksheet on page 30 of the instructions to determine your capital loss carryover.

**Part V Tax Computation Using Maximum Capital Gains Rates (Complete this part only if both lines 15c and 16 in column (2) are gains, and Form 1041, line 22 is more than zero.)**

<b>18</b> Enter taxable income from Form 1041, line 22			
<b>19</b> Enter the smaller of line 15c or 16 in column (2)	<b>19</b>		
<b>20</b> If you are filing Form 4952, enter the amount from Form 4952, line 4e	<b>20</b>		
<b>21</b> Subtract line 20 from line 19. If zero or less, enter -0-	<b>21</b>		
<b>22</b> Combine lines 14 and 15a, column (2). If zero or less, enter -0-	<b>22</b>		
<b>23</b> Enter the smaller of line 15a, column (2), or line 22, but not less than zero	<b>23</b>		
<b>24</b> Enter the amount from line 15b, column (2)	<b>24</b>		
<b>25</b> Add lines 23 and 24	<b>25</b>		
<b>26</b> Subtract line 25 from line 21. If zero or less, enter -0-			<b>26</b>
<b>27</b> Subtract line 26 from line 18. If zero or less, enter -0-			<b>27</b>
<b>28</b> Enter the smaller of line 18 or \$1,750	<b>28</b>		
<b>29</b> Enter the smaller of line 27 or line 28	<b>29</b>		
<b>30</b> Subtract line 21 from line 18. If zero or less, enter -0-	<b>30</b>		
<b>31</b> Enter the larger of line 29 or line 30	<b>31</b>		
<b>32</b> Tax on amount on line 31 from the 2000 Tax Rate Schedule			<b>32</b>
<i>Note: If the amounts on lines 28 and 29 are the same, skip lines 33 through 36 and go to line 37.</i>			
<b>33</b> Enter the amount from line 28	<b>33</b>		
<b>34</b> Enter the amount from line 27	<b>34</b>		
<b>35</b> Subtract line 34 from line 33. If zero or less, enter -0-	<b>35</b>		
<b>36</b> Multiply line 35 by 10% (.10)			<b>36</b>
<i>Note: If the amounts on lines 18 and 28 are the same, skip lines 37 through 50 and go to line 51.</i>			
<b>37</b> Enter the smaller of line 18 or line 26	<b>37</b>		
<b>38</b> Enter the amount from line 35	<b>38</b>		
<b>39</b> Subtract line 38 from line 37	<b>39</b>		
<b>40</b> Multiply line 39 by 20% (.20)			<b>40</b>
<i>Note: If line 25 is zero or blank, skip lines 41 through 50 and go to line 51.</i>			
<b>41</b> Enter the smaller of line 21 or line 24	<b>41</b>		
<b>42</b> Add lines 21 and 31	<b>42</b>		
<b>43</b> Enter the amount from line 18	<b>43</b>		
<b>44</b> Subtract line 43 from line 42. If zero or less, enter -0-	<b>44</b>		
<b>45</b> Subtract line 44 from line 41. If zero or less, enter -0-	<b>45</b>		
<b>46</b> Multiply line 45 by 25% (.25)			<b>46</b>
<i>Note: If line 23 is zero or blank, skip lines 47 through 50 and go to line 51.</i>			
<b>47</b> Enter the amount from line 18	<b>47</b>		
<b>48</b> Add lines 31, 35, 39, and 45	<b>48</b>		
<b>49</b> Subtract line 48 from line 47	<b>49</b>		
<b>50</b> Multiply line 49 by 28% (.28)			<b>50</b>
<b>51</b> Add lines 32, 36, 40, 46, and 50			<b>51</b>
<b>52</b> Tax on the amount on line 18 from the 2000 Tax Rate Schedule			<b>52</b>
<b>53</b> Tax on all taxable income (including capital gains). Enter the smaller of line 51 or line 52 here and on line 1a of Schedule G, Form 1041			<b>53</b>

**BENEFICIARY 1**  
**SCHEDULE K-1**  
**(Form 1041)**

**Beneficiary's Share of Income, Deductions, Credits, etc.**  
 for the calendar year 2000, or fiscal year  
 beginning 1/01/00, ending 12/27/00  
 ▶ Complete a separate Schedule K-1 for each beneficiary.

OMB No. 1545-0092

**2000**

Department of the Treasury  
 Internal Revenue Service

Name of trust or decedent's estate

**KEITH A. BROWN ESBT**  
**TRUST DATED 5/29/86**

Amended K-1

Final K-1

Beneficiary's identifying number ▶ **270-52-4562**

Estate's or trust's EIN ▶ **34-7070118**

Beneficiary's name, address, and ZIP code

**KEITH A. BROWN**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

Fiduciary's name, address, and ZIP code

**KEITH A. BROWN**  
**TRUSTEE**  
**30400 DETROIT ROAD, SUITE 203**  
**WESTLAKE OH 44145**

(a) Allocable share item		(b) Amount	(c) Calendar year 2000 Form 1040 filers enter the amounts in column (b) on:
1 Interest	1	48,080	Schedule B, Part I, line 1
2 Ordinary dividends	2		Schedule B, Part II, line 5
3 Net short-term capital gain	3		Schedule D, line 5
4 Net long-term capital gain: a 28% rate gain	4a		Schedule D, line 12, column (g)
b Unrecaptured section 1250 gain	4b		Ln. 11 of the worksheet for Schedule D, ln. 25
c Total for year	4c		Schedule D, line 12, column (f)
5a Annuities, royalties, and other nonpassive income before directly apportioned deductions	5a		Schedule E, Part III, column (f)
b Depreciation	5b		} Include on the applicable line of the appropriate tax form
c Depletion	5c		
d Amortization	5d		
6a Trade or business, rental real estate, and other rental income before directly apportioned deductions (see instructions)	6a		Schedule E, Part III
b Depreciation	6b		} Include on the applicable line of the appropriate tax form
c Depletion	6c		
d Amortization	6d		
7 Income for minimum tax purposes	7	48,080	
8 Income for regular tax purposes (add lines 1, 2, 3, 4c, 5a, and 6a)	8	48,080	
9 Adjustment for minimum tax purposes (subtract ln. 8 from ln. 7)	9		Form 6251, line 12
10 Estate tax deduction (including certain generation-skipping transfer taxes)	10		Schedule A, line 27
11 Foreign taxes	11		Form 1116 or Schedule A (Form 1040), line 8
12 Adjustments and tax preference items (itemize):			
a Accelerated depreciation	12a		} Include on the applicable line of Form 6251
b Depletion	12b		
c Amortization	12c		
d Exclusion items	12d		2001 Form 8801
13 Deductions in the final year of trust or decedent's estate:			
a Excess deductions on termination (see instructions)	13a		Schedule A, line 22
b Short-term capital loss carryover	13b		Schedule D, line 5
c Long-term capital loss carryover	13c	(1,301)	Schedule D, line 12, columns (f) and (g)
d Net operating loss (NOL) carryover for regular tax purposes	13d		Form 1040, line 21
e NOL carryover for minimum tax purposes	13e		See the instructions for Form 6251, line 20
f	13f		} Include on the applicable line of the appropriate tax form
g	13g		
14 Other (itemize):			
a Payments of estimated taxes credited to you	14a		Form 1040, line 59
b Tax-exempt interest	14b	117,884	Form 1040, line 8b
c <b>SEE K-1 SUPPLEMENT</b>	14c		} Include on the applicable line of the appropriate tax form
d	14d		
e	14e		
f	14f		
g	14g		
h	14h		

<b>Form 1041</b>	<b>Schedule K-1 Supplemental Form</b>	<b>2000</b>
For calendar year 2000, or tax year beginning <b>1/01/00</b> , and ending <b>12/27/00</b>		

Name of trust or decedent's estate  
**KEITH A. BROWN ESBT  
TRUST DATED 5/29/86**

<b>Beneficiary's identifying number ▶ 270-52-4562</b>	<b>Trust's or Decedent's Estate's EIN ▶ 34-7070118</b>
<b>Beneficiary's name, address, and ZIP code</b>  <b>KEITH A. BROWN  30400 DETROIT RD. SUITE 203  WESTLAKE OH 44145</b>	<b>Fiduciary's name, address, and ZIP code</b>  <b>KEITH A. BROWN  TRUSTEE  30400 DETROIT ROAD, SUITE 203  WESTLAKE OH 44145</b>

**LINE 14. OTHER**

OTHER INVESTMENT INCOME INCLUDED ON SCHEDULE K-1, P1	48,080
INTEREST INCOME FROM OHIO MUNICIPAL BONDS	82,950
DIVIDENDS FROM NON-OHIO MUNDER TAX FREE MMKT	32,936
DIVIDENDS FROM OHIO MUNDER TAX FREE MMKT	1,998
<b>TOTAL TAX EXEMPT INTEREST AND DIVIDENDS</b>	<b>117,884</b>

Statement 1 - Form 1041, Page 2, Other Information, Question 1 - Tax Exempt Income

<u>Payer</u>	<u>Municipal Bond</u>	<u>Private Activity Bond</u>
NATIONAL FINANCIAL SERVICES #290190	\$ 82,950	\$
NATIONAL FINANCIAL SERVICES #290190	34,934	
	<u>\$ 117,884</u>	
TOTAL TAX-EXEMPT INCOME		<u>117,884</u>

25055 KEITH A. BROWN ESBT

34-7070118

FYE: 12/27/2000

# Federal Statements

## Interest Income

<u>Description</u>	<u>Amount</u>
FOREST CITY TECHNOLOGIES, INC.	\$ 48,080
TOTAL	\$ 48,080

KEITH A. BROWN REVOCABLE LIVING TRUST DATED 5/20/86 ESBT  
 34-7070118  
 DECEMBER 27, 2000

Statement One - Total Tax Related to S-Corporation Stock

	Total	Delphi Realty Corporation # 31-1514230	Chimera Corporation # 34-1543301	Global Film & Packaging # 34-1600387	Poly Shapes Corporation # 34-1761856	Universal Equities Corporation # 34-1858133	Trilogy Investments, Inc. #34-1878729	Hampson Corporation #34-7070118
<b>ORDINARY INCOME</b>								
Ordinary income	\$ (236,185)		(130,931)	85,046	(151,852)			(38,418)
Income from rental real estate	(8,440)	(8,440)						
Interest	5,107		228			4,022	857	
Dividends	497,958					485,865	12,101	
Total ordinary income	\$ 258,448	(8,440)	(130,703)	85,046	(151,852)	489,887	12,958	(38,418)
Less: Charitable contributions	(680)		450	230				
Less: Investment expenses	(58)					66	2	
Net ordinary income	\$ 257,700							
Tax on ordinary income @ 39.6%	\$ 102,049							
<b>LONG-TERM CAPITAL GAINS</b>								
Net long-term capital gains	\$ 16,823,360					16,239,915	597,054	(13,609)
Net long-term capital loss	(5,438)		(596)	(36)	(4,806)			
Net short-term capital loss	(1,420,123)							
Total capital gains	\$ 15,397,799					(1,361,058)	(39,065)	
Tax on long-term capital gains @ 20%	\$ 3,079,560							
<b>TAX COMPUTATION SUMMARY</b>								
Tax on ordinary income	\$ 102,049							
Tax on net long-term capital gains	3,079,560							
Less: foreign tax credit	5,482					5,482		
Tax	\$ 3,176,127							

Estimated tax paid so far	\$ 2,900,000
Balance due April 16, 2001	\$ 276,127

**SCHEDULE K-1**  
**(Form 1120S)**

**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

▶ See separate instructions.

**2000**

Department of the Treasury  
Internal Revenue Service

For calendar year 1999 or tax year

beginning **1/01/00** and ending **9/20/00**

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **31-1514230**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN ESBT**  
**30400 DETROIT ROAD SUITE 203**  
**WESTLAKE OH 44145**

**DELPHI REALTY CORPORATION**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

- A** Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **80.000000%**  
**B** Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**  
**C** Tax shelter registration number (see instructions for Schedule K-1) ▶  
**D** Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
<b>Income (Loss)</b>	1 Ordinary income (loss) from trade or business activities	1	See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).  Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f)  Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	2 Net income (loss) from rental real estate activities	2 <b>-8,440</b>	
	3 Net income (loss) from other rental activities	3	
	4 Portfolio income (loss):		
	a Interest	4a	
	b Ordinary dividends	4b	
	c Royalties	4c	
	d Net short-term capital gain (loss)	4d	
	e Net long-term capital gain (loss):		
	(1) 28% rate gain (loss)	e(1)	
(2) Total for year	e(2)		
f Other portfolio income (loss) (attach schedule)	4f		
5 Net section 1231 gain (loss) (other than due to casualty or theft)	5	See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)	
6 Other income (loss) (attach schedule)	6		
<b>Deductions</b>	7 Charitable contributions (attach schedule)	7	Sch. A, line 15 or 16
	8 Section 179 expense deduction	8	See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (loss)	9	
	10 Other deductions (attach schedule)	10	
<b>Investment Interest</b>	11a Interest expense on investment debts	11a	Form 4952, line 1
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f above	b(1)	See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	(2) Investment expenses included on line 9 above	b(2)	
<b>Credits</b>	12a Credit for alcohol used as fuel	12a	Form 6478, line 10
	b Low-income housing credit:		Form 8586, line 5
	(1) From section 42(j)(5) partnerships for property placed in service before 1990	b(1)	
	(2) Other than on line 12b(1) for property placed in service before 1990	b(2)	
	(3) From section 42(j)(5) partnerships for property placed in service after 1989	b(3)	
	(4) Other than on line 12b(3) for property placed in service after 1989	b(4)	
	c Qualified rehabilitation expenditures related to rental real estate activities	12c	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	12d	
	e Credits related to other rental activities	12e	
13 Other credits	13		

▶ Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Schedule K-1 (Form 1120S) 1999

**THERE ARE NO AMOUNTS FOR PAGE 2**

**CLIENT'S COPY**

31-1514230 .

# SHAREHOLDER RENTAL REPORT

KEITH A. BROWN ESBT  
SSN/EIN: 34-7070118

<u>DESCRIPTION</u>	<u>RENTAL</u>	<u>REAL ESTATE</u>	<u>OTHER RENTAL</u>	<u>ROYALTY</u>
COMMERCIAL BUILDING	-8,440			
SHAREHOLDER TOTAL	<u>-8,440</u>	<u>0</u>	<u>0</u>	<u>0</u>

THE FOLLOWING INFORMATION IS INCLUDED IN THE SCHEDULE K-1-P FROM  
 DELPHI REALTY CORPORATION

Illinois Department of Revenue Partner's or Shareholder's Share of Income,  
 Schedule K-1-P Deductions, Credits, and Recapture

Year ending  
 9/20/00

For partnerships filing Form IL-1065 or S corporations filing Form IL-1120-ST

Month Year

Step 1: Identify your partnership or S corporation

1 Check your business type  partnership  S corporation

3 31-1514230

Federal employer identification number (FEIN)

2 DELPHI REALTY CORPORATION

4 Write the apportionment factor from Part III, Line 6, of Form IL-1065 or Form IL-1120-ST; otherwise write "1." 1.000000

Name as shown on your Form IL-1065 or Form IL-1120-ST

Step 2: Identify your partner or shareholder

5 KEITH A. BROWN ESBT

7 34-7070118

Name

Social Security number or FEIN

6 30400 DETROIT ROAD SUITE 203

8 80.000000

Mailing address

Share (%)

WESTLAKE OH 44145

9 Check the appropriate box

City State ZIP

individual  corporation  trust  
 partnership  S corporation  estate

Step 3: Figure your partner's or shareholder's share of your nonbusiness income

	A Member's share from Illinois Schedule NB	B Nonresident member's share allocable to Illinois
10 Interest	10 _____	_____
11 Dividends	11 _____	_____
12 Rental income	12 _____	_____
13 Patent royalties	13 _____	_____
14 Copyright royalties	14 _____	_____
15 Other royalty income	15 _____	_____
16 Capital gain or loss from real property	16 _____	_____
17 Capital gain or loss from tangible personal property	17 _____	_____
18 Capital gain or loss from intangible personal property	18 _____	_____
19 Other income and expense	19 _____	_____

Specify

Step 4: Figure your partner's or shareholder's share of your business income (loss)

(See instructions.)

	A Member's share from U.S. Schedule K-1, less nonbusiness income	B Nonresident member's share apportioned to IL
20 Ordinary income (loss) from trade or business activity	20 _____	_____
21 Net income (loss) from rental real estate activities	21 <u>-8,440</u>	<u>-8,440</u>
22 Net income (loss) from other rental activities	22 _____	_____
Portfolio income (loss)		
23 Interest	23 _____	_____
24 Dividends	24 _____	_____
25 Royalties	25 _____	_____
26 Net short-term capital gain (loss)	26 _____	_____
27 Net long-term capital gain (loss). (Total for year)	27 _____	_____
28 Other portfolio income (loss)	28 _____	_____
29 Guaranteed payments to partner (U.S. Form 1065 only)	29 _____	_____
30 Net Section 1231 gain (loss) (other than casualty or theft)	30 _____	_____
31 Other income and expense	31 _____	_____

Specify

THERE ARE NO AMOUNTS FOR PAGE 2

**SCHEDULE K-1**  
(Form 1120S)

**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

See separate instructions.

For calendar year 2000 or tax year

**2000**

Department of the Treasury  
Internal Revenue Service

beginning and ending

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **34-1543301**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN ESBT**  
**30400 DETROIT RD., SUITE 203**  
**WESTLAKE OH 44145**

**CHIMERA CORPORATION**  
**30400 DETROIT ROAD, SUITE 203**  
**WESTLAKE OH 44145**

A Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **98.907104 %**

B Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**

C Tax shelter registration number (see instructions for Schedule K-1) ▶

D Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
Income (Loss)	1 Ordinary income (loss) from trade or business activities	1 <b>-130,931</b>	See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).  Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f)  Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	2 Net income (loss) from rental real estate activities	2	
	3 Net income (loss) from other rental activities	3	
	4 Portfolio income (loss):		
	a Interest	4a <b>228</b>	
	b Ordinary dividends	4b	
	c Royalties	4c	
	d Net short-term capital gain (loss)	4d	
	e Net long-term capital gain (loss):		
	(1) 28% rate gain (loss)	4e(1)	
(2) Total for year	4e(2)		
f Other portfolio income (loss) (attach schedule)	4f		
5 Net section 1231 gain (loss) (other than due to casualty or theft)	5 <b>-596</b>		
6 Other income (loss) (attach schedule)	6		
Deductions	7 Charitable contributions (attach schedule)	7 <b>450</b>	Sch. A, line 15 or 16
	8 Section 179 expense deduction	8	See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (loss)	9	
	10 Other deductions (attach schedule)	10	
Investment Interest	11a Interest expense on investment debts	11a	
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f above	11b(1) <b>228</b>	See Shareholder's Instructions for Schedule K-1 (Form 1120S).
(2) Investment expenses included on line 9 above	11b(2)		
Credits	12a Credit for alcohol used as fuel	12a	Form 6478, line 10
	b Low-income housing credit:		Form 8586, line 5
	(1) From section 42(j)(5) partnerships for property placed in service before 1990	12b(1)	
	(2) Other than on line 12b(1) for property placed in service before 1990	12b(2)	
	(3) From section 42(j)(5) partnerships for property placed in service after 1989	12b(3)	
	(4) Other than on line 12b(3) for property placed in service after 1989	12b(4)	
	c Qualified rehabilitation expenditures related to rental real estate activities	12c	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	12d	
	e Credits related to other rental activities	12e	
	13 Other credits	13	

For Paperwork Reduction Act Notice, see the instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2000

KEITH A. BROWN ESBT  
CHIMERA CORPORATION

34-7070118  
34-1543301

Schedule K-1 (Form 1120S) (2000)

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:	
<b>Adjustments and Tax Preference Items</b>	14a Depreciation adjustment on property placed in service after 1986	14a 1,031	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S) and Instructions for Form 6251	
	b Adjusted gain or loss	14b -267		
	c Depletion (other than oil and gas)	14c		
	d (1) Gross income from oil, gas, or geothermal properties	14d(1)		
	(2) Deductions allocable to oil, gas, or geothermal properties	14d(2)		
	e Other adjustments and tax preference items	14e		
<b>Foreign Taxes</b>	15a Name of foreign country or U.S. possession		Form 1116, Part I	
	b Gross income sourced at shareholder level	15b		
	c Foreign gross income sourced at corporate level:	(1) Passive		15c(1)
		(2) Listed categories (attach schedule)		15c(2)
		(3) General limitation		15c(3)
	d Deductions allocated and apportioned at shareholder level:	(1) Interest expense		15d(1)
		(2) Other		15d(2)
	e Deductions allocated and apportioned at corporate level to foreign source income:	(1) Passive		15e(1)
		(2) Listed categories (attach schedule)		15e(2)
		(3) General limitation		15e(3)
f Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued	15f	Form 1116, Part II See instructions for Form 1116		
g Reduction in taxes available for credit and gross income from all sources (attach schedule)	15g			
<b>Other</b>	16 Section 59(e)(2) expenditures:		See Shareholder's Instructions for Schedule K-1 (Form 1120S).	
	a Type			
	b Amount	16b		
	17 Tax-exempt interest income	17	Form 1040, line 8b	
	18 Other tax-exempt income	18		
	19 Nondeductible expenses	19 25,909	See pages 7 and 8 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).	
	20 Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV	20		
	21 Amount of loan repayments for "Loans From Shareholders"	21		
22 Recapture of low-income housing credit:	a From section 42(j)(5) partnerships	22a	Form 8611, line 8	
	b Other than on line 22a	22b		
<b>Supplemental Information</b>	23 Supplemental information required to be reported separately to each shareholder (attach additional schedules if more space is needed):			

**SCHEDULE K-1**  
**(Form 1120S)**

**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

▶ See separate instructions.

For calendar year 2000 or tax year

**2000**

Department of the Treasury  
Internal Revenue Service

beginning

and ending

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **34-1600387**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN ESBT**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

**GLOBAL FILM & PACKAGING CORP.**  
**41740 SCHADDEN RDSTE 20**  
**ELYRIA OH 44035**

- A** Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **80.000000%**
- B** Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**
- C** Tax shelter registration number (see instructions for Schedule K-1) ▶
- D** Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

	(a) Pro rata share items	(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
<b>Income (Loss)</b>	<b>1</b> Ordinary income (loss) from trade or business activities	<b>85,046</b>	▶ See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).  Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f)  Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	<b>2</b> Net income (loss) from rental real estate activities		
	<b>3</b> Net income (loss) from other rental activities		
	<b>4</b> Portfolio income (loss):		
	<b>a</b> Interest	<b>4a</b>	
	<b>b</b> Ordinary dividends	<b>4b</b>	
	<b>c</b> Royalties	<b>4c</b>	
	<b>d</b> Net short-term capital gain (loss)	<b>4d</b>	
	<b>e</b> Net long-term capital gain (loss):		
	<b>(1)</b> 28% rate gain (loss)	<b>4e(1)</b>	
<b>(2)</b> Total for year	<b>4e(2)</b>		
<b>f</b> Other portfolio income (loss) (attach schedule)	<b>4f</b>		
<b>5</b> Net section 1231 gain (loss) (other than due to casualty or theft)	<b>-36</b>		
<b>6</b> Other income (loss) (attach schedule)	<b>6</b>		
<b>Deductions</b>	<b>7</b> Charitable contributions (attach schedule)	<b>230</b>	Sch. A, line 15 or 16
	<b>8</b> Section 179 expense deduction		▶ See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	<b>9</b> Deductions related to portfolio income (loss)		
	<b>10</b> Other deductions (attach schedule)		
<b>Investment Interest</b>	<b>11a</b> Interest expense on investment debts	<b>11a</b>	
	<b>(1)</b> Investment income included on lines 4a, 4b, 4c, and 4f above	<b>11b(1)</b>	▶ See Shareholder's Instructions for Schedule K-1 (Form 1120S).
<b>(2)</b> Investment expenses included on line 9 above	<b>11b(2)</b>		
<b>Credits</b>	<b>12a</b> Credit for alcohol used as fuel	<b>12a</b>	Form 6478, line 10
	<b>b</b> Low-income housing credit:		▶ Form 8586, line 5
	<b>(1)</b> From section 42(j)(5) partnerships for property placed in service before 1990	<b>12b(1)</b>	
	<b>(2)</b> Other than on line 12b(1) for property placed in service before 1990	<b>12b(2)</b>	
	<b>(3)</b> From section 42(j)(5) partnerships for property placed in service after 1989	<b>12b(3)</b>	
	<b>(4)</b> Other than on line 12b(3) for property placed in service after 1989	<b>12b(4)</b>	
	<b>c</b> Qualified rehabilitation expenditures related to rental real estate activities	<b>12c</b>	▶ See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	<b>d</b> Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	<b>12d</b>	
	<b>e</b> Credits related to other rental activities	<b>12e</b>	
	<b>13</b> Other credits	<b>13</b>	

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2000

KEITH BROWN ESBT  
GLOBAL FILM & PACKAGING CORP.

34-7070118  
34-1600387

(a) Pro rata share items

(b) Amount

(c) Form 1040 filers enter the amount in column (b) on:

		(a) Pro rata share items	(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:	
Adjustments and Tax Preference Items	14a	Depreciation adjustment on property placed in service after 1986	61,211	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S) and Instructions for Form 6251	
	b	Adjusted gain or loss	-1,496		
	c	Depletion (other than oil and gas)			
	d (1)	Gross income from oil, gas, or geothermal properties			
	d (2)	Deductions allocable to oil, gas, or geothermal properties			
e	Other adjustments and tax preference items				
Foreign Taxes	15a	Name of foreign country or U.S. possession		Form 1116, Part I	
	b	Gross income sourced at shareholder level			
	c	Foreign gross income sourced at corporate level:			
		(1)	Passive		
		(2)	Listed categories (attach schedule)		
	d	Deductions allocated and apportioned at shareholder level:			
		(1)	Interest expense		
		(2)	Other		
	e	Deductions allocated and apportioned at corporate level to foreign source income:			
		(1)	Passive		
(2)		Listed categories (attach schedule)			
(3)		General limitation			
f	Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued			Form 1116, Part II See Instructions for Form 1116	
g	Reduction in taxes available for credit and gross income from all sources (attach schedule)				
Other	16	Section 59(e)(2) expenditures:		See Shareholder's Instructions for Schedule K-1 (Form 1120S).	
	a	Type			
	b	Amount			
	17	Tax-exempt interest income		Form 1040, line 8b	
	18	Other tax-exempt income		See pages 7 and 8 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).	
	19	Nondeductible expenses	7,708		
	20	Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV	155,838		
	21	Amount of loan repayments for "Loans From Shareholders"		Form 8611, line 8	
22	Recapture of low-income housing credit:				
	a	From section 42(j)(5) partnerships			
b	Other than on line 22a				
Supplemental Information	23	Supplemental information required to be reported separately to each shareholder (attach additional schedules if more space is needed):			

**SCHEDULE K-1**  
**(Form 1120S)**

**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

▶ See separate instructions:

For calendar year 2000 or tax year

**2000**

Department of the Treasury  
Internal Revenue Service

beginning

and ending

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **34-1761856**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN TRUST**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

**POLY SHAPES CORPORATION**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

**A** Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **80.765027%**

**B** Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**

**C** Tax shelter registration number (see instructions for Schedule K-1) ▶

**D** Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
<b>Income (Loss)</b>	1 Ordinary income (loss) from trade or business activities	<b>1</b> -151,882	▶ See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).  Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f)  Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	2 Net income (loss) from rental real estate activities	<b>2</b>	
	3 Net income (loss) from other rental activities	<b>3</b>	
	4 Portfolio income (loss):		
	a Interest	<b>4a</b>	
	b Ordinary dividends	<b>4b</b>	
	c Royalties	<b>4c</b>	
	d Net short-term capital gain (loss)	<b>4d</b>	
	e Net long-term capital gain (loss):		
	(1) 28% rate gain (loss)	<b>4e(1)</b>	
(2) Total for year	<b>4e(2)</b>		
f Other portfolio income (loss) (attach schedule)	<b>4f</b>		
5 Net section 1231 gain (loss) (other than due to casualty or theft)	<b>5</b> -4,806		
6 Other income (loss) (attach schedule)	<b>6</b>		
<b>Deductions</b>	7 Charitable contributions (attach schedule)	<b>7</b>	Sch. A, line 15 or 16
	8 Section 179 expense deduction	<b>8</b>	▶ See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (loss)	<b>9</b>	
	10 Other deductions (attach schedule)	<b>10</b>	
<b>Investment Interest</b>	11a Interest expense on investment debts	<b>11a</b>	
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f above	<b>11b(1)</b>	▶ See Shareholder's Instructions for Schedule K-1 (Form 1120S).
(2) Investment expenses included on line 9 above	<b>11b(2)</b>		
<b>Credits</b>	12a Credit for alcohol used as fuel	<b>12a</b>	Form 6478, line 10
	b Low-income housing credit:		▶ Form 8586, line 5
	(1) From section 42(j)(5) partnerships for property placed in service before 1990	<b>12b(1)</b>	
	(2) Other than on line 12b(1) for property placed in service before 1990	<b>12b(2)</b>	
	(3) From section 42(j)(5) partnerships for property placed in service after 1989	<b>12b(3)</b>	
	(4) Other than on line 12b(3) for property placed in service after 1989	<b>12b(4)</b>	
	c Qualified rehabilitation expenditures related to rental real estate activities	<b>12c</b>	▶ See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	<b>12d</b>	
	e Credits related to other rental activities	<b>12e</b>	
	13 Other credits	<b>13</b>	

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2000

KEITH A. BROWN TRUST  
POLY SHAPES CORPORATION

34-7070118  
34-1761856

Schedule K-1 (Form 1120S) (2000)

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:	
Adjustments and Tax Preference Items	14a Depreciation adjustment on property placed in service after 1988	14a 5,500	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S) and Instructions for Form 6251	
	b Adjusted gain or loss	14b 779		
	c Depletion (other than oil and gas)	14c		
	d (1) Gross income from oil, gas, or geothermal properties	14d(1)		
	(2) Deductions allocable to oil, gas, or geothermal properties	14d(2)		
	e Other adjustments and tax preference items	14e		
Foreign Taxes	15a Name of foreign country or U.S. possession		Form 1116, Part I	
	b Gross income sourced at shareholder level	15b		
	c Foreign gross income sourced at corporate level:	(1) Passive		15c(1)
		(2) Listed categories (attach schedule)		15c(2)
		(3) General limitation		15c(3)
	d Deductions allocated and apportioned at shareholder level:	(1) Interest expense		15d(1)
		(2) Other		15d(2)
	e Deductions allocated and apportioned at corporate level to foreign source income:	(1) Passive		15e(1)
		(2) Listed categories (attach schedule)		15e(2)
		(3) General limitation		15e(3)
f Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued	15f	Form 1116, Part II See Instructions for Form 1116		
g Reduction in taxes available for credit and gross income from all sources (attach schedule)	15g			
Other	16 Section 59(e)(2) expenditures:		See Shareholder's Instructions for Schedule K-1 (Form 1120S). Form 1040, line 8b	
	a Type			
	b Amount	16b		
	17 Tax-exempt interest income	17	See pages 7 and 8 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).	
	18 Other tax-exempt income	18		
	19 Nondeductible expenses	19 223		
	20 Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV	20	Form 8611, line 8	
	21 Amount of loan repayments for "Loans From Shareholders"	21		
22 Recapture of low-income housing credit:	a From section 42(j)(5) partnerships	22a		
	b Other than on line 22a	22b		
Supplemental Information	23 Supplemental information required to be reported separately to each shareholder (attach additional schedules if more space is needed):			

THE FOLLOWING INFORMATION IS INCLUDED IN THE SCHEDULE K-1-P FROM  
POLY SHAPES CORPORATION

Illinois Department of Revenue Partner's or Shareholder's Share of Income,  
Schedule K-1-P Deductions, Credits, and Recapture

Year ending  
12/31/00  
Month Year

For partnerships filing Form IL-1065 or S corporations filing Form IL-1120-ST

Step 1: Identify your partnership or S corporation

1 Check your business type  partnership  S corporation

3 34-1761856

Federal employer identification number (FEIN)

2 POLY SHAPES CORPORATION

4 Write the apportionment factor from Part III, Line 6, of Form IL-1065  
or Form IL-1120-ST; otherwise write "1." 0.359357

Name as shown on your Form IL-1065 or Form IL-1120-ST

Step 2: Identify your partner or shareholder

5 KEITH A. BROWN TRUST

7 34-7070118

Name

Social Security number or FEIN

6 30400 DETROIT RD. SUITE 203

8 80.765027

Mailing address

Share (%)

WESTLAKE

OH 44145

9 Check the appropriate box

City

State

ZIP

individual  corporation  trust  
 partnership  S corporation  estate

Step 3: Figure your partner's or shareholder's share of your nonbusiness income

	A Member's share from Illinois Schedule NB	B Nonresident member's share allocable to Illinois
10 Interest	10	
11 Dividends	11	
12 Rental income	12	
13 Patent royalties	13	
14 Copyright royalties	14	
15 Other royalty income	15	
16 Capital gain or loss from real property	16	
17 Capital gain or loss from tangible personal property	17	
18 Capital gain or loss from intangible personal property	18	
19 Other income and expense	19	

Specify

Step 4: Figure your partner's or shareholder's share of your business income (loss)

(See instructions.)

	A Member's share from U.S. Schedule K-1, less nonbusiness income	B Nonresident member's share apportioned to IL
20 Ordinary income (loss) from trade or business activity	20 -151,882	-54,580
21 Net income (loss) from rental real estate activities	21	
22 Net income (loss) from other rental activities	22	
Portfolio income (loss)		
23 Interest	23	
24 Dividends	24	
25 Royalties	25	
26 Net short-term capital gain (loss)	26	
27 Net long-term capital gain (loss). (Total for year)	27	
28 Other portfolio income (loss)	28	
29 Guaranteed payments to partner (U.S. Form 1065 only)	29	
30 Net Section 1231 gain (loss) (other than casualty or theft)	30 -4,806	-1,727
31 Other income and expense	31	

Specify

THERE ARE NO AMOUNTS FOR PAGE 2

SECTION 1377 (A) (2) ELECTION MADE

**SCHEDULE K-1**  
(Form 1120S)

**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

See separate instructions.

For calendar year 2000 or tax year

**2000**

Department of the Treasury  
Internal Revenue Service

beginning

and ending

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **34-1858133**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN ESBT**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

**UNIVERSAL EQUITIES CORPORATION**  
**30400 DETROIT ROAD, SUITE 203**  
**WESTLAKE OH 44145**

- A Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **98.907104%**
- B Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**
- C Tax shelter registration number (see instructions for Schedule K-1) ▶
- D Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
<b>Income (Loss)</b>	1 Ordinary income (loss) from trade or business activities	1	See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).  Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f)  Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	2 Net income (loss) from rental real estate activities	2	
	3 Net income (loss) from other rental activities	3	
	4 Portfolio income (loss):		
	a Interest	4a <b>4,022</b>	
	b Ordinary dividends	4b <b>485,865</b>	
	c Royalties	4c	
	d Net short-term capital gain (loss)	4d <b>-1,381,058</b>	
	e Net long-term capital gain (loss):		
	(1) 28% rate gain (loss)	4e(1)	
(2) Total for year	4e(2) <b>16,239,915</b>		
f Other portfolio income (loss) (attach schedule)	4f		
5 Net section 1231 gain (loss) (other than due to casualty or theft)	5		
6 Other income (loss) (attach schedule)	6		
<b>Deductions</b>	7 Charitable contributions (attach schedule)	7	Sch. A, line 15 or 16
	8 Section 179 expense deduction	8	See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (loss)	9	
	10 Other deductions (attach schedule)	10 <b>66</b>	
<b>Investment Interest</b>	11a Interest expense on investment debts	11a	
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f above	11b(1) <b>489,887</b>	See Shareholder's Instructions for Schedule K-1 (Form 1120S).
(2) Investment expenses included on line 9 above	11b(2)		
<b>Credits</b>	12a Credit for alcohol used as fuel	12a	Form 6478, line 10
	b Low-income housing credit:		Form 8586, line 5
	(1) From section 42(j)(5) partnerships for property placed in service before 1990	12b(1)	
	(2) Other than on line 12b(1) for property placed in service before 1990	12b(2)	
	(3) From section 42(j)(5) partnerships for property placed in service after 1989	12b(3)	
	(4) Other than on line 12b(3) for property placed in service after 1989	12b(4)	
	c Qualified rehabilitation expenditures related to rental real estate activities	12c	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	12d	
	e Credits related to other rental activities	12e	
13 Other credits	13		

For Paperwork Reduction Act Notice, see the instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2000

**KEITH A. BROWN ESBT  
UNIVERSAL EQUITIES CORPORATION**

**34-7070118  
34-1858133**

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:	
<b>Adjustments and Tax Preference Items</b>	14a Depreciation adjustment on property placed in service after 1986	14a	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S) and Instructions for Form 6251	
	b Adjusted gain or loss	14b		
	c Depletion (other than oil and gas)	14c		
	d (1) Gross income from oil, gas, or geothermal properties	14d(1)		
	(2) Deductions allocable to oil, gas, or geothermal properties	14d(2)		
e Other adjustments and tax preference items	14e			
<b>Foreign Taxes</b>	15a Name of foreign country or U.S. possession ▶ <b>VARIOUS</b>		Form 1116, Part I	
	b Gross income sourced at shareholder level	15b		36,547
	c Foreign gross income sourced at corporate level:			
	(1) Passive	15c(1)		
	(2) Listed categories (attach schedule)	15c(2)		
	(3) General limitation	15c(3)		
	d Deductions allocated and apportioned at shareholder level:			
	(1) Interest expense	15d(1)		
	(2) Other	15d(2)		
	e Deductions allocated and apportioned at corporate level to foreign source income:			
	(1) Passive	15e(1)		
(2) Listed categories (attach schedule)	15e(2)			
(3) General limitation	15e(3)			
f Total foreign taxes (check one): ▶ <input checked="" type="checkbox"/> Paid <input type="checkbox"/> Accrued	15f	5,482	Form 1116, Part II	
g Reduction in taxes available for credit and gross income from all sources (attach schedule)	15g		See Instructions for Form 1116	
<b>Other</b>	16 Section 59(e)(2) expenditures:		See Shareholder's Instructions for Schedule K-1 (Form 1120S).	
	a Type ▶			
	b Amount	16b		
	17 Tax-exempt interest income	17	129,054	Form 1040, line 8b
	18 Other tax-exempt income	18	108,024	See pages 7 and 8 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	19 Nondeductible expenses	19		
	20 Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV	20	3,315,449	
	21 Amount of loan repayments for "Loans From Shareholders"	21		Form 8611, line 8
22 Recapture of low-income housing credit:				
a From section 42(j)(5) partnerships	22a			
b Other than on line 22a	22b			
<b>Supplemental Information</b>	23 Supplemental information required to be reported separately to each shareholder (attach additional schedules if more space is needed): <b>AMOUNT ON LINE 4 (A) INTEREST INCOME DERIVED FROM US SECURITIES IS</b>		295	

**SECTION 1377 (A) (2) ELECTION MADE**  
**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

**SCHEDULE K-1**  
(Form 1120S)

▶ See separate instructions.

**2000**

Department of the Treasury  
Internal Revenue Service

beginning and ending

For calendar year 2000 or tax year

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **34-1878729**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN ESBT**  
**30400 DETROIT RD. SUITE 203**  
**WESTLAKE OH 44145**

**TRILOGY INVESTMENTS, INC.**  
**30400 DETROIT ROAD, SUITE 203**  
**WESTLAKE OH 44145**

- A** Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **0.986339%**  
**B** Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**  
**C** Tax shelter registration number (see instructions for Schedule K-1) ▶  
**D** Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
<b>Income (Loss)</b>	1 Ordinary income (loss) from trade or business activities	1	▶ See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	2 Net income (loss) from rental real estate activities	2	
	3 Net income (loss) from other rental activities	3	
	4 Portfolio income (loss):		▶ Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f) Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.) See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	a Interest	4a <b>857</b>	
	b Ordinary dividends	4b <b>12,101</b>	
	c Royalties	4c	
	d Net short-term capital gain (loss)	4d <b>-39,065</b>	
	e Net long-term capital gain (loss):		
	(1) 28% rate gain (loss)	4e(1)	
(2) Total for year	4e(2) <b>597,054</b>		
f Other portfolio income (loss) (attach schedule)	4f		
5 Net section 1231 gain (loss) (other than due to casualty or theft)	5		
6 Other income (loss) (attach schedule)	6		
<b>Deductions</b>	7 Charitable contributions (attach schedule)	7	▶ Sch. A, line 15 or 16
	8 Section 179 expense deduction	8	
	9 Deductions related to portfolio income (loss)	9	▶ See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	10 Other deductions (attach schedule)	10 <b>2</b>	
<b>Investment Interest</b>	11a Interest expense on investment debts	11a <b>58</b>	▶ Form 4952, line 1
	b (1) Investment income included on lines 4a, 4b, 4c, and 4f above	11b(1) <b>12,958</b>	▶ See Shareholder's Instructions for Schedule K-1 (Form 1120S).
(2) Investment expenses included on line 9 above	11b(2)		
<b>Credits</b>	12a Credit for alcohol used as fuel	12a	▶ Form 6478, line 10
	b Low-income housing credit:		▶ Form 8586, line 5
	(1) From section 42(j)(5) partnerships for property placed in service before 1990	12b(1)	
	(2) Other than on line 12b(1) for property placed in service before 1990	12b(2)	
	(3) From section 42(j)(5) partnerships for property placed in service after 1989	12b(3)	
	(4) Other than on line 12b(3) for property placed in service after 1989	12b(4)	
	c Qualified rehabilitation expenditures related to rental real estate activities	12c	▶ See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities	12d	
	e Credits related to other rental activities	12e	
13 Other credits	13		

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2000

**KEITH A. BROWN ESBT  
TRILOGY INVESTMENTS, INC.**

**34-7070118  
34-1878729**

(a) Pro rata share items

(b) Amount

(c) Form 1040 filers enter the amount in column (b) on:

<b>Adjustments and Tax Preference Items</b>	14a Depreciation adjustment on property placed in service after 1986	14a		See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S) and Instructions for Form 6251
	b Adjusted gain or loss	14b		
	c Depletion (other than oil and gas)	14c		
	d (1) Gross income from oil, gas, or geothermal properties	14d(1)		
	(2) Deductions allocable to oil, gas, or geothermal properties	14d(2)		
e Other adjustments and tax preference items	14e			

<b>Foreign Taxes</b>	15a Name of foreign country or U.S. possession			Form 1116, Part I
	b Gross income sourced at shareholder level	15b		
	c Foreign gross income sourced at corporate level:			
	(1) Passive	15c(1)		
	(2) Listed categories (attach schedule)	15c(2)		
	(3) General limitation	15c(3)		
	d Deductions allocated and apportioned at shareholder level:			
	(1) Interest expense	15d(1)		
	(2) Other	15d(2)		
	e Deductions allocated and apportioned at corporate level to foreign source income:			
(1) Passive	15e(1)			
(2) Listed categories (attach schedule)	15e(2)			
(3) General limitation	15e(3)			
f Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued	15f		Form 1116, Part II See Instructions for Form 1116	
g Reduction in taxes available for credit and gross income from all sources (attach schedule)	15g			

<b>Other</b>	16 Section 59(e)(2) expenditures:			See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	a Type			
	b Amount	16b		
	17 Tax-exempt interest income	17	34	Form 1040, line 8b
	18 Other tax-exempt income	18	1,078	
	19 Nondeductible expenses	19		See pages 7 and 8 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	20 Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV	20	41,765	
21 Amount of loan repayments for "Loans From Shareholders"	21			
22 Recapture of low-income housing credit:			Form 8611, line 8	
a From section 42(j)(5) partnerships	22a			
b Other than on line 22a	22b			

<b>Supplemental Information</b>	23 Supplemental information required to be reported separately to each shareholder (attach additional schedules if more space is needed):			
	<b>AMOUNT ON LINE 4 (A) INTEREST INCOME IS ALL DERIVED FROM</b>			
	<b>U.S. GOVERNMENT SECURITIES</b>			857

**SEC. 1377(A)(2) ELECTION MAJ**  
**Shareholder's Share of Income, Credits, Deductions, etc.**

OMB No. 1545-0130

**SCHEDULE K-1**  
 (Form 1120S)

▶ See separate instructions.

**2000**

Department of the Treasury  
 Internal Revenue Service

For calendar year 2000 or tax year

beginning and ending

Shareholder's identifying number ▶ **34-7070118**

Corporation's identifying number ▶ **34-1874617**

Shareholder's name, address, and ZIP code

Corporation's name, address, and ZIP code

**KEITH A. BROWN ESBT**  
**30400 DETROIT RD., SUITE 203**  
**WESTLAKE OH 44145**

**HAMPSON CORPORATION**  
**30400 DETROIT ROAD, STE #203**  
**WESTLAKE OH 44145**

- A** Shareholder's percentage of stock ownership for tax year (see instructions for Schedule K-1) ▶ **74.180328%**  
**B** Internal Revenue Service Center where corporation filed its return ▶ **CINCINNATI, OH 45999**  
**C** Tax shelter registration number (see instructions for Schedule K-1) ▶  
**D** Check applicable boxes: (1)  Final K-1 (2)  Amended K-1

(a) Pro rata share items		(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
<b>Income (Loss)</b>	<b>1</b> Ordinary income (loss) from trade or business activities	<b>-38,418</b>	▶ See pages 4 and 5 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).  Sch. B, Part I, line 1 Sch. B, Part II, line 5 Sch. E, Part I, line 4 Sch. D, line 5, col. (f)  Sch. D, line 12, col. (g) Sch. D, line 12, col. (f) (Enter on appl. ln. of your return.)  See Shareholder's Instructions for Schedule K-1 (Form 1120S). (Enter on appl. ln. of your return.)
	<b>2</b> Net income (loss) from rental real estate activities		
	<b>3</b> Net income (loss) from other rental activities		
	<b>4</b> Portfolio income (loss):		
	<b>a</b> Interest		
	<b>b</b> Ordinary dividends		
	<b>c</b> Royalties		
	<b>d</b> Net short-term capital gain (loss)		
	<b>e</b> Net long-term capital gain (loss):		
	<b>(1)</b> 28% rate gain (loss)		
<b>(2)</b> Total for year			
<b>f</b> Other portfolio income (loss) (attach schedule)			
<b>5</b> Net section 1231 gain (loss) (other than due to casualty or theft)	<b>-13,609</b>		
<b>6</b> Other income (loss) (attach schedule)			
<b>Deductions</b>	<b>7</b> Charitable contributions (attach schedule)		Sch. A, line 15 or 16
	<b>8</b> Section 179 expense deduction		▶ See page 6 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	<b>9</b> Deductions related to portfolio income (loss)		
	<b>10</b> Other deductions (attach schedule)		
<b>Investment Interest</b>	<b>11a</b> Interest expense on investment debts		Form 4952, line 1
	<b>b (1)</b> Investment income included on lines 4a, 4b, 4c, and 4f above		▶ See Shareholder's Instructions for Schedule K-1 (Form 1120S).
<b>(2)</b> Investment expenses included on line 9 above			
<b>Credits</b>	<b>12a</b> Credit for alcohol used as fuel		Form 5478, line 10
	<b>b</b> Low-income housing credit:		▶ Form 8586, line 5
	<b>(1)</b> From section 42(j)(5) partnerships for property placed in service before 1990		
	<b>(2)</b> Other than on line 12b(1) for property placed in service before 1990		
	<b>(3)</b> From section 42(j)(5) partnerships for property placed in service after 1989		
	<b>(4)</b> Other than on line 12b(3) for property placed in service after 1989		
	<b>c</b> Qualified rehabilitation expenditures related to rental real estate activities		▶ See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S).
	<b>d</b> Credits (other than credits shown on lines 12b and 12c) related to rental real estate activities		
	<b>e</b> Credits related to other rental activities		
	<b>13</b> Other credits		

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Schedule K-1 (Form 1120S) 2000

KEITH A. BROWN ESBT  
HAMPSON CORPORATION

34-7070118  
34-1874617

Schedule K-1 (Form 1120S) (2000)

		(a) Pro rata share items	(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
Adjustments and Tax Preference Items	14a	Depreciation adjustment on property placed in service after 1986	64,619	See page 7 of the Shareholder's Instructions for Schedule K-1 (Form 1120S) and Instructions for Form 6251
	b	Adjusted gain or loss	-5,044	
	c	Depletion (other than oil and gas)		
	d (1)	Gross income from oil, gas, or geothermal properties		
	d (2)	Deductions allocable to oil, gas, or geothermal properties		
e	Other adjustments and tax preference items			
Foreign Taxes	15a	Name of foreign country or U.S. possession		Form 1116, Part I
	b	Gross income sourced at shareholder level		
	c	Foreign gross income sourced at corporate level:		
	(1)	Passive		
	(2)	Listed categories (attach schedule)		
	(3)	General limitation		
	d	Deductions allocated and apportioned at shareholder level:		
	(1)	Interest expense		
	(2)	Other		
	e	Deductions allocated and apportioned at corporate level to foreign source income:		
(1)	Passive			
(2)	Listed categories (attach schedule)			
(3)	General limitation			
f	Total foreign taxes (check one): <input type="checkbox"/> Paid <input type="checkbox"/> Accrued			Form 1116, Part II See Instructions for Form 1116
g	Reduction in taxes available for credit and gross income from all sources (attach schedule)			
Other	16	Section 59(e)(2) expenditures:		See Shareholder's Instructions for Schedule K-1 (Form 1120S). Form 1040, line 8b
	a	Type		
	b	Amount		
	17	Tax-exempt interest income		See pages 7 and 8 of the Shareholder's instructions for Schedule K-1 (Form 1120S).
	18	Other tax-exempt income		
	19	Nondeductible expenses	488	
	20	Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV		Form 8611, line 8
	21	Amount of loan repayments for "Loans From Shareholders"		
22	Recapture of low-income housing credit:			
a	From section 42(j)(5) partnerships			
b	Other than on line 22a			
Supplemental Information	23	Supplemental information required to be reported separately to each shareholder (attach additional schedules if more space is needed):		

**OHIO BOARD OF TAX APPEALS**

Keith A. Brown and Noel P. Brown.,	)	CASE NO. 2006-R-1041
	)	
Appellants,	)	(PERSONAL INCOME TAX)
	)	
vs.	)	ORDER
	)	
William W. Wilkins,	)	(Denying the Tax Commissioner's
Tax Commissioner of Ohio,	)	Request to Hold this Matter
	)	in Abeyance)
Appellee.	)	

**APPEARANCES:**

For the Appellants - Cavitch, Familo, Durkin & Frutkin  
Kismet R. Wunder  
1717 East Ninth Street, 14<sup>th</sup> Floor  
Cleveland, OH 44114

For the Appellee - Jim Petro  
Attorney General of Ohio  
Barton A. Hubbard  
Assistant Attorney General, Taxation Section  
State Office Tower - 16<sup>th</sup> Floor  
30 East Broad Street  
Columbus, OH 43215

Entered **NOV 3 2006**

This matter is now considered by the Board of Tax Appeals upon a request filed by the Tax Commissioner of Ohio. In his motion, the commissioner requests that this board to stay the proceedings in the above-captioned appeal pending the outcome of litigation currently before the Supreme Court of Ohio in *Knust v. Wilkins*, docketed as that court's case number 2005-2084.

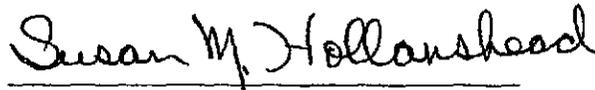
The Tax Commissioner submits that a similar issue in the present matter is raised in the *Knust* case; that is, whether a trust's election to be treated as an Electing Small Business Trust, pursuant to section 1361 of the Internal Revenue Code, would permit the income generated from the trust to escape Ohio taxation. The Tax Commissioner maintains that the decision or settlement reached in the Supreme Court case may have a direct impact on the outcome of the appeal presently before the board. The commissioner informs the board that the *Knust* case has already been briefed and argued as of June 6, 2006.

The appellants, Keith A. Brown and Noel P. Brown, filed a response to the commissioner's motion, requesting that the board deny the Tax Commissioner's request to hold this case in abeyance. In the alternative, if the board does stay this matter, then the appellants ask that the Tax Commissioner still be required to timely respond to the appellants' discovery and that the accrual of interest on the amount in controversy be suspended for the pendency of the abeyance. The appellants argue that this matter has already been pending over four years before the Tax Commissioner and that the appellants have a right to have the merits of their case decided before the Board of Tax Appeals in a timely fashion. Furthermore, the appellants object to having the facts and circumstances of another case used to determine the outcome of their case. Finally, the appellants maintain that they would be prejudiced by further delay because of the amount of interest accruing while this case is pending.

Based upon the appellants' objections to holding this matter in abeyance pending a decision from the Ohio Supreme Court in *Knust*, the board hereby denies the Tax Commissioner's motion, and the matter will proceed in the ordinary course of the board's business.

Furthermore, the Tax Commissioner is expected to respond to the appellants' discovery requests within the dictates of the discovery rules.

On behalf of the Board of Tax Appeals,  
Pursuant to Ohio Adm. Code 5717-1-10



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Susan M. Hollanshead  
Attorney Examiner

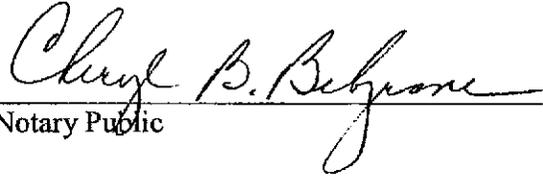


**FURTHER AFFIANT SAYETH NAUGHT.**



Kismet Wunder

SWORN TO BEFORE ME and subscribed in my presence this 17<sup>th</sup> day of  
May, 2007.



Notary Public



**CHERYL B. BELGRAVE**  
Notary Public, State of Ohio  
Guyahoga County  
My Commission Expires  
November 25, 2011

IT-1040

OHIO

Income Tax Return

2000

For the year Jan. 1-Dec. 31, 2000 or other taxable year ending 20 Social Security Numbers must be filed in below.

Please Clip Your Order Here

Your first name Initial Last name <b>KEITH A. BROWN</b>	Your social security number <b>270-52-4562</b>	Filing Status - check only one <input type="checkbox"/> Single or Head of Household <input checked="" type="checkbox"/> Married filing joint return <input type="checkbox"/> Married filing separately, enter spouse's SS # _____
If a joint rtn., sp. first name Initial Last name <b>NOEL P. BROWN</b>	Spouse's soc. sec. no. <b>287-78-7569</b>	
Home address (number and street) <small>PLACE LABEL HERE OR PRINT/TYPE INFORMATION</small> Apt. No. <b>2419 LAGUNA DRIVE</b>		Ohio county <b>CUYAHOGA</b> SS # _____
City, town or post office, state and ZIP code <b>FORT LAUDERDALE FL 33316</b>		Ohio Public School District Number <b>1832</b>
Ohio Residency Status (see instructions) <input checked="" type="checkbox"/> Resident <input type="checkbox"/> Part-Year Resident from: _____ to _____ <input type="checkbox"/> Nonresident _____ to _____ <small>state of residence</small>		Ohio Political Party Fund Do you want \$1 to go to this fund? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If joint return, does your spouse want \$1 to go to this fund? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Note: Checking "Yes" will not increase your tax or decrease your refund.

<b>I N C O M E</b>	1. Federal Adjusted Gross Income (from Federal Form 1040, line 33; or 1040A, line 19; or 1040EZ, line 4; or 1040 TEL)	1	1,468,427	00
	2. Ohio Adjustments (from line 44 on back of this return)	2	785,131	00
	3. Ohio Adjusted Gross Income (line 2 subtracted from or added to line 1)	3	2,253,558	00
	4. Multiply your personal and dependent exemptions <input type="text" value="5"/> times \$1,100 and enter the result here	4	5,500	00
	5. Ohio Taxable Income (subtract line 4 from line 3)	5	2,248,058	00
<b>T A X A N D S</b>	6. Ohio Tax before Credits (see tax tables)	6	153,664	00
	7. Credits from Schedule B (line 53 on back of this return)	7		00
	8. Ohio Tax less Schedule B Credits (Subtract line 7 from line 6. If line 7 is more than line 6, enter zero.)	8	153,664	00
	9. Exemption Credit: Number of personal and dependent exemptions <input type="text" value="5"/> times \$20	9	100	00
	10. Ohio Tax less Exemption Credit (Subtract line 9 from line 8. If line 9 is more than line 8, enter zero.)	10	153,564	00
	11. Joint Filing Credit (see instructions and attach documentation) <input type="text" value="5"/> % times line 10 (limit \$650)	11	650	00
	12. Ohio Tax less Joint Filing Credit (subtract line 11 from line 10) <b>SEE STMT 1</b>	12	152,914	00
	13. Resident/Nonresident/Part-Year Credits (Sch. C or D) & Nonrefundable Business Credits (att. Sch. E)	13	163	00
	14. Ohio Income Tax (Subtract line 13 from line 12. If line 13 is more than line 12, enter zero)	14	152,751	00
	15. Interest Penalty on Underpayment of Estimated Tax: Check <input type="checkbox"/> if form IT-2210 is attached	15		00
	16. Ohio Use Tax (please see worksheet)	16		00
	17. Total Ohio Tax (please add line 14, line 15, and line 16)	17		152,751 00
	<b>P A Y M E N T S</b>	18. Ohio Tax Withheld (box 18 on your W-2) (attach W-2's to the back of this form) <b>AMOUNT WITHHELD</b>	18	0
19. Ohio Estimated Tax, IT-40P Payments for 2000, and 1999 Overpayment Credited to 2000		19	200,000	00
20. Refundable Business Jobs Credit <input type="text"/> Refundable Pass-through Entity Credits <input type="text"/> Total of 20a & 20b		20		00
21. Add lines 18, 19, and 20 <b>TOTAL PAYMENTS</b>		21	200,000	00
<b>A M O U N T Y O U O W E</b>	22. If line 21 is LESS than line 17, subtract line 21 from line 17. Attach payment made payable to Treasurer of State of Ohio. Check here <input type="checkbox"/> if you have paid or will pay with a credit card (see instructions) <b>AMOUNT YOU OWE</b>	22		0 00
	23. If line 21 is GREATER than line 17, subtract line 17 from line 21 <b>AMOUNT OVERPAID</b>	23		47,249 00
	24. Amount of line 23 you wish to DONATE for conservation of endangered species and wildlife diversity: \$3 <input type="checkbox"/> \$5 <input type="checkbox"/> \$10 <input type="checkbox"/> Other <input type="checkbox"/> Check box and enter amount on line 24	24		00
	25. Amount of line 23 you wish to DONATE for nature preserves, scenic rivers, & endangered species protection: \$3 <input type="checkbox"/> \$5 <input type="checkbox"/> \$10 <input type="checkbox"/> Other <input type="checkbox"/> Check box and enter amount on line 25	25		00
	26. Amount of line 23 to be credited to 2001 est. tax liability <b>CREDIT</b>	26		00
	27. Amount of line 23 to be refunded (subtract amounts on lines 24, 25, and 26 from line 23) <b>YOUR REFUND</b>	27		47,249 00
	IF THE BALANCE DUE IS LESS THAN \$1.01 PAYMENT NEED NOT BE MADE, AND IF THE OVERPAYMENT IS LESS THAN \$1.01, NO REFUND WILL BE ISSUED.			
I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and complete.				
<b>S I G N H E R E</b>	Your signature _____ Date _____		<b>FOR DEPARTMENTAL USE ONLY</b>  Refund/Credit Requested-Mail to: Ohio Department of Taxation P.O. Box 2679 Columbus, OH 43270-2679 Payment Enclosed-Mail to: Ohio Department of Taxation P.O. Box 2057 Columbus, OH 43270-2057	
	Spouse's signature (if filing jointly, BOTH must sign) _____ Phone number (optional) _____			
	Preparer's signature and address (including zip code) _____ Preparer's phone number <b>330-867-7350</b>			
	Preparer's address (including zip code) <b>1540 W. MARKET STREET, SUITE 201 AKRON OH 44313</b>			

**KEITH A. & NOEL P. BROWN**

Schedule A Additions and Deductions to Income	Additions - Add to the extent not included in Federal Adjusted Gross Income (Line 1)				
	28.	Add non-Ohio state or local government interest and dividends	28 ●	785,240	00
	29.	Add Pass-through Entity addback	29 ●		00
	30.	Add income from an electing small business trust (ESBT-see instructions)	30 ●		00
	31.	Other. Check if from:			
		a. <input type="checkbox"/> Federal interest and dividends subject to state taxation			
		b. <input type="checkbox"/> Accumulation Distributions from a complex trust			
		c. <input type="checkbox"/> Losses from sale/exchange of Ohio Public Obligations			
		d. <input type="checkbox"/> Non-medical withdrawals from an Ohio Medical Savings Account			
		e. <input type="checkbox"/> Reimbursements previously deducted but not included in Federal Adjusted Gross Income			
		Total	31 ●		00
	32.	Total additions (add lines 28, 29, 30, and 31)	32 ●	785,240	00
	Deductions - See Limitations in Instructions				
	33.	Deduct federal interest and dividends exempt from state taxation	33 ●		00
34.	Deduct compensation earned in Ohio by full-year residents of neighboring states	34 ●		00	
35.	Deduct state or municipal income tax overpayments (from line 10 of Federal Form 1040)	35 ●	109	00	
36.	Deduct disability and survivorship benefits (does not include pension continuations)	36 ●		00	
37.	Deduct qualifying social security benefits and some railroad benefits	37 ●		00	
38.	Deduct contributions to a variable college savings account and/or purchases of tuition credits	38 ●		00	
39.	Deduct unsubsidized health insurance/long term care insurance and excess medical expenses (see worksheet)	39 ●		00	
40.	Deduct funds deposited into & earnings of a medical savings account for eligible medical expenses (see worksheet)	40 ●		00	
41.	Deduct losses from an electing small business trust (ESBT-see instructions)	41 ●		00	
42.	Other. Check if:				
	a. <input type="checkbox"/> Wage & salary expense not deducted due to the federal targeted jobs or the work opportunity tax credits				
	b. <input type="checkbox"/> Interest and gains from the sale/exchange of Ohio Public Obligations				
	c. <input type="checkbox"/> Refund or reimbursements of prior-year federal itemized deductions (from line 21 of Federal 1040)				
	d. <input type="checkbox"/> Repayment of income reported in a prior year				
	e. <input type="checkbox"/> Amount contributed to an Individual Development Account				
	Total	42 ●		00	
43.	Total Deductions (add lines 33 through 42)	43 ●	109	00	
44.	Net adjustments - If line 32 is GREATER than line 43, enter the difference here & on line 2 as a positive amount. If line 32 is LESS than line 43, enter the difference here & on line 2 as a negative amount	44 ●	785,131	00	
Schedule B Credits	45.	Retirement Income Credit (see instructions for credit table) (Limit-\$200)	45 ●		00
	46.	Senior Citizen's Credit (Limit-\$50 per return)	46 ●		00
	47.	Lump Sum Distribution credit (you must be 65 years of age or older to claim this credit)	47 ●		00
	48.	Child and Dependent Care Credit (see instructions and worksheet)	48 ●		00
	49.	Lump Sum Retirement Credit	49 ●		00
	50.	Job Training Credit (see instructions and worksheet) (Limit-\$500)	50 ●		00
	51.	Ohio Political Contributions Credit	51 ●		00
	52.	Ohio Adoption Credit (Limit-\$500 per adoption)	52 ●		00
	53.	Total Credits (add lines 45 through 52) - enter here and on line 7	53 ●		00
Schedule C Resident	54.	Enter the portion of line 3 subjected to tax by other states or the District of Columbia while an Ohio resident	54 ●	4,804	00
	55.	Enter Ohio Adjusted Gross Income (line 3)	55	2,253,558	00
	56.	Divide line 54 by line 55 <span style="border: 1px solid black; padding: 2px;">0.2132 %</span> Multiply by the amount on line 12	56	326	00
	57.	Enter the 2000 income tax less all related credits other than withholding and estimated tax payments and carry-forwards from previous years paid to other states or the District of Columbia	57 ●	163	00
	58.	Enter the smaller of line 56 or line 57. This is your Ohio Resident Tax Credit. Enter here and on line 13	58	163	00
List the state(s) other than Ohio with which you filed 2000 Income Tax Returns <span style="border: 1px solid black; padding: 2px;">INDIANA</span>					
Sch. D Non-Res.	59.	Enter the portion of Ohio Adjusted Gross Income (line 3) that was not earned or received in Ohio	59 ●		00
	60.	Enter the Ohio Adjusted Gross Income (line 3)	60		00
	61.	Divide line 59 by line 60 <span style="border: 1px solid black; padding: 2px;">%</span> Multiply by the amount on line 12. Enter here and on line 13	61		00

BK4562 BROWN, KEITH A. & NOEL P.  
270-52-4562

**Ohio Statements**

**Ohio Taxable Interest and US Government Obligations**

Payer	Regular Int	US Govt	Reg Int	US Govt	Force	Force
	Full-Year	Full-Year	In-State	In-State	Reg In-St	US In-St
DONALD A. BROWN TRUST	\$ 290,022	\$	\$	\$	\$	\$
MERRILL LYNCH - 646-18017	5,787					
KEITH A. BROWN REVOCABLE LIVING TRUST						
KEITH A. BROWN ESBT	48,080					
K1 TXBL/US INT	1,512					
<b>TOTAL</b>	<b>\$ 345,401</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>		

**Ohio Municipal Interest from Interest Sources**

Payer	Total	Txbl Muni	Txbl Muni	Force Txbl
	Muni Int	Full-Year	In-State	Muni In-St
DONALD A. BROWN TRUST - TX EX - NON OHIO	\$ 752,304	\$ 752,304	\$	\$
DONALD A. BROWN TRUST - TX EX - OHIO	56,169			
KEITH A. BROWN REVOCABLE LIVING TRUST				
NATIONAL FINANCIAL SERVICES - 290190	82,950			
KEITH A. BROWN ESBT	82,950			
<b>TOTAL</b>	<b>\$ 974,373</b>	<b>\$ 752,304</b>	<b>\$ 0</b>	

**Ohio Statements**

**Ohio Taxable Dividends and US Government Obligations**

Payer	Reg Div		US Govt		Force	
	Full-Year	Full-Year	In-State	In-State	Reg In-St	US In-St
DONALD A. BROWN TRUST	\$ 683,225	\$	\$	\$	\$	\$
KEYBANK	2,393					
NATIONAL FINANCIAL SERVICES 297364	3,498					
USG CORPORATION	1,304					
USG CORPORATION	1,026					
DONALD A. BROWN TRUST - FOREIGN	27,630					
NATIONAL FINANCIAL SERVICES 297364-FOREIGN						
<b>TOTAL</b>	<b>\$ 719,076</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>		

**Ohio Municipal Obligations from Dividend Sources**

Payer	Total	Txbl Muni	Txbl Muni	Force Txbl
	Muni Div	Full-Year	In-State	Muni In-St
NATIONAL FINANCIAL SERVICES - 297364	\$ 142	\$	\$	\$
KEITH A. BROWN ESBT	34,934	32,936		
<b>TOTAL</b>	<b>\$ 35,076</b>	<b>\$ 32,936</b>	<b>\$ 0</b>	



## Ohio Legislative Service Commission *122nd House Bill Analysis*

### **H.B. 802**

122nd General Assembly  
(As Introduced)

**Reps. Jerse, Opfer, Garcia, Miller**

- Extends the personal income tax to electing small business trusts that receive income from S corporations.
- Requires persons who sell shares of an Ohio S corporation to apportion the capital gain or loss to Ohio.

### **CONTENT AND OPERATION**

#### *Taxing electing small business trusts*

(secs. 5733.40(I)(1), 5747.01(N), and 5747.454)

#### *Nature of electing small business trusts*

An electing small business trust is one of only a few kinds of trusts that may own shares in an S corporation. An S corporation is a corporate form of business organization that is taxed in a manner similar to partnerships--i.e., the shareholders, rather than the corporation, are taxed on income from the corporation. They were authorized by Congress to permit more than one beneficiary to receive S corporation income through a trust. For example, such a trust might be established to distribute (or accumulate) income from a family-held S corporation among various family members. Interests in the trusts cannot be acquired by purchase; interests may only be acquired by gift, bequest, or other nonpurchase means. (See I.R.C. 1361(e).)

#### *Federal tax treatment*

For federal income tax purposes, an electing small business trust that owns S corporation stock is treated as two trusts: the portion owning the S corporation stock and the portion owning the remainder of the trust. The portion that owns the S corporation stock is taxed at the highest marginal tax rate. The trust's beneficiaries are not taxed on income received or accumulated from that portion of the trust, and that income is not included in the beneficiary's federal adjusted gross income.

**Current Ohio tax treatment**

Currently, trusts are not subject to the state's personal income tax; only individuals and estates are taxed. Since, under federal law, the federal adjusted gross income of a beneficiary of an electing small business trust does not include income from an S corporation that is passed through (or accumulated by) the trust, beneficiaries do not have to pay Ohio income taxes on that income.

**Proposed Ohio tax treatment**

The bill generally would treat electing small business trusts in the same way they are treated under federal law--i.e., the portion of the trusts that consist of S corporation stock would be taxed as entities, and the beneficiaries would continue to avoid taxes on S corporation income passed through (or accumulated by) such a trust. All income received by a trust from an S corporation would be taxed at the highest marginal tax rate, as under federal law, and the trusts could claim all of the business credits that any S corporation shareholder may claim.

The bill distinguishes between two kinds of electing small business trusts--resident and nonresident--for the purpose of allocating a trust's income to Ohio. A resident trust is defined as one whose creator was a resident of Ohio (for income tax purposes) at any time within the three years preceding the creation of the trust or the most recent amendment to the trust. In the case of an existing trust to which S corporation stock is contributed, this residency test applies to the person who contributes the stock to the trust. Any trust that does not satisfy the definition of a resident trust is considered to be a nonresident trust. Trusts would be presumed to be resident trusts unless the trustee can show, by a preponderance of evidence, that the trust is a nonresident trust. Resident trusts could claim the resident credit for income taxed by another state, and nonresident trusts could claim the nonresident credit for income not properly allocable to Ohio.

**Withholding taxes on S corporations with ESBT investors**

(sec. 5733.40(I))

Currently, certain pass-through entities must withhold and pay Ohio income taxes on income the entity or trust distributes to nonresident owners. Taxes have to be paid only on account of so-called "qualifying investors." Certain classes of investors are exempted from being considered as qualifying investors, including electing small business trusts (recall that these trusts may legally invest in S corporations). Thus, under current law, S corporations do not have to withhold and pay Ohio income taxes on account of electing small business trusts, since the trusts currently are not subject to income taxes.

The bill would eliminate the tax withholding and payment exemption for electing small business trusts, since the trusts would become taxable under the bill. Thus, S corporations would have to withhold and pay Ohio income taxes on account of electing small business

trusts that own shares in the corporation.

**Assigning capital gains, losses from selling pass-through entity stock**

(sec. 5747.20(B)(2)(c))

The bill would require nonresident taxpayers who own at least 5% of a pass-through entity doing business in Ohio, and who sell (or otherwise dispose of) their interest in the entity, to apportion the capital gain or loss to Ohio for income tax purposes. A pass-through entity is a partnership, S corporation, limited liability company, or other form of business organization that generally is not itself taxed under federal income tax law; the entity's income and loss items are passed through to the owners and retain the same character that they had, for tax accounting purposes, at the entity level (e.g., a capital gain earned by the entity is reportable as a capital gain by the individual owners). (Apportionment determines what portion of certain kinds of a person's income that the state will tax.) Currently, a taxpayer must allocate all capital gains or losses to Ohio from the sale of intangible property (such as stock) only if the taxpayer is domiciled in Ohio when the property is sold.

Under the proposed apportionment method, a nonresident taxpayer's capital gain would be taxed in proportion to the S corporation's business presence in Ohio over the preceding three years. Business presence is measured by the weighted average of the corporation's sales, property, and payroll in Ohio as compared to everywhere over the three-year period. This weighted average is multiplied by the capital gain (or loss) to determine the portion of the gain (or loss) that is considered for Ohio income tax purposes. The weights employed in the weighted average are the same that apply in apportioning a corporation's income to Ohio-- sales are weighted most heavily at 60%, while property and payroll each are weighted at 20%. The apportionment requirement would apply regardless of whether the taxpayer owned the interest directly, or indirectly through a related person or entity.

**Effective date**

(Section 3)

The bill would apply to taxable years beginning on or after January 1, 1998.

## **HISTORY**

### **ACTION DATE JOURNAL ENTRY**

Introduced 07-13-98 p. 2652

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**[Help using this Web Site](#)**  
*This site is updated daily Monday through Friday*********



**State of Ohio**



## *Bill Analysis*

Peter A. Cooper

Legislative Service Commission

### **H.B. 139** 123rd General Assembly (As Introduced)

**Reps. Jerse, Allen, Barrett, Bender, Boyd, Britton, Corbin, DePiero, Flannery, Ford, Hartley, Hartnett, James, Jones, Krupinski, Metelsky, D. Miller, Ogg, Opfer, Perry, Schuler, Smith, Sullivan, Sutton, Sykes, Pringle, Beatty**

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#### **BILL SUMMARY**

- Extends the personal income tax to electing small business trusts that own shares of an S corporation.
- Requires nonresidents who sell shares of an Ohio S corporation to apportion the capital gain or loss to Ohio.
- Applies to taxable years beginning on or after January 1, 1999.

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#### **CONTENT AND OPERATION**

##### *Taxing electing small business trusts*

(secs. 5733.40(I)(1), 5747.01(N), and 5747.454)

##### *Nature of electing small business trusts*

An electing small business trust is one of only a few kinds of trusts that may own shares in an S corporation.<sup>1</sup> They were authorized by Congress to permit more than one beneficiary to receive S corporation income through a trust. For example, such a trust might be established to distribute (or accumulate) income from a family-held S corporation among various family members. Interests in the trusts cannot be acquired by purchase; interests may only be acquired by gift, bequest, or other nonpurchase means. The federal tax treatment of such trusts,

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<sup>1</sup> *An S corporation is a corporate form of business organization that is taxed in a manner similar to partnerships--i.e., the shareholders, rather than the corporation, are taxed on income from the corporation.*

explained below, applies to taxable years beginning on or after January 1, 1997. (See I.R.C. 1361(e).)

**Federal tax treatment**

Under federal law, electing small business trusts are taxed on their S corporation distributive shares.<sup>2</sup> Since the trust is liable for tax, a beneficiary's federal adjusted gross income does not include income from the S corporation portion of the trust--thus, the beneficiary is not liable for federal tax on distributions from the trust. The trust pays the federal income tax at the highest federal marginal tax rate applying to trusts and estates. (I.R.C. secs. 641 and 1361.)

**Current Ohio tax treatment**

Currently, trusts are not subject to the state's personal income tax; only individuals and estates are taxed. Since, under federal law, the federal adjusted gross income of a beneficiary of an electing small business trust does not include income from an S corporation that is passed through (or accumulated by) the trust, beneficiaries do not have to pay Ohio income taxes on that income.

The interaction of federal and Ohio law currently has the tax effects diagrammed below:

Federal taxation	Flow of income	Ohio taxation
	<u>S Corporation</u>	
	V	
Trust pays tax }	\$\$ distributive shares \$\$	{ Trust pays no tax
	V	
	<u>Electing Small Business Trust</u>	
	V	
Beneficiary } pays no tax	\$\$ distributions \$\$	{ Beneficiary pays no tax
	V	
	<u>Beneficiaries</u>	

<sup>2</sup> This analysis considers only distributions of ordinary earnings and profits by an S corporation to an electing small business trust; distributions that represent a return of capital to the trust may not incur any tax liability.

### Proposed Ohio tax treatment

The bill generally would treat electing small business trusts in the same way they are treated under federal law--i.e., the portion of the trusts that consist of S corporation stock would be taxed as entities, and the beneficiaries would continue to avoid taxes on S corporation income passed through (or accumulated by) such a trust. All income received by a trust from an S corporation would be taxed at the highest marginal tax rate, as under federal law, and the trusts could claim all of the business credits that any S corporation shareholder may claim.

The bill distinguishes between two kinds of electing small business trusts--resident and nonresident--for the purpose of allocating a trust's income to Ohio. A resident trust is defined as one whose creator was a resident of Ohio (for income tax purposes) at any time within the three years preceding the creation of the trust or the most recent amendment to the trust. In the case of an existing trust to which S corporation stock is contributed, this residency test applies to the person who contributes the stock to the trust. Any trust that does not satisfy the definition of a resident trust is considered to be a nonresident trust. Trusts would be presumed to be resident trusts unless the trustee can show, by a preponderance of evidence, that the trust is a nonresident trust. Resident trusts could claim the resident credit for income taxed by another state, and nonresident trusts could claim the nonresident credit for income not properly allocable to Ohio.

### Withholding taxes on S corporations with ESBT investors

(sec. 5733.40(I))

Currently, certain pass-through entities must withhold and pay Ohio income taxes on income the entity or trust distributes to nonresident owners.<sup>3</sup> Taxes have to be paid only on account of so-called "qualifying investors." Certain classes of investors are exempted from being considered as qualifying investors, including electing small business trusts (recall that these trusts may legally invest in S corporations). Thus, under current law, S corporations do not have to withhold and pay Ohio income taxes on account of electing small business trusts, since the trusts currently are not subject to income taxes.

The bill would eliminate the tax withholding and payment exemption for electing small business trusts, since the trusts would become taxable under the bill.

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<sup>3</sup> *A pass-through entity is a partnership, S corporation, limited liability company, or other form of business organization that generally is not itself taxed under federal income tax law; the entity's income and loss items are passed through to the owners and retain the same character that they had, for tax accounting purposes, at the entity level (e.g., a capital gain earned by the entity is reportable as a capital gain by the individual owners).*

Thus, S corporations would have to withhold and pay Ohio income taxes on account of electing small business trusts that own shares in the corporation.

Assigning capital gains, losses from selling pass-through entity stock

(sec. 5747.20(B)(2)(c))

The bill would require nonresident taxpayers who own at least 5% of a pass-through entity doing business in Ohio, and who sell (or otherwise dispose of) their interest in the entity, to apportion the capital gain or loss to Ohio for income tax purposes. (Apportionment determines what portion of certain kinds of a person's income that the state will tax.) Currently, a taxpayer must allocate all capital gains or losses to Ohio from the sale of intangible property (such as stock) only if the taxpayer is domiciled in Ohio when the property is sold.

Under the proposed apportionment method, a nonresident taxpayer's capital gain would be taxed in proportion to the S corporation's business presence in Ohio over the preceding three years. Business presence is measured by the weighted average of the corporation's sales, property, and payroll in Ohio as compared to everywhere over the three-year period. This weighted average is multiplied by the capital gain (or loss) to determine the portion of the gain (or loss) that is considered for Ohio income tax purposes.<sup>4</sup> The apportionment requirement would apply regardless of whether the taxpayer owned the interest directly, or indirectly through a related person or entity.

Effective date

(Section 3)

The bill would apply to taxable years beginning on or after January 1, 1999.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced H0139-I.123/rss	02-02-99	p. 166

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<sup>4</sup> The weights employed in the weighted average are the same that apply in apportioning a corporation's income to Ohio--sales are weighted most heavily at 60%, while property and payroll each are weighted at 20%.



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### **IT 2000-01 - Grantor Trust Provisions Take Precedence Over ESBT Provisions - January 19, 2000**

Effective for individual and estate taxable years beginning after December 31, 1999, the Income Tax Audit Division will require certain individuals and estates to include in their federal adjusted gross income ("FAGI") and Ohio taxable income all relevant pass-through items of income, gain or loss from S corporations when such items have been treated as reportable for federal income tax purposes on a trust's fiduciary income tax return (Form 1041) because the trust has elected to be taxed as an Electing Small Business Trust ("ESBT") under Internal Revenue Code ("IRC") section 1361(e)(3). Specifically, if an individual or estate would be treated as the owner of all or a portion of a trust pursuant to IRC section 671 et seq., then such individual or estate shall include in his, her or its FAGI or Ohio taxable income all relevant S corporation pass-through items as if the individual or estate were itself the actual owner of the S corporation stock owned by the trust.<sup>1</sup>

Furthermore, because the Income Tax Audit Division will treat such trusts as grantor trusts rather than as ESBT's, the trust cannot qualify as an electing small business trust excluded, under Ohio Revised Code ("ORC") section 5733.40(I)(1), from the definition of a "qualifying investor." As such, for taxable years beginning after December 31, 1999, an S corporation must pay the 5% pass-through entity withholding tax and related estimated tax (ORC sections 5747.41 and 5747.43) with respect to "adjusted qualifying amounts" (ORC section 5733.40(A)(1)(a)) which pass through to such trusts.

For taxable years beginning after December 31, 1999, assessments for unpaid tax and all related failure-to-timely-pay and failure-to-timely-file charges will apply (i) to such individuals and estates who do not adjust their FAGI and Ohio taxable income (and timely pay tax and related estimated tax thereon) in accordance with this information release and (ii) to S corporations which do not timely pay the 5% withholding tax and the related es-timated tax with respect to such S corporation distributive shares.

#### **Discussion**

The Internal Revenue Code does not contain any provisions which expressly state that an ESBT which also qualifies as and/or is described as a grantor trust is exempt from the grantor trust provisions. Neither does the "Blue Book" provide or address any such exemption.<sup>2</sup> In fact, the principal advocate of the ESBT legislation has cautioned that the provisions of an ESBT's governing instruments "... should be limited so that no power would result in the inclusion of trust assets or revenue in the trustee's own estate or income."<sup>3</sup> Thus, even the principal advocate of the ESBT legislation implicitly recognizes that an ESBT which also qualifies as and/or is described as a grantor trust is, in fact, subject to the grantor trust provisions for taxation rather than qualifying for the special rules for taxation of ESBT's under IRC section 641(c).

The Income Tax Audit Division recognizes that various tax practitioners have differing interpretations of how the ESBT provisions interplay with the grantor trust provisions of the Internal Revenue Code. Some have advocated that the ESBT provisions should take precedence over the grantor trust provisions, while others believe that a grantor trust can-not make the ESBT election.<sup>4</sup> In light of the fact that neither the U.S. Treasury Department nor the Internal Revenue Service has issued any guidance in this area, and barring any change in the federal tax law or issuance of new U.S. Treasury regulations to the contrary, the Income Tax Audit Division's position is that a grantor trust cannot make the ESBT election.

If you have questions regarding this information release, please contact the Income Tax Audit Division at 614-433-7610 (TTY: 1-800-750-0750).

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<sup>1</sup>Of course, individuals and estates will not have to make these adjustments to the extent these individuals and estates have already done so on their federal income tax returns.

<sup>2</sup>Staff of the Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress.

<sup>3</sup>See the last sentence of Frederick G. Comeel's article, "The Electing Small Business Trust: Subchapter S's User-Friendly Estate Planning Tool" beginning on page 215 of the April, 1997 issue of the Journal of Taxation. The "Editor's Note" appearing in that article states as follows:

"Mr. Comeel was the principal advocate on Capitol Hill for ESBTs, and he worked with the staffs of both the Joint Committee and Treasury in drafting the legislation. . . . Moreover, until there is Treasury guidance or further legislation, his analysis of the law stands as uniquely important to any potential users of this new estate planning tool."

<sup>4</sup>See item number 4 in the American Institute of Certified Public Accountants December 21, 1999 correspondence to IRS Assistant Chief Counsel Paul F. Kugler. That letter is reproduced in the December 29, 1999 edition of BNA, Inc.'s TaxCore. But see Apple, "Ohio Income Tax Treatment of The Newest "S" Corporation Shareholder: The Electing Small Business Trust," The Ohio CPA Journal, April - June, 1998 on page 29, 4th line down: "Grantor trusts cannot elect to be treated as an ESBT."

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8994]

RIN 1545-AU76

Electing Small Business Trust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the qualification and treatment of electing small business trusts (ESBTs). The final regulations interpret the rules added to the Internal Revenue Code (Code) by section 1302 of the Small Business Job Protection Act of 1996, section 1601 of the Taxpayer Relief Act of 1997, and section 316 of the Community Renewal Tax Relief Act of 2000. In addition, the final regulations provide that an ESBT, or a trust described in section 401(a) of the Code or section 501(c)(3) of the Code and exempt from taxation under section 501(a) of the Code, is not treated as a deferral entity for purposes of §1.444-2T. The final regulations affect S corporations and certain trusts that own S corporation stock.

DATES: Effective Date: These regulations are effective May 14, 2002.

Dates of Applicability: The regulations regarding ESBTs under §1.641(c)-1(d) through (k), (l) Examples 2 - 5, §1.1361-1(h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), (j)(12), and (m), §1.1362-6(b)(2)(iv), §1.1377-1(a)(2)(iii) and (c) Example 3 apply for taxable years beginning on and after May 14, 2002. The regulations regarding taxation of ESBTs

under §1.641(c)-1(a), (b), (c), and (l) Example 1 are applicable for taxable years of ESBTs that end on and after December 29, 2000. The regulations under §1.444-4 are applicable to taxable years beginning on or after December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Bradford Poston or James A. Quinn, (202) 622-3060; specifically concerning §1.444-4, Michael F. Schmit, (202) 622-4960 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collections of information in these final regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and assigned control number 1545-1591.

The collections of information in these final regulations are in §1.1361-1(j)(12), §1.1361-1(m), and §1.444-4(c). The information required by §1.1361-1(j)(12) and §1.1361-1(m) is needed to allow trusts to elect to be ESBTs and to allow for the conversion of a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The likely respondents are trusts.

The information required by §1.444-4(c) is needed to allow certain S corporations to reinstate their previous taxable year that was terminated under §1.444-2T. The likely respondents are businesses and other for-profit institutions.

Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn.: Desk Officer for the Department of the Treasury,

Office of Information and Regulatory Affairs, Washington, DC 20503 with copies to the **Internal Revenue Service**, Attn.: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by July 15, 2002. Comments are specifically requested concerning:

Whether the collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The burden contained in §1.444-4 is reflected in the burden of Form 8716.

Estimated total annual reporting burden: 7,500 hours.

Estimated annual burden per respondent: 1 hour.

Estimated number of respondents: 7,500.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

On December 29, 2000, proposed regulations (REG-251701-96) were published in the **Federal Register** (65 FR 82963) containing proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to S corporations and electing small business trusts (ESBTs). Section 1302 of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755) (August 20, 1996) (the 1996 Act), amended sections 641 and 1361 of the Code to permit an ESBT to be an S corporation shareholder. Further amendments were made to section 1361(e) by the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 1601(c)(1)) (August 5, 1997), and the Community Renewal Tax Relief Act of 2000, Public Law 106-554 (114 Stat. 2763) (December 21, 2000). Prior section 641(d) was redesignated as section 641(c) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 6007(f)(2)) (July 22, 1998).

On December 29, 2000, proposed and temporary regulations were also published in the **Federal Register** (65 FR 82963) and (65 FR 82926) containing

amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election of a taxable year other than the required taxable year.

A public hearing was held on the proposed and temporary regulations on April 25, 2001. Written comments were received on the proposed and temporary regulations. The proposed regulations, with certain changes in response to the comments, are adopted as final regulations, and the temporary regulations are removed.

### **Summary of Comments and Explanation of Revisions**

#### **Beneficiaries and Potential Current Beneficiaries**

For a trust to qualify as an electing small business trust (ESBT) and as a shareholder in a subchapter S corporation, only certain types of persons are permitted to be beneficiaries of the trust. Once a trust makes the ESBT election, each potential current beneficiary (PCB) of the trust is treated as a shareholder of the S corporation. Thus, the identity of the beneficiaries affects whether a trust can be an ESBT, while the identity and number of PCBs affect whether the corporation can be a S corporation. It is possible under certain circumstances for a person to be a PCB, as that term is defined in section 1361(e)(2) and the proposed regulations, without being a beneficiary, as that term is defined in the proposed regulations. For example, a person who may receive a distribution from an ESBT under a currently exercisable power of appointment is a PCB but is not treated as a beneficiary until the power is actually exercised.

Some commentators expressed concerns about the possible adverse effects of the definition of PCBs, especially in situations involving potential recipients of a currently exercisable power of appointment. Some commentators suggested that a person should have to meet the definition of a beneficiary before the person could be considered a PCB. Commentators also suggested that a person who may receive a distribution under a currently exercisable power of appointment should not be treated as a PCB until exercise of the power. Several commentators suggested that a temporary waiver or release of a broad power of appointment should be sufficient to limit the number of PCBs during a period of time.

The final regulations do not change the basic definition of PCBs. While there is no statutory definition of beneficiary in section 1361(e), there is a statutory definition of PCB. Under section 1361(e)(2), a PCB is, "with respect to any period, any person who at any time during such period is entitled to, or, at the discretion of any person, may receive, a distribution from the principal or income of the trust." The IRS and the Treasury Department believe that it would be inconsistent with this statutory definition not to treat a person as a PCB until an actual distribution is made to that person pursuant to the exercise of a power of appointment. The final regulations provide that an attempt to temporarily waive, release, or limit a power of appointment would not be effective to limit the PCBs because of uncertainty as to the effectiveness of a temporary waiver, release, or limitation on the power of appointment under state law and the potential to manipulate a temporary waiver, release, or limitation on a power of appointment to avoid the S corporation shareholder limitation rules. However, a

permanent release of a power of appointment that is effective under local law may reduce the number of PCBs of an ESBT.

Another commentator suggested that the separate share provisions of section 663(c) should apply so that beneficiaries or PCBs of the share holding the assets other than the S corporation stock would not be counted as beneficiaries or PCBs of the S portion. There is no authority to ignore beneficiaries and PCBs of a portion of a trust holding assets other than S corporation stock. The statutory definitions of an ESBT and of a PCB look to all the persons who are beneficiaries or PCBs of the trust, not just the S portion. In addition, the separate share provisions of section 663(c) are not applicable because they generally apply only for purposes of allocating distributable net income under sections 661 and 662.

Two commentators requested guidance on what period of time is considered in determining who are PCBs in light of the statutory definition. They suggested that period means any moment in time. Thus, if an event occurs during a taxable year that changes who the PCBs are, the PCBs before and after the event would not be counted cumulatively for purposes of the 75-shareholder limit. The shareholder limitation in section 1361(b)(1)(A) means that an S corporation may not have more than 75 shareholders at any particular time during the taxable year. See Rev. Rul. 78-390 (1978-2 C.B. 220). The final regulations clarify that a person is treated as a shareholder of the S corporation at any moment in time when that person is entitled to, or in the discretion of any person may, receive a distribution of principal or income of

the trust. The final regulations also provide that a person who, after the exercise of a power of appointment, receives only a future interest in the trust is not a PCB.

One commentator was concerned about the statement in the proposed regulations that if a person holds a general lifetime power of appointment, the corporation will exceed the 75-shareholder limit and thus the corporation's S election will terminate. The commentator pointed out that a beneficiary's power to withdraw assets from a trust is considered a general power of appointment but the beneficiary is the only one who can receive those assets. The final regulations clarify that the potential recipients of current distributions pursuant to an exercise of the power are considered, not whether the power is a general or special power of appointment.

The proposed regulations provide that a person with a future beneficial interest is not a beneficiary of an ESBT if that interest is so remote as to be negligible. This provision permitted trusts to qualify as ESBTs even though there was a remote possibility that all the named beneficiaries would die and the trust assets would escheat to the state, an impermissible beneficiary of an ESBT. The Community Renewal Tax Relief Act of 2000 eliminated this potential problem by changing the statutory definition of permissible beneficiaries to include an organization described in section 170(c)(1) that holds a contingent interest in the trust and is not a PCB. The final regulations, therefore, remove the provision regarding remote beneficiaries and the accompanying example.

#### Interests in Trust Acquired by Purchase

Two commentators requested clarification on whether a trust is eligible to be an ESBT if it acquires property in a part-gift, part-sale transaction, such as a gift of encumbered property or a net gift, in which the donor transfers property to a trust provided the trust pays the resulting gift tax. Section 1361(e)(1)(A)(ii) provides that a trust is eligible to be an ESBT only if “no interest in the trust was acquired by purchase.” Section 1361(e)(1)(C) defines purchase as “any acquisition if the basis of the property acquired is determined under section 1012.” The proposed regulations provide that if any portion of a beneficiary’s basis in the beneficiary’s interest is determined under section 1012, the beneficiary’s interest was acquired by purchase. The final regulations clarify that the prohibition on purchases applies to purchases of a beneficiary’s interest in the trust, not to purchases of property by the trust. A net gift of a beneficial interest in a trust, where the donee pays the gift tax, would be treated as a purchase of a beneficial interest under these rules, while a net gift to the trust itself, where the trustee of the trust pays the gift tax, would not.

#### Grantor Trusts

Most commentators praised the position in the proposed regulations that a trust, all or a portion of which is treated as owned by an individual (deemed owner) under subpart E, part I, subchapter J, chapter 1 of the Code (grantor trust), may elect to be an ESBT. One commentator, however, suggested that grantor trusts should not be permitted to make ESBT elections. The final regulations continue to provide that a grantor trust may elect to be an ESBT.

The proposed regulations provide that if a grantor trust makes an ESBT election, the trust consists of a grantor portion, an S portion, and a non-S portion. The items of income, deduction, and credit attributable to the grantor portion are taxed to the deemed owner of that portion. The S portion is taxed under the special rules of section 641(c), while the non-S portion is subject to the normal trust taxation rules of subparts A through D of subchapter J.

Commentators made several suggestions regarding the taxation of a grantor trust that elects to be an ESBT. Some suggested that the taxation rules of section 641(c) should override the grantor trust rules of section 671, and thus all tax items attributable to the trust's shares in the S corporation should be taxed to the trust, not the deemed owner. Some suggested the grantor trust rules should not apply to any tax items of a trust that makes an ESBT election. According to these commentators, this approach would eliminate administrative complexity in determining what portion of the trust is treated as owned by the deemed owner. Others suggested that the trustee should be permitted to elect to have all items attributable to the S corporation taxed to the trust, not to the deemed owner. Others suggested that none of the S items should be taxed to the deemed owner but that ESBTs should be subject to additional reporting requirements to ensure the collection of the proper tax. Another suggested that the deemed owner should be taxed on the items from an ESBT only if the deemed owner is treated as owning the entire trust, not just a portion of the trust. Other commentators agreed with the taxation regime set forth in the proposed regulations.

The IRS and the Treasury Department believe that the qualification and taxation of ESBTs are two separate issues and that the proposed regulations take the correct position regarding the taxation of grantor trusts that make ESBT elections. Section 1361(e)(1) expands the permissible shareholders of an S corporation to include trusts that meet the definition of an ESBT. Grantor trusts are not excluded from the definition of an ESBT and, therefore, are permitted to make ESBT elections. Making an ESBT election, however, does not alter the long established treatment of tax items attributable to the portion of a trust treated as owned by the grantor or another. Section 671 requires that items of income, deduction, and credit attributable to the portion of the trust treated as owned by a grantor or another must be taken into account by that deemed owner. Only remaining items of the trust are subject to the provisions of subparts A through D of subchapter J. The special taxation rules for ESBTs are contained in subpart A and, therefore, only apply to any portion of the trust that is not treated as owned by the grantor or another under subpart E.

As pointed out by one of the commentators, the issue of determining what portion, if any, of a trust is treated as owned by the grantor or another has existed for years in a much broader context than in the application of the ESBT rules. The special taxation rules of section 641(c) would apply only to S items, while normal trust taxation rules clearly apply to non-S items. As a result, taxing all the S items to the trust would not eliminate the need to determine what portion of the trust is a grantor trust and the resulting administrative difficulties with respect to the non-S tax items of the trust.

Some commentators requested clarification of the effect of an ESBT election by a grantor trust. One commentator suggested that if a wholly-owned grantor trust makes an ESBT election, only the deemed owner should be treated as the shareholder of the S corporation. Another commentator made a similar suggestion where the grantor has retained the power to amend or revoke the trust or to make gifts from the trust. The IRS and the Treasury Department believe that the definitional and qualification requirements of section 1361(e) apply to any trust that makes an ESBT election irrespective of whether it is a grantor trust. Therefore, the final regulations continue to provide that the deemed owner is treated as a PCB along with others who meet the definition of a PCB.

#### Charitable Contributions

The proposed regulations provide that if an otherwise allowable deduction of the S portion is attributable to a charitable contribution paid by the S corporation, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument and will be deductible if the other requirements of section 642(c)(1) are met. Several commentators requested clarification concerning the other requirements of section 642(c)(1), the application of the limitations under section 681, and the election to treat charitable payments made after the close of a taxable year as made during the taxable year. One commentator suggested that the S portion should be entitled to a deduction for its share of any charitable contribution made by the S corporation because it is a separately stated item under section 1366 that the S portion takes into account under section 641(c)(2)(C)(i).

Section 641(c)(2)(C) specifies the items of income, loss, deduction, or credit that the S portion is required to take into account in determining its tax. These items include items required to be taken into account under section 1366, that is, the trust's pro rata share of the S corporation's items passed through to it as a shareholder. Both section 641(c)(2)(C) and section 1366(a) reference items that must be taken into account but do not themselves provide the authority to include in income, deduct from income, or claim a credit with respect to those items. That authority comes from other Code sections. A charitable contribution made by an S corporation is required to be a separately stated item under section 1366 because whether the item is deductible depends on the identity of the shareholder and the provisions of the Code applicable to charitable contributions made by that type of shareholder. Thus, for an individual shareholder, the contribution is deductible only in accordance with the provisions of section 170, while for a trust or estate, the contribution is deductible only in accordance with the provisions of section 642(c).

The final regulations continue to provide that the S portion's share of a charitable contribution made by the S corporation is deductible only if it meets the requirements of section 642(c)(1). The final regulations clarify how those requirements apply to such a contribution. If a contribution is paid from the S corporation's gross income, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument. The limitations of section 681, regarding unrelated business income, apply to determine whether the contribution is deductible by the S portion. The final regulations also clarify that the charitable contribution is

deductible by the S portion, if at all, only in the year that it is an item required to be taken into account by the trust under section 1366. The trustee may not make the election to treat a contribution made by the S corporation after the close of the taxable year as made during the taxable year. This election is available only for charitable payments actually made by the trust, not for the trust's share of contributions made by another entity.

One commentator suggested that if the trust contributes S corporation stock to a charitable organization, the S portion should be entitled to a charitable deduction with respect to the contribution. Deductions available to the S portion are limited by section 641(c)(2)(C) to S corporation items required to be taken into account under section 1366 and the S portion's share of state and local income taxes and administrative expenses. Charitable contributions by the trust are not items included in the list of items that may be taken into account by the S portion under section 641(c)(2)(C). Therefore, the final regulations do not change the rule that no deduction is available to either the S portion or the non-S portion with respect to a contribution of S corporation stock to charity.

#### Interest Paid on Loans to Acquire S Corporation Stock

The proposed regulations provide that interest expense incurred by the trust to purchase S corporation stock is allocated to the S portion but is not an administrative expense. Therefore, the interest is not an allowable deduction of the S portion under section 641(c)(2)(C)(iii). Several commentators suggested that the interest should be deductible. Some thought the interest should be allocated to the non-S portion and

deducted under the investment interest limitations of section 163(d). Others thought the interest should be allocated to the S portion but should be considered a deductible administrative expense. One commentator suggested that if the shareholders are required to buy the stock of a departing shareholder pursuant to the terms of a stock purchase agreement, any interest expense incurred as a result of financing the stock purchase with a loan should be deductible when paid by an ESBT. Another commentator suggested that if interest paid on a loan to acquire S corporation stock is not deductible, it should be added to the basis of the acquired stock.

Because the purchase of S corporation stock increases the S portion, rather than the non-S portion, of the trust, interest expenses incurred in the purchase should be allocated to the S portion. These interest expenses would be deductible by the S portion only if they are "administrative expenses" under section 641(c)(2)(C)(iii). The IRS and the Treasury Department believe that, for purposes of section 641(c)(2)(C)(iii), "administrative expenses" include the traditional expenses necessary for the management and preservation of trust assets, but do not include expenses incurred to acquire additional assets. The final regulations, therefore, continue to provide that, in all cases, interest incurred to purchase S corporation stock is a nondeductible expense allocable to the S portion. Because there is no authority to permit nondeductible interest expenses to increase the basis of assets, the final regulations do not adopt this suggestion.

#### Tax Credit Carryovers

Section 641(c)(4) and the proposed regulations provide that if a trust is no longer an ESBT, any loss carryover or excess deductions of the S portion that are referred to in section 642(h) are taken into account by the entire trust or by the beneficiaries if the entire trust terminates. One commentator suggested that any tax credit carryovers of the S portion should receive similar treatment. Section 641(c)(4) permits the entire trust to take into account only those items specified in section 642(h), which does not include tax credit carryovers. The S portion's tax credit carryovers and any other items not listed in section 642(h) are forfeited once the trust is no longer an ESBT, just as they are upon the termination of a trust or estate. The final regulations, therefore, do not adopt the commentator's suggestion.

#### Distributions From the ESBT

One commentator suggested that the tax treatment of distributions to beneficiaries in the proposed regulations is inconsistent with section 641(c)(1)(A), which provides that the portion of an ESBT consisting of the S corporation stock is treated as a separate trust. The proposed regulations provide that distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are, to the extent of the distributable net income of the non-S portion, deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are includible in the gross income of the beneficiaries under section 652 or 662. The commentator recommended that, because the S portion and the non-S portion are treated as separate trusts, the source of the distribution should determine its tax treatment.

The final regulations do not adopt the commentator's suggestion because section 641(c)(3) provides that section 641(c) does not affect the taxation of any distribution from the trust except for the exclusion of the S portion items from the distributable net income of the entire trust. Thus, the rules otherwise applicable to trust distributions apply to ESBTs.

#### ESBT Election

The proposed regulations provide that the ESBT election is filed with the service center where the trust files its income tax returns. The election to be a qualified subchapter S trust (QSST) is filed with the service center where the S corporation files its income tax returns. The preamble to the proposed regulations requested comments on whether the rules for filing the QSST election should be changed so the election is filed with the service center where the trust files its returns. One commentator suggested there should be consistent filing locations for QSST elections, ESBT elections, and conversions from QSST to ESBT or ESBT to QSST. The commentator, therefore, suggested that all these documents be filed with the service center(s) where the trust and the S corporation file their returns.

The final regulations provide that the ESBT election and the election to convert from an ESBT to a QSST or from a QSST to an ESBT are all filed with the service center where the S corporation files its income tax returns. Thus, the rule in the final regulations will establish a consistent filing location for QSST and ESBT elections and conversions.

One commentator suggested that grantor trusts should be permitted to make protective ESBT elections in light of the uncertain status of some trusts that may be grantor trusts under section 674. The IRS and the Treasury Department continue to believe that a conditional ESBT election that only becomes effective in the event the trust is not a wholly-owned grantor trust should not be available. A conditional ESBT election should not be allowed because the ESBT election must have a fixed effective date. If, in the absence of a conditional ESBT election, the trust is an ineligible shareholder, relief under section 1362(f) may be available for an S corporation. In addition, a trust that qualifies as an ESBT may make an ESBT election notwithstanding that the trust is a wholly-owned grantor trust.

#### Expedited Section 1362(f) Relief

In several contexts, commentators requested some form of expedited relief if an S corporation's election is inadvertently ineffective or is inadvertently terminated. In all these situations, the S corporation may seek relief under section 1362(f). The facts and circumstances of a particular situation are considered in determining whether relief is available, and the procedures for obtaining this relief are well established.

#### Effect under Section 1377 of Change in Status of a Trust

A commentator suggested that a trust's conversion to an ESBT should result in a complete termination of the trust's interest in the S corporation for purposes of section 1377(a)(2) because the incidence of taxation with respect to S corporation items will change as a result of the ESBT election. The proposed regulations provide that the election would result in a termination only if, prior to the election, the trust was

Section 641(c)(2)(C)(iii) provides that the S portion may take into account its allocable share of state and local income taxes and administrative expenses, but only to the extent provided in the regulations. The commentator noted that before final regulations are issued there is no authority for an ESBT to deduct any of these items. Therefore, the commentator requested that trusts be allowed to rely on the regulatory provisions regarding these items for taxable years beginning after December 31, 1996. The effective date provisions have been modified based on this suggestion.

#### Additional Provisions

The final regulations clarify that the basis of S corporation stock in the S portion must be adjusted in accordance with section 1367 and the regulations thereunder. If the ESBT owns stock in more than one S corporation, the adjustments to the basis in the S corporation stock of each S corporation must be determined separately.

#### **Effect on other documents**

The following documents are superseded for taxable years of ESBTs beginning on and after May 14, 2002.

Notice 97-12 (1997-1 C.B. 385).

Notice 97-49 (1997-2 C.B. 304).

Rev. Proc. 98-23 (1998-1 C.B. 662).

#### **Special Analysis**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative

Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that (1) the estimated average burden per trust in complying with the collections of information in §1.1361-1(m) is 1 hour, and (2) the requirement for S corporations to comply with § 1.444-4(c) will affect very few taxpayers and the associated burden is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small business.

### **Drafting Information**

The principal authors of these regulations are Bradford Poston and James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects**

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 602

Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART I--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

Section 1.444-4 is also issued under 26 U.S.C. 444(g). \* \* \*

Par. 2. Section 1.444-4 is added to read as follows:

§1.444-4 Tiered structure.

(a) Electing small business trusts. For purposes of §1.444-2T, solely with respect to an S corporation shareholder, the term deferral entity does not include a trust that is treated as an electing small business trust under section 1361(e). An S corporation with an electing small business trust as a shareholder may make an election under section 444. This paragraph is applicable to taxable years beginning on and after December 29, 2000; however, taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1996.

(b) Certain tax-exempt trusts. For purposes of §1.444-2T, solely with respect to an S corporation shareholder, the term deferral entity does not include a trust that is described in section 401(a) or 501(c)(3), and is exempt from taxation under section 501(a). An S corporation with a trust as a shareholder that is described in section 401(a) or section 501(c)(3), and is exempt from taxation under section 501(a) may make an election under section 444. This paragraph is applicable to taxable years

beginning on and after December 29, 2000; however taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1997.

(c) Certain terminations disregarded--(1) In general. An S corporation that is described in this paragraph (c)(1) may request that a termination of its election under section 444 be disregarded, and that the S corporation be permitted to resume use of the year it previously elected under section 444, by following the procedures of paragraph (c)(2) of this section. An S corporation is described in this paragraph if the S corporation is otherwise qualified to make a section 444 election, and its previous election was terminated under §1.444-2T(a) solely because --

(i) In the case of a taxable year beginning after December 31, 1996, a trust that is treated as an electing small business trust became a shareholder of such S corporation; or

(ii) In the case of a taxable year beginning after December 31, 1997, a trust that is described in section 401(a) or 501(c)(3), and is exempt from taxation under section 501(a) became a shareholder of such S corporation.

(2) Procedure--(i) In general. An S corporation described in paragraph (c)(1) of this section that wishes to make the request described in paragraph (c)(1) of this section must do so by filing Form 8716, "Election To Have a Tax Year Other Than a Required Tax Year," and typing or printing legibly at the top of such form --  
"CONTINUATION OF SECTION 444 ELECTION UNDER §1.444-4." In order to assist the Internal Revenue Service in updating the S corporation's account, on Line 5 the Box "Changing to" should be checked. Additionally, the election month indicated must

be the last month of the S corporation's previously elected section 444 election year, and the effective year indicated must end in 2002.

(ii) Time and place for filing Form 8716. Such form must be filed on or before October 15, 2002, with the service center where the S corporation's returns of tax (Forms 1120S) are filed. In addition, a copy of the Form 8716 should be attached to the S corporation's short period Federal income tax return for the first election year beginning on or after January 1, 2002.

(3) Effect of request--(i) Taxable years beginning on or after January 1, 2002.

An S corporation described in paragraph (c)(1) of this section that requests, in accordance with this paragraph, that a termination of its election under section 444 be disregarded will be permitted to resume use of the year it previously elected under section 444, commencing with its first taxable year beginning on or after January 1, 2002. Such S corporation will be required to file a return under §1.7519-2T for each taxable year beginning on or after January 1, 2002. No payment under section 7519 will be due with respect to the first taxable year beginning on or after January 1, 2002. However, a required payment will be due on or before May 15, 2003, with respect to such S corporation's second continued section 444 election year that begins in calendar year 2002.

(ii) Taxable years beginning prior to January 1, 2002. An S corporation described in paragraph (c)(1) of this section that requests, in accordance with this paragraph, that a termination of its election under section 444 be disregarded will not be required to amend any prior Federal income tax returns, make any required

payments under section 7519, or file any returns under §1.7519-2T, with respect to taxable years beginning on or after the date the termination of its section 444 election was effective and prior to January 1, 2002.

(iii) Section 7519: required payments and returns. The Internal Revenue Service waives any requirement for an S corporation described in paragraph (c)(1) of this section to file the federal tax returns and make any required payments under section 7519 for years prior to the taxable year of continuation as described in paragraph (c)(3)(i) of this section, if for such years the S corporation filed its federal income tax returns on the basis of its required taxable year.

**§1.444-4T [Removed]**

Par. 3. Section 1.444-4T is removed.

Par. 4. Sections 1.641(c)-0 and 1.641(c)-1 are added to read as follows:

§1.641(c)-0 Table of contents.

This section lists the major captions contained in §1.641(c)-1.

§1.641(c)-1 Electing small business trust.

- (a) In general.
- (b) Definitions.
  - (1) Grantor portion.
  - (2) S portion.
  - (3) Non-S portion.
- (c) Taxation of grantor portion.
- (d) Taxation of S portion.
  - (1) In general.
  - (2) Section 1366 amounts.
  - (3) Gains and losses on disposition of S stock.
  - (4) State and local income taxes and administrative expenses.
- (e) Tax rates and exemption of S portion.
  - (1) Income tax rate.

- (2) Alternative minimum tax exemption.
- (f) Adjustments to basis of stock in the S portion under section 1367.
- (g) Taxation of non-S portion.
  - (1) In general.
  - (2) Dividend income under section 1368(c)(2).
  - (3) Interest on installment obligations.
  - (4) Charitable deduction.
- (h) Allocation of state and local income taxes and administration expenses.
- (i) Treatment of distributions from the trust.
- (j) Termination or revocation of ESBT election.
- (k) Effective date.
- (l) Examples.

§1.641(c)-1 Electing small business trust.

(a) In general. An electing small business trust (ESBT) within the meaning of section 1361(e) is treated as two separate trusts for purposes of chapter 1 of the Internal Revenue Code. The portion of an ESBT that consists of stock in one or more S corporations is treated as one trust. The portion of an ESBT that consists of all the other assets in the trust is treated as a separate trust. The grantor or another person may be treated as the owner of all or a portion of either or both such trusts under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code. The ESBT is treated as a single trust for administrative purposes, such as having one taxpayer identification number and filing one tax return. See §1.1361-1(m).

(b) Definitions--(1) Grantor portion. The grantor portion of an ESBT is the portion of the trust that is treated as owned by the grantor or another person under subpart E.

(2) S portion. The S portion of an ESBT is the portion of the trust that consists of S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(3) Non-S portion. The non-S portion of an ESBT is the portion of the trust that consists of all assets other than S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(c) Taxation of grantor portion. The grantor or another person who is treated as the owner of a portion of the ESBT includes in computing taxable income items of income, deductions, and credits against tax attributable to that portion of the ESBT under section 671.

(d) Taxation of S portion--(1) In general. The taxable income of the S portion is determined by taking into account only the items of income, loss, deduction, or credit specified in paragraphs (d)(2), (3), and (4) of this section, to the extent not attributable to the grantor portion.

(2) Section 1366 amounts--(i) In general. The S portion takes into account the items of income, loss, deduction, or credit that are taken into account by an S corporation shareholder pursuant to section 1366 and the regulations thereunder. Rules otherwise applicable to trusts apply in determining the extent to which any loss, deduction, or credit may be taken into account in determining the taxable income of the S portion. See §1.1361-1(m)(3)(iv) for allocation of those items in the taxable year of the S corporation in which the trust is an ESBT for part of the year and an eligible shareholder under section 1361(a)(2)(A)(i) through (iv) for the rest of the year.

(ii) Special rule for charitable contributions. If a deduction described in paragraph (d)(2)(i) of this section is attributable to an amount of the S corporation's gross income that is paid by the S corporation for a charitable purpose specified in section 170(c) (without regard to section 170(c)(2)(A)), the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument within the meaning of section 642(c)(1) . The limitations of section 681, regarding unrelated business income, apply in determining whether the contribution is deductible in computing the taxable income of the S portion.

(iii) Multiple S corporations. If an ESBT owns stock in more than one S corporation, items of income, loss, deduction, or credit from all the S corporations are aggregated for purposes of determining the S portion's taxable income.

(3) Gains and losses on disposition of S stock--(i) In general. The S portion takes into account any gain or loss from the disposition of S corporation stock. No deduction is allowed under section 1211(b)(1) and (2) for capital losses that exceed capital gains.

(ii) Installment method. If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the income recognized under this method is taken into account by the S portion. See paragraph (g)(3) of this section for the treatment of interest on the installment obligation. See §1.1361-1(m)(5)(ii) regarding treatment of a trust as an ESBT upon the sale of all S corporation stock using the installment method.

(iii) Distributions in excess of basis. Gain recognized under section 1368(b)(2) from distributions in excess of the ESBT's basis in its S corporation stock is taken into account by the S portion.

(4) State and local income taxes and administrative expenses--(i) In general. State and local income taxes and administrative expenses directly related to the S portion and those allocated to that portion in accordance with paragraph (h) are taken into account by the S portion.

(ii) Special rule for certain interest. Interest paid by the trust on money borrowed by the trust to purchase stock in an S corporation is allocated to the S portion but is not a deductible administrative expense for purposes of determining the taxable income of the S portion.

(e) Tax rates and exemption of S portion--(1) Income tax rate. Except for capital gains, the highest marginal trust rate provided in section 1(e) is applied to the taxable income of the S portion. See section 1(h) for the rates that apply to the S portion's net capital gain.

(2) Alternative minimum tax exemption. The exemption amount of the S portion under section 55(d) is zero.

(f) Adjustments to basis of stock in the S portion under section 1367. The basis of S corporation stock in the S portion must be adjusted in accordance with section 1367 and the regulations thereunder. If the ESBT owns stock in more than one S corporation, the adjustments to the basis in the S corporation stock of each S corporation must be determined separately with respect to each S corporation.

Accordingly, items of income, loss, deduction, or credit of an S corporation that are taken into account by the ESBT under section 1366 can only result in an adjustment to the basis of the stock of that S corporation and cannot affect the basis in the stock of the other S corporations held by the ESBT.

(g) Taxation of non-S portion--(1) In general. The taxable income of the non-S portion is determined by taking into account all items of income, deduction, and credit to the extent not taken into account by either the grantor portion or the S portion. The items attributable to the non-S portion are taxed under subparts A through D of part I, subchapter J, chapter 1 of the Internal Revenue Code. The non-S portion may consist of more than one share pursuant to section 663(c).

(2) Dividend income under section 1368(c)(2). Any dividend income within the meaning of section 1368(c)(2) is includible in the gross income of the non-S portion.

(3) Interest on installment obligations. If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the interest on the installment obligation is includible in the gross income of the non-S portion. See paragraph (d)(3)(ii) of this section for the treatment of income from such a sale or disposition.

(4) Charitable deduction. For purposes of applying section 642(c)(1) to payments made by the trust for a charitable purpose, the amount of gross income of the trust is limited to the gross income of the non-S portion. See paragraph (d)(2)(ii) of this section for special rules concerning charitable contributions paid by the S corporation that are deemed to be paid by the S portion.

(h) Allocation of state and local income taxes and administration expenses.

Whenever state and local income taxes or administration expenses relate to more than one portion of an ESBT, they must be allocated between or among the portions to which they relate. These items may be allocated in any manner that is reasonable in light of all the circumstances, including the terms of the governing instrument, applicable local law, and the practice of the trustee with respect to the trust if it is reasonable and consistent. The taxes and expenses apportioned to each portion of the ESBT are taken into account by that portion.

(i) Treatment of distributions from the trust. Distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are includible in the gross income of the beneficiaries under section 652 or 662. However, the amount of the deduction or inclusion cannot exceed the amount of the distributable net income of the non-S portion. Items of income, loss, deduction, or credit taken into account by the grantor portion or the S portion are excluded for purposes of determining the distributable net income of the non-S portion of the trust.

(j) Termination or revocation of ESBT election. If the ESBT election of the trust terminates pursuant to §1.1361-1(m)(5) or the ESBT election is revoked pursuant to §1.1361-1(m)(6), the rules contained in this section are thereafter not applicable to the trust. If, upon termination or revocation, the S portion has a net operating loss under section 172; a capital loss carryover under section 1212; or deductions in excess of gross income; then any such loss, carryover, or excess deductions shall be allowed as

a deduction, in accordance with the regulations under section 642(h), to the trust, or to the beneficiaries succeeding to the property of the trust if the entire trust terminates.

(k) Effective date. This section generally is applicable for taxable years of ESBTs beginning on and after May 14, 2002. However, paragraphs (a), (b), (c), and (l) Example 1 of this section are applicable for taxable years of ESBTs that end on and after December 29, 2000. ESBTs may apply paragraphs (d)(4) and (h) of this section for taxable years of ESBTs beginning after December 31, 1996.

(l) Examples. The following examples illustrate the rules of this section:

Example 1. Comprehensive example. (i) Trust has a valid ESBT election in effect. Under section 678, B is treated as the owner of a portion of Trust consisting of a 10% undivided fractional interest in Trust. No other person is treated as the owner of any other portion of Trust under subpart E. Trust owns stock in X, an S corporation, and in Y, a C corporation. During 2000, Trust receives a distribution from X of \$5,100, of which \$5,000 is applied against Trust's adjusted basis in the X stock in accordance with section 1368(c)(1) and \$100 is a dividend under section 1368(c)(2). Trust makes no distributions to its beneficiaries during the year.

(ii) For 2000, Trust has the following items of income and deduction:

Ordinary income attributable to <u>X</u> under section 1366.....	\$5,000
Dividend income from <u>Y</u> .....	\$900
Dividend from <u>X</u> representing C corporation earnings and profits.....	\$100
Total trust income.....	\$6,000
Charitable contributions attributable to <u>X</u> under section 1366.....	\$300
Trustee fees.....	\$200
State and local income taxes.....	\$100

(iii) Trust's items of income and deduction are divided into a grantor portion, an S portion, and a non-S portion for purposes of determining the taxation of those items. Income is allocated to each portion as follows:

<u>B</u> must take into account the items of income attributable to the grantor portion, that is, 10% of each item, as follows:	
Ordinary income from <u>X</u> .....	\$500

Dividend income from <u>Y</u> .....	\$90
Dividend income from <u>X</u> .....	\$10
Total grantor portion income.....	\$600

The total income of the S portion is \$4,500, determined as follows:

Ordinary income from <u>X</u> .....	\$5,000
Less: Grantor portion.....	(\$500)
Total S portion income.....	\$4,500

The total income of the non-S portion is \$900 determined as follows:

Dividend income from <u>Y</u> (less grantor portion).....	\$810
Dividend income from <u>X</u> (less grantor portion).....	\$90
Total non-S portion income.....	\$900

(iv) The administrative expenses and the state and local income taxes relate to all three portions and under state law would be allocated ratably to the \$6,000 of trust income. Thus, these items would be allocated 10% (600/6000) to the grantor portion, 75% (4500/6000) to the S portion and 15% (900/6000) to the non-S portion.

(v) B must take into account the following deductions attributable to the grantor portion of the trust:

Charitable contributions from <u>X</u> .....	\$30
Trustee fees.....	\$20
State and local income taxes.....	\$10

(vi) The taxable income of the S portion is \$4,005, determined as follows:

Ordinary income from <u>X</u> .....	\$4,500
Less: Charitable contributions from X (less grantor portion).....	(\$270)
75% of trustee fees.....	(\$150)
75% of state and local income taxes.....	(\$75)
Taxable income of S portion.....	\$4,005

(vii) The taxable income of the non-S portion is \$755, determined as follows:

Dividend income from <u>Y</u> .....	\$810
Dividend income from <u>X</u> .....	\$90
Total non-S portion income.....	\$900
Less: 15 % of trustee fees.....	(\$30)
15% state and local income taxes.....	(\$15)
Personal exemption.....	(\$100)
Taxable income of non-S portion.....	\$755

Example 2. Sale of S stock. Trust has a valid ESBT election in effect and owns stock in X, an S corporation. No person is treated as the owner of any portion of Trust under subpart E. In 2003, Trust sells all of its stock in X to a person who is unrelated to Trust and its beneficiaries and realizes a capital gain of \$5,000. This gain is taken into account by the S portion and is taxed using the appropriate capital gain rate found in section 1(h).

Example 3. (i) Sale of S stock for an installment note. Assume the same facts as in Example 2, except that Trust sells its stock in X for a \$400,000 installment note payable with stated interest over ten years. After the sale, Trust does not own any S corporation stock.

(ii) Loss on installment sale. Assume Trust's basis in its X stock was \$500,000. Therefore, Trust sustains a capital loss of \$100,000 on the sale. Upon the sale, the S portion terminates and the excess loss, after being netted against the other items taken into account by the S portion, is made available to the entire trust as provided in section 641(c)(4).

(iii) Gain on installment sale. Assume Trust's basis in its X stock was \$300,000 and that the \$100,000 gain will be recognized under the installment method of section 453. Interest income will be recognized annually as part of the installment payments. The portion of the \$100,000 gain recognized annually is taken into account by the S portion. However, the annual interest income is includible in the gross income of the non-S portion.

Example 4. Charitable lead annuity trust. Trust is a charitable lead annuity trust which is not treated as owned by the grantor or another person under subpart E. Trust acquires stock in X, an S corporation, and elects to be an ESBT. During the taxable year, pursuant to its terms, Trust pays \$10,000 to a charitable organization described in section 170(c)(2). The non-S portion of Trust receives an income tax deduction for the charitable contribution under section 642(c) only to the extent the amount is paid out of the gross income of the non-S portion. To the extent the amount is paid from the S portion by distributing S corporation stock, no charitable deduction is available to the S portion.

Example 5. ESBT distributions. (i) As of January 1, 2002, Trust owns stock in X, a C corporation. No portion of Trust is treated as owned by the grantor or another person under subpart E. X elects to be an S corporation effective January 1, 2003, and Trust elects to be an ESBT effective January 1, 2003. On February 1, 2003, X makes an \$8,000 distribution to Trust, of which \$3,000 is treated as a dividend from accumulated earnings and profits under section 1368(c)(2) and the remainder is applied against Trust's basis in the X stock under section 1368(b). The trustee of Trust

makes a distribution of \$4,000 to Beneficiary during 2003. For 2003, Trust's share of X's section 1366 items is \$5,000 of ordinary income. For the year, Trust has no other income and no expenses or state or local taxes.

(ii) For 2003, Trust has \$5,000 of taxable income in the S portion. This income is taxed to Trust at the maximum rate provided in section 1(e). Trust also has \$3,000 of distributable net income (DNI) in the non-S portion. The non-S portion of Trust receives a distribution deduction under section 661(a) of \$3,000, which represents the amount distributed to Beneficiary during the year (\$4,000), not to exceed the amount of DNI (\$3,000). Beneficiary must include this amount in gross income under section 662(a). As a result, the non-S portion has no taxable income.

Par. 5. Section 1.1361-0 is amended by adding entries for §1.1361-1(j)(12) and

(m) to read as follows:

§1.1361-0 Table of contents.

\* \* \* \* \*

§1.1361-1 S corporation defined.

\* \* \* \* \*

(j) \* \* \*

(12) Converting a QSST to an ESBT.

\* \* \* \* \*

(m) Electing small business trust (ESBT).

(1) Definition.

(2) ESBT election.

(3) Effect of ESBT election.

(4) Potential current beneficiaries.

(5) ESBT terminations.

(6) Revocation of ESBT election.

(7) Converting an ESBT to a QSST.

(8) Examples.

(9) Effective date.

\* \* \* \* \*

Par. 6. Section 1.1361-1 is amended by:

1. Adding paragraphs (h)(1)(vi) and (h)(3)(i)(F).
2. Adding a sentence to the beginning of paragraph (h)(3)(ii) introductory text.
3. Adding paragraph (j)(12).
4. Adding a sentence to the end of paragraph (k)(2)(i).
5. Adding paragraph (m).

The additions read as follows:

§1.1361-1 S corporation defined.

\*\*\*\*\*

(h) \*\*\* (1) \*\*\*

(vi) Electing small business trusts. An electing small business trust (ESBT) under section 1361(e). See paragraph (m) of this section for rules concerning ESBTs including the manner of making the election to be an ESBT under section 1361(e)(3).

\*\*\*\*\*

(3) \*\*\* (i) \*\*\*

(F) If S corporation stock is held by an ESBT, each potential current beneficiary is treated as a shareholder. However, if for any period there is no potential current beneficiary of the ESBT, the ESBT is treated as the shareholder during such period. See paragraph (m)(4) of this section for the definition of potential current beneficiary.

(ii) \*\*\* See §1.641(c)-1 for the rules for the taxation of an ESBT. \*\*\*

\*\*\*\*\*

(j) \*\*\*

(12) Converting a QSST to an ESBT. For a trust that seeks to convert from a QSST to an ESBT, the consent of the Commissioner is hereby granted to revoke the QSST election as of the effective date of the ESBT election, if all the following requirements are met:

(i) The trust meets all of the requirements to be an ESBT under paragraph (m)(1) of this section except for the requirement under paragraph (m)(1)(iv)(A) of this section that the trust not have a QSST election in effect.

(ii) The trustee and the current income beneficiary of the trust sign the ESBT election. The ESBT election must be filed with the service center where the S corporation files its income tax return. This ESBT election must state at the top of the document "ATTENTION ENTITY CONTROL--CONVERSION OF A QSST TO AN ESBT PURSUANT TO SECTION 1.1361-1(j)" and include all information otherwise required for an ESBT election under paragraph (m)(2) of this section. A separate election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from an ESBT to a QSST within the 36-month period preceding the effective date of the new ESBT election.

(iv) The date on which the ESBT election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective on the day that is 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than

12 months after the date on which the election is filed, it will be effective on the day that is 12 months after the date it is filed.

(k) \* \* \*

(2) \* \* \* (i) \* \* \* Paragraphs (h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), and (j)(12) of this section are applicable for taxable years beginning on and after May 14, 2002.

\* \* \* \* \*

(m) Electing small business trust (ESBT)--(1) Definition--(i) General rule. An electing small business trust (ESBT) means any trust if it meets the following requirements: the trust does not have as a beneficiary any person other than an individual, an estate, an organization described in section 170(c)(2) through (5), or an organization described in section 170(c)(1) that holds a contingent interest in such trust and is not a potential current beneficiary; no interest in the trust has been acquired by purchase; and the trustee of the trust makes a timely ESBT election for the trust.

(ii) Qualified beneficiaries--(A) In general. For purposes of this section, a beneficiary includes a person who has a present, remainder, or reversionary interest in the trust.

(B) Distributee trusts. A distributee trust is the beneficiary of the ESBT only if the distributee trust is an organization described in section 170(c)(2) or (3). In all other situations, any person who has a beneficial interest in a distributee trust is a beneficiary of the ESBT. A distributee trust is a trust that receives or may receive a distribution from an ESBT, whether the rights to receive the distribution are fixed or contingent, or immediate or deferred.

(C) Powers of appointment. A person in whose favor a power of appointment could be exercised is not a beneficiary of an ESBT until the holder of the power of appointment actually exercises the power in favor of such person.

(D) Nonresident aliens. A nonresident alien as defined in section 7701(b)(1)(B) is an eligible beneficiary of an ESBT. However, see paragraph (m)(4)(i) and (m)(5)(iii) of this section if the nonresident alien is a potential current beneficiary of the ESBT (which would result in an ineligible shareholder and termination of the S corporation election).

(iii) Interests acquired by purchase. A trust does not qualify as an ESBT if any interest in the trust has been acquired by purchase. Generally, if a person acquires an interest in the trust and thereby becomes a beneficiary of the trust as defined in paragraph (m)(1)(ii)(A), and any portion of the basis in the acquired interest in the trust is determined under section 1012, such interest has been acquired by purchase. This includes a net gift of a beneficial interest in the trust, in which the person acquiring the beneficial interest pays the gift tax. The trust itself may acquire S corporation stock or other property by purchase or in a part-gift, part-sale transaction.

(iv) Ineligible trusts. An ESBT does not include--

(A) Any qualified subchapter S trust (as defined in section 1361(d)(3)) if an election under section 1361(d)(2) applies with respect to any corporation the stock of which is held by the trust;

(B) Any trust exempt from tax or not subject to tax under subtitle A; or

(C) Any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(2) ESBT election—(i) In general. The trustee of the trust must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of paragraph (m)(2)(ii) of this section. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must sign the election statement. If any one of several trustees can legally bind the trust, only one trustee needs to sign the election statement. Generally, only one ESBT election is made for the trust, regardless of the number of S corporations whose stock is held by the ESBT. However, if the ESBT holds stock in multiple S corporations that file in different service centers, the ESBT election must be filed with all the relevant service centers where the corporations file their income tax returns. This requirement applies only at the time of the initial ESBT election; if the ESBT later acquires stock in an S corporation which files its income tax return at a different service center, a new ESBT election is not required.

(ii) Election statement. The election statement must include--

(A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently owns stock;

(B) An identification of the election as an ESBT election made under section 1361(e)(3);

(C) The first date on which the trust owned stock in each S corporation;

(D) The date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed); and

(E) Representations signed by the trustee stating that--

(1) The trust meets the definitional requirements of section 1361(e)(1); and

(2) All potential current beneficiaries of the trust meet the shareholder requirements of section 1361(b)(1).

(iii) Due date for ESBT election. The ESBT election must be filed within the time requirements prescribed in paragraph (j)(6)(iii) of this section for filing a qualified subchapter S trust (QSST) election.

(iv) Election by a trust described in section 1361(c)(2)(A)(ii) or (iii). A trust that is a qualified S corporation shareholder under section 1361(c)(2)(A)(ii) or (iii) may elect ESBT treatment at any time during the 2-year period described in those sections or the 16-day-and-2-month period beginning on the date after the end of the 2-year period. If the trust makes an ineffective ESBT election, the trust will continue nevertheless to qualify as an eligible S corporation shareholder for the remainder of the period described in section 1361(c)(2)(A)(ii) or (iii).

(v) No protective election. A trust cannot make a conditional ESBT election that would be effective only in the event the trust fails to meet the requirements for an eligible trust described in section 1361(c)(2)(A)(i) through (iv). If a trust attempts to make such a conditional ESBT election and it fails to qualify as an eligible S corporation shareholder under section 1361(c)(2)(A)(i) through (iv), the S corporation election will be ineffective or will terminate because the corporation will have an

ineligible shareholder. Relief may be available under section 1362(f) for an inadvertent ineffective S corporation election or an inadvertent S corporation election termination. In addition, a trust that qualifies as an ESBT may make an ESBT election notwithstanding that the trust is a wholly-owned grantor trust.

(3) Effect of ESBT election—(i) General rule. If a trust makes a valid ESBT election, the trust will be treated as an ESBT for purposes of chapter 1 of the Internal Revenue Code as of the effective date of the ESBT election.

(ii) Employer Identification Number. An ESBT has only one employer identification number (EIN). If an existing trust makes an ESBT election, the trust continues to use the EIN it currently uses.

(iii) Taxable year. If an ESBT election is effective on a day other than the first day of the trust's taxable year, the ESBT election does not cause the trust's taxable year to close. The termination of the ESBT election (including a termination caused by a conversion of the ESBT to a QSST) other than on the last day of the trust's taxable year also does not cause the trust's taxable year to close. In either case, the trust files one tax return for the taxable year.

(iv) Allocation of S corporation items. If, during the taxable year of an S corporation, a trust is an ESBT for part of the year and an eligible shareholder under section 1361(c)(2)(A)(i) through (iv) for the rest of the year, the S corporation items are allocated between the two types of trusts under section 1377(a). See §1.1377-1(a)(2)(iii).

(v) Estimated taxes. If an ESBT election is effective on a day other than the first day of the trust's taxable year, the trust is considered one trust for purposes of estimated taxes under section 6654.

(4) Potential current beneficiaries--(i) In general. For purposes of determining whether a corporation is a small business corporation within the meaning of section 1361(b)(1), each potential current beneficiary of an ESBT generally is treated as a shareholder of the corporation. Subject to the provisions of this paragraph (m)(4), a potential current beneficiary generally is, with respect to any period, any person who at any time during such period is entitled to, or in the discretion of any person may receive, a distribution from the principal or income of the trust. A person is treated as a shareholder of the S corporation at any moment in time when that person is entitled to, or in the discretion of any person may, receive a distribution of principal or income of the trust. No person is treated as a potential current beneficiary solely because that person holds any future interest in the trust.

(ii) Grantor trusts. If all or a portion of an ESBT is treated as owned by a person under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, such owner is a potential current beneficiary in addition to persons described in paragraph (m)(4)(i) of this section.

(iii) Special rule for dispositions of stock. Notwithstanding the provisions of paragraph (m)(4)(i) of this section, if a trust disposes of all of its S corporation stock, any person who first met the definition of a potential current beneficiary during the 60-

day period ending on the date of such disposition is not a potential current beneficiary and thus is not a shareholder of that corporation.

(iv) Distributee trusts--(A) In general. This paragraph (m)(4)(iv) contains the rules for determining who are the potential current beneficiaries of an ESBT if a distributee trust becomes entitled to, or at the discretion of any person, may receive a distribution from principal or income of an ESBT. A distributee trust does not include a trust that is not currently in existence. For this purpose, a trust is not currently in existence if the trust has no assets and no items of income, loss, deduction, or credit. Thus, if a trust instrument provides for a trust to be funded at some future time, the future trust is not currently a distributee trust.

(B) If the distributee trust is not a trust described in section 1361(c)(2)(A), then the distributee trust is the potential current beneficiary of the ESBT and the corporation's S corporation election terminates.

(C) If the distributee trust is a trust described in section 1361(c)(2)(A), the persons who would be its potential current beneficiaries (as defined in paragraphs (m)(4)(i) and (ii) of this section) if the distributee trust were an ESBT are treated as the potential current beneficiaries of the ESBT. Notwithstanding the preceding sentence, however, if the distributee trust is a trust described in section 1361(c)(2)(A)(ii) or (iii), the estate described in section 1361(c)(2)(B) (ii) or (iii) is treated as the potential current beneficiary of the ESBT for the 2-year period during which such trust would be permitted as a shareholder.

(D) For the purposes of paragraph (m)(4)(iv)(C) of this section, a trust will be

deemed to be described in section 1361(c)(2)(A) if such trust would qualify for a QSST election under section 1361(d) or an ESBT election under section 1361(e) if it owned S corporation stock.

(v) Contingent distributions. A person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event (such as the death of the holder of a power of appointment) is not a potential current beneficiary until such time or the occurrence of such event.

(vi) Currently exercisable powers of appointment--(A) In general. A person to whom a distribution is or may be made during a period pursuant to a power of appointment is a potential current beneficiary. Thus, if any person has a lifetime power of appointment that would permit distributions from the trust to be made to more than 75 persons, the corporation's S corporation election will terminate because the number of potential current beneficiaries will exceed the 75-shareholder limit of section 1361(b)(1)(A). Also, the S corporation election will terminate if the currently exercisable power of appointment allows distributions to be made to an ineligible shareholder as defined in section 1361(b)(1)(B) and (C).

(B) Waiver or release. If the holder of a power of appointment permanently releases the power in a manner that is valid under applicable local law, the persons that would be potential current beneficiaries solely because of the power will not be potential current beneficiaries after the effective date of the release. An attempt to temporarily waive, release, or limit a currently exercisable power of appointment will be ignored in determining who are potential current beneficiaries of the trust.

(vii) Number of shareholders. Each potential current beneficiary of the ESBT, as defined in paragraphs (m)(4)(i) through (vi) of this section, is counted as a shareholder of any S corporation whose stock is owned by the ESBT. During any period in which the ESBT has no potential current beneficiaries, the ESBT is counted as the shareholder. A person is counted as only one shareholder of an S corporation even though that person may be treated as a shareholder of the S corporation by direct ownership and through one or more eligible trusts described in section 1361(c)(2)(A). Thus, for example, if a person owns stock in an S corporation and is a potential current beneficiary of an ESBT that owns stock in the same S corporation, that person is counted as one shareholder of the S corporation. Similarly, if a husband owns stock in an S corporation and his wife is a potential current beneficiary of an ESBT that owns stock in the same S corporation, the husband and wife will be counted as one shareholder of the S corporation.

(viii) Miscellaneous. Payments made by an ESBT to a third party on behalf of a beneficiary are considered to be payments made directly to the beneficiary. The right of a beneficiary to assign the beneficiary's interest to a third party does not result in the third party being a potential current beneficiary until that interest is actually assigned.

(5) ESBT terminations—(i) Ceasing to meet ESBT requirements. A trust ceases to be an ESBT on the first day the trust fails to meet the definition of an ESBT under section 1361(e). The last day the trust is treated as an ESBT is the day before the date on which the trust fails to meet the definition of an ESBT.

(ii) Disposition of S stock. In general, a trust ceases to be an ESBT on the first day following the day the trust disposes of all S corporation stock. However, if the trust is using the installment method to report income from the sale or disposition of its stock in an S corporation, the trust ceases to be an ESBT on the day following the earlier of the day the last installment payment is received by the trust or the day the trust disposes of the installment obligation.

(iii) Potential current beneficiaries that are ineligible shareholders. If a potential current beneficiary of an ESBT is not an eligible shareholder of a small business corporation within the meaning of section 1361(b)(1), the S corporation election terminates. For example, the S corporation election will terminate if a nonresident alien becomes a potential current beneficiary of an ESBT. Such a potential current beneficiary is treated as an ineligible shareholder beginning on the day such person becomes a potential current beneficiary, and the S corporation election terminates on that date. However, see the special rule of paragraph (m)(4)(iii) of this section. If the S corporation election terminates, relief may be available under section 1362(f).

(6) Revocation of ESBT election. An ESBT election may be revoked only with the consent of the Commissioner. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request under the appropriate revenue procedure.

(7) Converting an ESBT to a QSST. For a trust that seeks to convert from an ESBT to a QSST, the consent of the Commissioner is hereby granted to revoke the

ESBT election as of the effective date of the QSST election, if all the following requirements are met:

(i) The trust meets all of the requirements to be a QSST under section 1361(d).

(ii) The trustee and the current income beneficiary of the trust sign the QSST election. The QSST election must be filed with the service center where the S corporation files its income tax return. This QSST election must state at the top of the document "ATTENTION ENTITY CONTROL--CONVERSION OF AN ESBT TO A QSST PURSUANT TO SECTION 1.1361-1(m)" and include all information otherwise required for a QSST election under §1.1361-1(j)(6). A separate QSST election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from a QSST to an ESBT within the 36-month period preceding the effective date of the new QSST election.

(iv) The date on which the QSST election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective on the day that is 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective on the day that is 12 months after the date it is filed.

(8) Examples. The provisions of this paragraph (m) are illustrated by the following examples in which it is assumed, unless otherwise specified, that all noncorporate persons are citizens or residents of the United States:

Example 1. (i) ESBT election with section 663(c) separate shares. On January 1, 2003, M contributes S corporation stock to Trust for the benefit of M's three children A, B, and C. Pursuant to section 663(c), each of Trust's separate shares for A, B, and C will be treated as separate trusts for purposes of determining the amount of distributable net income (DNI) in the application of sections 661 and 662. On January 15, 2003, the trustee of Trust files a valid ESBT election for Trust effective January 1, 2003. Trust will be treated as a single ESBT and will have a single S portion taxable under section 641(c).

(ii) ESBT acquires stock of an additional S corporation. On February 15, 2003, Trust acquires stock of an additional S corporation. Because Trust is already an ESBT, Trust does not need to make an additional ESBT election.

(iii) Section 663(c) shares of ESBT convert to separate QSSTs. Effective January 1, 2004, A, B, C, and Trust's trustee elect to convert each separate share of Trust into a separate QSST pursuant to paragraph (m)(7) of this section. For each separate share, they file a separate election for each S corporation whose stock is held by Trust. Each separate share will be treated as a separate QSST.

Example 2. (i) Invalid potential current beneficiary. Effective January 1, 2003, Trust makes a valid ESBT election. On January 1, 2004, A, a nonresident alien, becomes a potential current beneficiary of Trust. Trust does not dispose of all of its S corporation stock within 60 days after January 1, 2004. As of January 1, 2004, A is a potential current beneficiary of Trust and therefore is treated as a shareholder of the S corporation. Because A is not an eligible shareholder of an S corporation under section 1361(b)(1), the S corporation election of any corporation in which Trust holds stock terminates effective January 1, 2004. Relief may be available under section 1362(f).

(ii) Invalid potential current beneficiary and disposition of S stock. Assume the same facts as in Example 2 (i) except that within 60 days after January 1, 2004, trustee of Trust disposes of all Trust's S corporation stock. A is not considered a potential current beneficiary of Trust and therefore is not treated as a shareholder of any S corporation in which Trust previously held stock.

Example 3. Subpart E trust. M transfers stock in X, an S corporation, and other assets to Trust for the benefit of B and B's siblings. M retains no powers or interest in

Trust. Under section 678(a), B is treated as the owner of a portion of Trust that includes a portion of the X stock. No beneficiary has acquired any portion of his or her interest in Trust by purchase, and Trust is not an ineligible trust under paragraph (m)(1)(iv) of this section. Trust is eligible to make an ESBT election.

Example 4. Subpart E trust continuing after grantor's death. On January 1, 2003, M transfers stock in X, an S corporation, and other assets to Trust. Under the terms of Trust, the trustee of Trust has complete discretion to distribute the income or principal to M during M's lifetime and to M's children upon M's death. During M's life, M is treated as the owner of Trust under section 677. The trustee of Trust makes a valid election to treat Trust as an ESBT effective January 1, 2003. On March 28, 2004, M dies. Under applicable local law, Trust does not terminate on M's death. Trust continues to be an ESBT after M's death, and no additional ESBT election needs to be filed for Trust after M's death.

Example 5. Potential current beneficiaries and distributee trust holding S corporation stock. Trust-1 has a valid ESBT election in effect. The trustee of Trust-1 has the power to make distributions to A directly or to any trust created for the benefit of A. On January 1, 2003, M creates Trust-2 for the benefit of A. Also on January 1, 2003, the trustee of Trust-1 distributes some S corporation stock to Trust-2. A, as the current income beneficiary of Trust-2, makes a timely and effective election to treat Trust-2 as a QSST. Because Trust-2 is a valid S corporation shareholder, the distribution to Trust-2 does not terminate the ESBT election of Trust-1. Trust-2 itself will not be counted toward the 75-shareholder limit of section 1361(b)(1)(A). Additionally, because A is already counted as an S corporation shareholder because of A's status as a potential current income beneficiary of Trust-1, A is not counted again by reason of A's status as the deemed owner of Trust-2.

Example 6. Potential current beneficiaries and distributee trust not holding S corporation stock. (i) Distributee trust that would itself qualify as an ESBT. Trust-1 holds stock in X, an S corporation, and has a valid ESBT election in effect. Under the terms of Trust-1, the trustee has discretion to make distributions to A, B, and Trust-2, a trust for the benefit of C, D, and E. Trust-2 would qualify to be an ESBT, but it owns no S corporation stock and has made no ESBT election. Under paragraph (m)(4)(iv) of this section, Trust-2's potential current beneficiaries are treated as the potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Thus, A, B, C, D, and E are potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Trust-2 itself will not be counted as a shareholder of Trust-1 for purposes of section 1361(b)(1).

(ii) Distributee trust that would not qualify as an ESBT or a QSST. Assume the same facts as in paragraph (i) of this Example 6 except that D is a nonresident alien. Trust-2 would not be eligible to make an ESBT or QSST election if it owned S

corporation stock and therefore Trust-2 is a potential current beneficiary of Trust-1. Since Trust-2 is not an eligible shareholder, X's S corporation election terminates.

(iii) Distributee trust that is a section 1361(c)(2)(A)(ii) trust. Assume the same facts as in paragraph (i) of this Example 6 except that Trust-2 is a trust treated as owned by A under section 676 because A has the power to revoke Trust-2 at any time prior to A's death. On January 1, 2003, A dies. Because Trust-2 is a trust described in section 1361(c)(2)(A)(ii) during the 2-year period beginning on the day of A's death, under paragraph (m)(4)(iv)(C) of this section, Trust-2's only potential current beneficiary is the person listed in section 1361(c)(2)(B)(ii), A's estate. Thus, B and A's estate are potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1).

Example 7. Potential current beneficiaries and powers of appointment. M creates Trust for the benefit of A. A also has a currently exercisable power to appoint income or principal to anyone except A, A's creditors, A's estate, and the creditors of A's estate. The potential current beneficiaries of Trust will be A and all other persons except for A's creditors, A's estate, and the creditors of A's estate. This number will exceed the 75-shareholder limit of section 1361(b)(1)(A). If Trust holds S corporation stock, the corporation's S election will terminate.

(9) Effective date. This paragraph (m) is applicable for taxable years of ESBTs beginning on and after May 14, 2002.

Par. 7. Section 1.1362-6 is amended by revising paragraph (b)(2)(iv) to read as follows:

§1.1362-6 Election and consents.

\*\*\*\*\*

(b) \*\*\*

(2) \*\*\*

(iv) Trusts. In the case of a trust described in section 1361(c)(2)(A) (including a trust treated under section 1361(d)(1)(A) as a trust described in section 1361(c)(2)(A)(i) and excepting an electing small business trust described in section 1361(c)(2)(A)(v)

(ESBT)), only the person treated as the shareholder for purposes of section 1361(b)(1) must consent to the election. When stock of the corporation is held by a trust, both husband and wife must consent to any election if the husband and wife have a community interest in the trust property. See paragraph (b)(2)(i) of this section for rules concerning community interests in S corporation stock. In the case of an ESBT, the trustee and the owner of any portion of the trust that consists of the stock in one or more S corporations under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code must consent to the S corporation election. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must consent to the S corporation election.

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Par. 8. Section 1.1362-7 is amended by:

1. Revising the section heading.
2. Adding a sentence to the end of paragraph (a).

The revision and addition read as follows:

§1.1362-7 Effective dates.

(a) \*\*\* Section 1.1362-6(b)(2)(iv) is applicable for taxable years beginning on and after May 14, 2002.

\*\*\*\*\*

Par. 9. Section 1.1377-0 is amended by adding an entry for §1.1377-1(a)(2)(iii) to read as follows:

§1.1377-0 Table of contents.

\*\*\*\*\*

§1.1377-1 Pro rata share.

(a) \*\*\*

(2) \*\*\*

(iii) Shareholder trust conversions.

\*\*\*\*\*

Par. 10. Section 1.1377-1 is amended by:

1. Adding paragraph (a)(2)(iii).
2. Adding Example 3 to paragraph (c).

The additions read as follows:

§1.1377-1 Pro rata share.

(a) \*\*\*

(2) \*\*\*

(iii) Shareholder trust conversions. If, during the taxable year of an S corporation, a trust that is an eligible shareholder of the S corporation converts from a trust described in section 1361(c)(2)(A)(i), (ii), (iii), or (v) for the first part of the year to a trust described in a different subpart of section 1361(c)(2)(A)(i), (ii), or (v) for the remainder of the year, the trust's share of the S corporation items is allocated between the two types of trusts. The first day that a qualified subchapter S trust (QSST) or an electing small business trust (ESBT) is treated as an S corporation shareholder is the effective date of the QSST or ESBT election. Upon the conversion, the trust is not treated as terminating its entire interest in the S corporation for purposes of paragraph

(b) of this section, unless the trust was a trust described in section 1361(c)(2)(A)(ii) or (iii) before the conversion.

\* \* \* \* \*

(c) \* \* \*

Example 3. Effect of conversion of a qualified subchapter S trust (QSST) to an electing small business trust (ESBT). (i) On January 1, 2003, Trust receives stock of S corporation. Trust's current income beneficiary makes a timely QSST election under section 1361(d)(2), effective January 1, 2003. Subsequently, the trustee and current income beneficiary of Trust elect, pursuant to §1.1361-1(j)(12), to terminate the QSST election and convert to an ESBT, effective July 1, 2004. The taxable year of S corporation is the calendar year. In 2004, Trust's pro rata share of S corporation's nonseparately computed income is \$100,000.

(ii) For purposes of computing the income allocable to the QSST and to the ESBT, Trust is treated as a QSST through June 30, 2004, and Trust is treated as an ESBT beginning July 1, 2004. Pursuant to section 1377(a)(1), the pro rata share of S corporation income allocated to the QSST is \$49,727 ( $\$100,000 \times 182 \text{ days}/366 \text{ days}$ ), and the pro rata share of S corporation income allocated to the ESBT is \$50,273 ( $\$100,000 \times 184 \text{ days}/366 \text{ days}$ ).

Par. 11. Section 1.1377-3 is revised to read as follows:

§1.1377-3 Effective dates.

Section 1.1377-1 and 1.1377-2 apply to taxable years of an S corporation beginning after December 31, 1996, except that §1.1377-1(a)(2)(iii), and (c) Example 3 are applicable for taxable years beginning on and after May 14, 2002.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION  
ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. In §602.101, paragraph (b) is amended by adding an entry for 1.444-4 and revising the entry for 1.1361-1 in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

\*\*\*\*\*

(b) \*\*\*

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CFR part or section where  
identified and described

Current OMB  
control No.

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1.444-4..... 1545-1591

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1.1361-1..... 1545-0731  
1545-1591

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Robert E. Wenzel  
Deputy Commissioner of Internal Revenue.

Approved: May 3, 2002

Pamela F. Olson  
Acting Assistant Secretary of the Treasury.

**IT-1040 OHIO Income Tax Return**

**2000**

For the year Jan. 1-Dec. 31, 2000 or other taxable year ending \_\_\_\_\_, 20 Social Security Numbers must be filled in below.

Please Clip Your Check or Money Order Here.

Your first name	Initial	Last name	Your social security number	<b>Filing Status--check only one</b> <input type="checkbox"/> Single or Head of Household <input type="checkbox"/> Married filing joint return <input type="checkbox"/> Married filing separately, enter spouse's SS# _____								
If a joint return, spouse's first name	Initial	Last name	Spouse's social security number									
Home address (number and street)		Apt. Number	Ohio county									
City, town or post office, state and ZIP code			Ohio Public School District Number	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td></tr> </table>								
<b>Ohio Residency Status (see Instructions)</b> <input type="checkbox"/> Resident <input type="checkbox"/> Part-Year Resident from: _____ <input type="checkbox"/> Nonresident _____ state of residence _____ / /00 to _____ / /00			<b>Ohio Political Party Fund</b> Do you want \$1 to go to this fund? ..... <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td></tr> <tr><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td></tr> </table> If joint return, does your spouse want \$1 to go to this fund? ..... <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td></tr> <tr><td style="width:20px; height:20px;"></td><td style="width:20px; height:20px;"></td></tr> </table> Note: Checking "Yes" will not increase your tax or decrease your refund.									

<b>INCOME</b>	1. Federal Adjusted Gross Income (from Federal Form 1040, line 33; or 1040A, line 19; or 1040EZ, line 4; or 1040 TEL) ...	1		00
	2. Ohio Adjustments (from line 44 on back of this return) .....	2		00
	3. Ohio Adjusted Gross Income (line 2 subtracted from or added to line 1) .....	3		00
	4. Multiply your personal and dependent exemptions _____ times \$1,100 and enter the result here .....	4		00
	5. Ohio Taxable Income (subtract line 4 from line 3) .....	5		00
<b>TAX AND CREDITS</b>	6. Ohio Tax before Credits (see tax tables) .....	6		00
	7. Credits from Schedule B (line 53 on back of this return) .....	7		00
	8. Ohio Tax less Schedule B Credits (Subtract line 7 from line 6. If line 7 is more than line 6, enter zero.) .....	8		00
	9. Exemption Credit: Number of personal and dependent exemptions _____ times \$20 .....	9		00
	10. Ohio Tax less Exemption Credit (Subtract line 9 from line 8. If line 9 is more than line 8, enter zero.) .....	10		00
	11. Joint Filing Credit (see instructions and attach documentation) _____ % times line 10 (limit \$650) .....	11		00
	12. Ohio Tax less Joint Filing Credit (subtract line 11 from line 10) .....	12		00
	13. Resident/Nonresident/Part-Year Credits (Sch. C or D) & Nonrefundable Business Credits (attach Sch. E) .....	13		00
	14. Ohio Income Tax (Subtract line 13 from line 12. If line 13 is more than line 12, enter zero.) .....	14		00
	15. Interest Penalty on Underpayment of Estimated Tax: Check <input type="checkbox"/> if form IT-2210 is attached ....	15		00
	16. Ohio Use Tax (please see worksheet) .....	16		00
	17. Total Ohio Tax (please add line 14, line 15, and line 16) .....	17		00
<b>PAYMENTS</b>	18. Ohio Tax Withheld (box 18 on your W-2) (attach W-2's to the back of this form) .....	18	<b>AMOUNT WITHHELD</b> ▶	00
	19. Ohio Estimated Tax, IT-40P Payments for 2000, and 1999 Overpayment Credited to 2000 ..	19		00
	20. Refundable Business Jobs Refundable Pass-through Entity Total of Credit 20a _____ Credits 20b _____ 20a & 20b .....	20		00
	21. Add lines 18, 19, and 20 .....	21	<b>TOTAL PAYMENTS</b> ▶	00
<b>REFUND OR AMOUNT YOU OWE</b>	22. If line 21 is LESS than line 17, subtract line 21 from line 17. Attach payment made payable to Treasurer of State of Ohio. Check here <input type="checkbox"/> if you have paid or will pay with a credit card (see instructions) .....	22	<b>AMOUNT YOU OWE</b> ▶	00
	23. If line 21 is GREATER than line 17, subtract line 17 from line 21 .....	23	<b>AMOUNT OVERPAID</b> ▶	00
	24. Amount of line 23 you wish to DONATE for conservation of endangered species and wildlife diversity: \$3 <input type="checkbox"/> \$5 <input type="checkbox"/> \$10 <input type="checkbox"/> Other <input type="checkbox"/> Check box and enter amount on line 24 .....	24		00
	25. Amount of line 23 you wish to DONATE for nature preserves, scenic rivers, and endangered species protection: \$3 <input type="checkbox"/> \$5 <input type="checkbox"/> \$10 <input type="checkbox"/> Other <input type="checkbox"/> Check box and enter amount on line 25 .....	25		00
	26. Amount of line 23 to be credited to 2001 estimated tax liability .....	26	<b>CREDIT</b> ▶	00
	27. Amount of line 23 to be refunded (subtract amounts on lines 24, 25, and 26 from line 23) .....	27	<b>YOUR REFUND</b> ▶	00
	IF THE BALANCE DUE IS LESS THAN \$1.01 PAYMENT NEED NOT BE MADE, AND IF THE OVERPAYMENT IS LESS THAN \$1.01, NO REFUND WILL BE ISSUED. I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and complete.			

<b>SIGN HERE</b>	Your signature	Date
	Spouse's signature (if filing jointly, BOTH must sign)	Phone number (optional)
	Preparer's signature and address (including zip code)	Preparer's phone number
	Preparer's address (including zip code)	

FOR DEPARTMENTAL USE ONLY	
	18a. _____ U
Refund/Credit Requested--Mail to: Ohio Department of Taxation P.O. Box 2679 Columbus, OH 43270-2679	Payment Enclosed--Mail to: Ohio Department of Taxation P.O. Box 2057 Columbus, OH 43270-2057

Schedule A - Adjustments to Income (Additions and Deductions)			
<b>Additions - Add to the extent not included in Federal Adjusted Gross Income (Line 1)</b>			
28.	Add non-Ohio state or local government interest and dividends .....	28 ●	00
29.	Add Pass-through Entity adback .....	29 ●	00
30.	Add income from an electing small business trust (ESBT) .....	30 ●	00
31.	Other. Check if from:		
a.	<input type="checkbox"/> Federal interest and dividends subject to state taxation		
b.	<input type="checkbox"/> Accumulation Distributions from a complex trust		
c.	<input type="checkbox"/> Losses from sale/exchange of Ohio Public Obligations		
d.	<input type="checkbox"/> Non-medical withdrawals from an Ohio Medical Savings Account		
e.	<input type="checkbox"/> Reimbursements previously deducted but not included in Federal Adjusted Gross Income		
	Total .....	31 ●	00
32.	Total additions (add lines 28, 29, 30, and 31) .....	32 ●	00
<b>Deductions - See Limitations in Instructions</b>			
33.	Deduct federal interest and dividends exempt from state taxation .....	33 ●	00
34.	Deduct compensation earned in Ohio by full-year residents of neighboring states .....	34 ●	00
35.	Deduct state or municipal income tax overpayments (from line 10 of Federal Form 1040) .....	35 ●	00
36.	Deduct disability and survivorship benefits (does not include pension continuations) .....	36 ●	00
37.	Deduct qualifying social security benefits and some railroad benefits .....	37 ●	00
38.	Deduct contributions to a variable college savings account and/or purchases of tuition credits .....	38 ●	00
39.	Deduct unsubsidized health insurance/long term care insurance and excess medical expenses (see worksheet) .....	39 ●	00
40.	Deduct funds deposited into & earnings of a medical savings account for eligible medical expenses (see worksheet) .....	40 ●	00
41.	Deduct losses from an electing small business trust (ESBT) .....	41 ●	00
42.	Other. Check if :		
a.	<input type="checkbox"/> Wage & salary expense not deducted due to the federal targeted jobs or the work opportunity tax credits		
b.	<input type="checkbox"/> Interest and gains from the sale/exchange of Ohio Public Obligations		
c.	<input type="checkbox"/> Refund or reimbursements of prior-year federal itemized deductions (from line 21 of Federal 1040)		
d.	<input type="checkbox"/> Repayment of income reported in a prior year		
e.	<input type="checkbox"/> Amount contributed to an Individual Development Account		
	Total .....	42 ●	00
43.	Total Deductions (add lines 33 through 42) .....	43 ●	00
44.	Net adjustments--If line 32 is GREATER than line 43, enter the difference here & on line 2 as a positive amount. If line 32 is LESS than line 43, enter the difference here & on line 2 as a negative amount .....	44 ●	00
<b>Schedule B Credits</b>			
45.	Retirement Income Credit (see instructions for credit table) (Limit-\$200) .....	45 ●	00
46.	Senior Citizen's Credit (Limit-\$50 per return) .....	46 ●	00
47.	Lump Sum Distribution credit (you must be 65 years of age or older to claim this credit) .....	47 ●	00
48.	Child and Dependent Care Credit (see instructions and worksheet) .....	48 ●	00
49.	Lump Sum Retirement Credit .....	49 ●	00
50.	Job Training Credit (see instructions and worksheet) (Limit-\$500) .....	50 ●	00
51.	Ohio Political Contributions Credit .....	51 ●	00
52.	Ohio Adoption Credit (Limit-\$500 per adoption) .....	52 ●	00
53.	Total Credits (add lines 45 through 52) - enter here and on line 7 .....	53 ●	00
<b>Schedule C Ohio Resident</b>			
54.	Enter the portion of line 3 subjected to tax by other states or the District of Columbia while an Ohio resident .....	54 ●	00
55.	Enter Ohio Adjusted Gross Income (line 3) .....	55	00
56.	Divide line 54 by line 55 <input type="text"/> % Multiply by the amount on line 12 .....	56	00
57.	Enter the 2000 income tax less all related credits other than withholding and estimated tax payments and carry-forwards from previous years paid to other states or the District of Columbia .....	57 ●	00
58.	Enter the smaller of line 56 or line 57. This is your Ohio Resident Tax Credit. Enter here and on line 13 .....	58	00
	List the state(s) other than Ohio with which you filed 2000 Income Tax Returns <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
<b>Sched. D Non-Res/ Part-Year Resident</b>			
59.	Enter the portion of Ohio Adjusted Gross Income (line 3) that was not earned or received in Ohio .....	59 ●	00
60.	Enter the Ohio Adjusted Gross Income (line 3) .....	60	00
61.	Divide line 59 by line 60 <input type="text"/> % Multiply by the amount on line 12. Enter here and on line 13. ....	61	00

**Cawley, Tom**

---

**From:** Keith Brown [chimera@bright.net]  
**Sent:** Thursday, December 28, 2000 6:22 PM  
**To:** Cawley, Tom  
**Cc:** Jim Gornick  
**Subject:** year end tax planning

dear tom,

pursuant to our telephone conversation of this afternoon, I would appreciate you and Jim gornick terminating the Keith A. Brown revocable trust, E.I.N. number 34-7070118, of which I am the trustee, grantor and beneficiary, effective immediately. as you are aware, this trust elected small business trust status (ESBIT) a few years ago. upon termination of this trust , please distribute all of the trust assets to me personally. please telephone me at 440 821 3002 should you have any questions regarding the above.

thank you very much. Keith a brown, trustee

UNIVERSAL EQUITIES CORPORATION

WHERE  
REQUIRED  
PASTE  
VENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 500 Shares

From whom transferred

Original Issuance

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares

Issued to Keith A. Brown, Trustee under that  
certain Revocable Living Trust Agreement dtd 05/29/86

Dated NO. ORIGINAL CERTIFICATE	19	
	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

on \_\_\_\_\_ 19 \_\_\_\_\_

Dated February 26, 19 98

INCORPORATED UNDER THE  
THE STATE OF OHIO



**CANCELLED**

**This Certifies that** Keith A. Brown, Trustee under that certain Revocable  
Living Trust Agreement dated May 29, 1986 *is the owner of*  
five hundred (500) *fully paid and non-assessable Shares of*  
*the Capital Stock of the above named Corporation transferable only on the books of the*  
*Corporation, by the holder hereof in person, or by duly authorized Attorney upon*  
*surrender of this Certificate, properly endorsed.*

*In Witness Whereof*, the said Corporation has caused this Certificate to be signed by its duly authorized officers  
*and its corporate Seal to be hereunto affixed this* 26th *day of* February *C.D.* 1998

Neil Brown *SECRETARY-TREASURER*      Keith A. Brown *PRESIDENT*

Appendix Page No. 185

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL RESALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR

The shall be con-  
tions in ad-  
JT TEN

TEN COM

PLEASE INSERT  
IDENTIFYING  
NUMBER

*to be done  
by Brown  
Cawley  
2/10*

UNIVERSAL EQUITIES CORPORATION

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for social security or other identifying number]

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated  
December 28, 2000

all OF THE SHARES REPRESENTED BY THE ATTACHED CERTIFICATE (No. 1) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT

Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 28, 2000

*Keith A. Brown Trustee*  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated  
May 29, 1986

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EXACT PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 400 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated 5/29/86

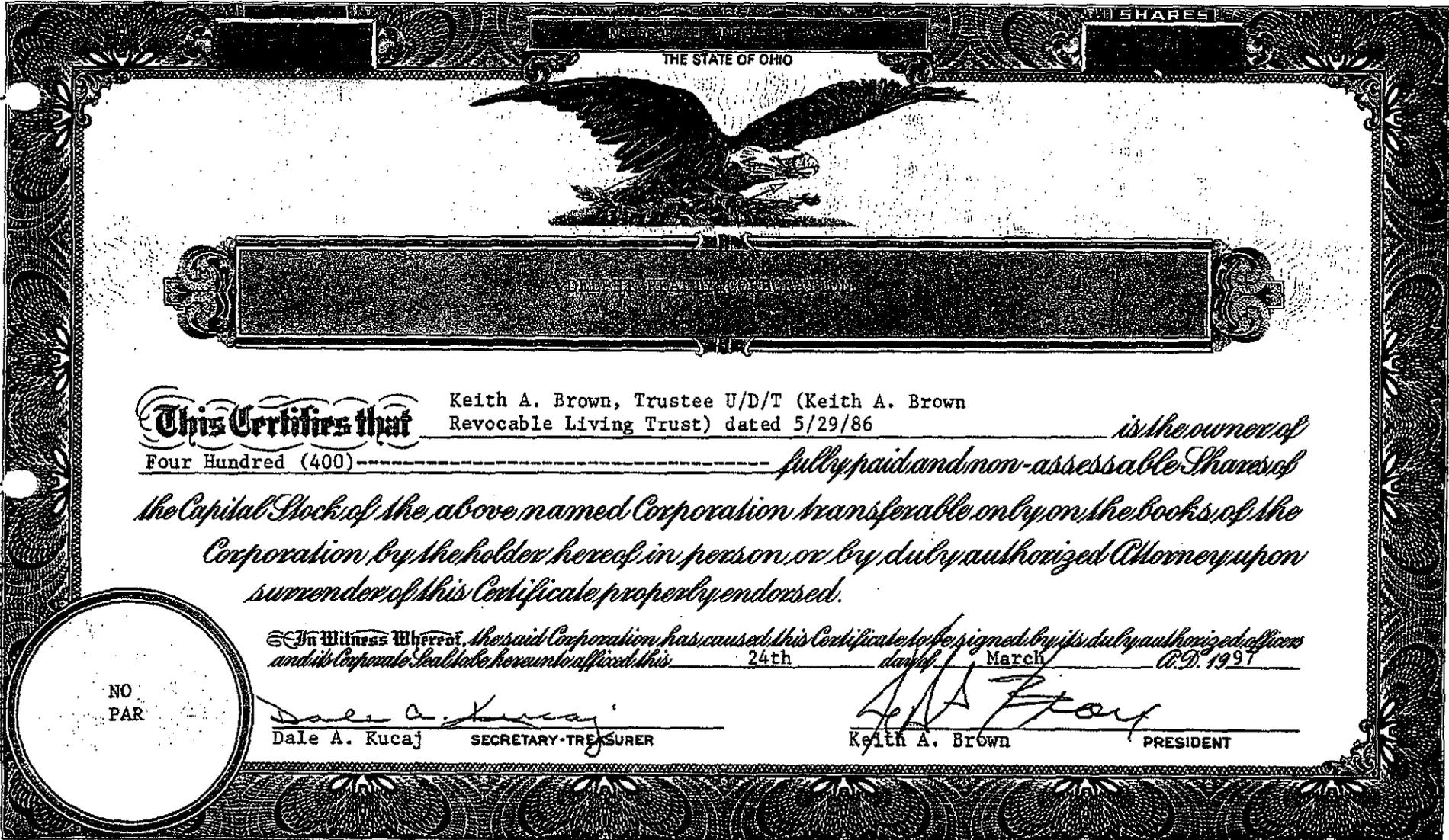
Dated March 24, 19 97

From whom transferred  
Original Issuance

Dated <u>19</u>		
No. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

Received Certificate No. \_\_\_\_\_

for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19 \_\_\_\_\_



THE STATE OF OHIO

**This Certifies that**

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated 5/29/86

*is the owner of*

Four Hundred (400) *fully paid and non-assessable Shares of*

*the Capital Stock of the above named Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 24th day of March 1997 C.D. 1997



Dale A. Kucaj  
Dale A. Kucaj SECRETARY-TREASURER

Keith A. Brown  
Keith A. Brown PRESIDENT





WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 80 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated May 29, 1986

Dated March 1 1999

From whom transferred  
Keith A. Brown

Dated <u>October 2</u> 19 <u>98</u>		
NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
3	80	80

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19\_\_\_\_

**CALL FOR IT  
DATE 10/2/98**

THE STATE OF OHIO

SHARES

This Certifies that  
eighty (80)

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated May 29, 1986

is the owner of

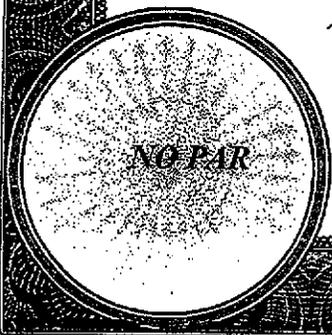
fully paid and non-assessable Shares of

the Capital Stock of the above named Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 1st day of NOVEMBER A.D. 1999

Dale A. Kucaj  
Dale A. Kucaj, SECRETARY/TREASURER

Keith A. Brown  
Keith A. Brown, PRESIDENT



Appendix Page No. 190

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL REALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR BUSINESS ORGANIZATION SHALL BE MADE ONLY TO PERSONS OR BUSINESS ORGANIZATIONS WHO ARE RESIDENT WITHIN THE STATE OF OHIO.

THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED BY A CORPORATION SUBJECT TO A STATUTORY CLOSE CORPORATION AGREEMENT UNDER OHIO REVISED CODE SECTION 1701.591. ANY PURCHASER OR TRANSFEREE OF THESE SHARES IS BOUND BY THE AGREEMENT AND SHALL BE CONSIDERED A PARTY TO THE AGREEMENT. SAID CLOSE CORPORATION AGREEMENT WAS ENTERED INTO AS OF THE 30TH DAY OF SEPTEMBER, 1998, BY AND AMONG HAMPSON ACQUISITION CORPORATION, KEITH A. BROWN, TRUSTEE U/D/T (KEITH A. BROWN REVOCABLE LIVING TRUST) DATED MAY 29, 1986, AND DALE A. KUCAJ, TRUSTEE U/D/T (DALE A. KUCAJ ELECTING SMALL BUSINESS TRUST) DATED APRIL 1, 1998, AND RESTRICTS THE FREE TRANSFERABILITY OF SAID SHARES. THE CORPORATION WILL MAIL TO THE HOLDER OF THIS CERTIFICATE, WITHOUT CHARGE, A COPY OF SUCH AGREEMENT WITHIN FIVE (5) DAYS AFTER RECEIVING A WRITTEN REQUEST THEREFOR.

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for social security or other identifying number of assignee]

Jeffery L. Petras, Trustee U/D/T (Jeffery L. Petras Electing Small Business Trust) dated June 1, 1999

five (5) OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. 5) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED October 1 1999

*Keith A. Brown*  
Keith A. Brown, Trustee

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

EACH

SHARES

**CANCELLED**

THIS CERTIFICATE

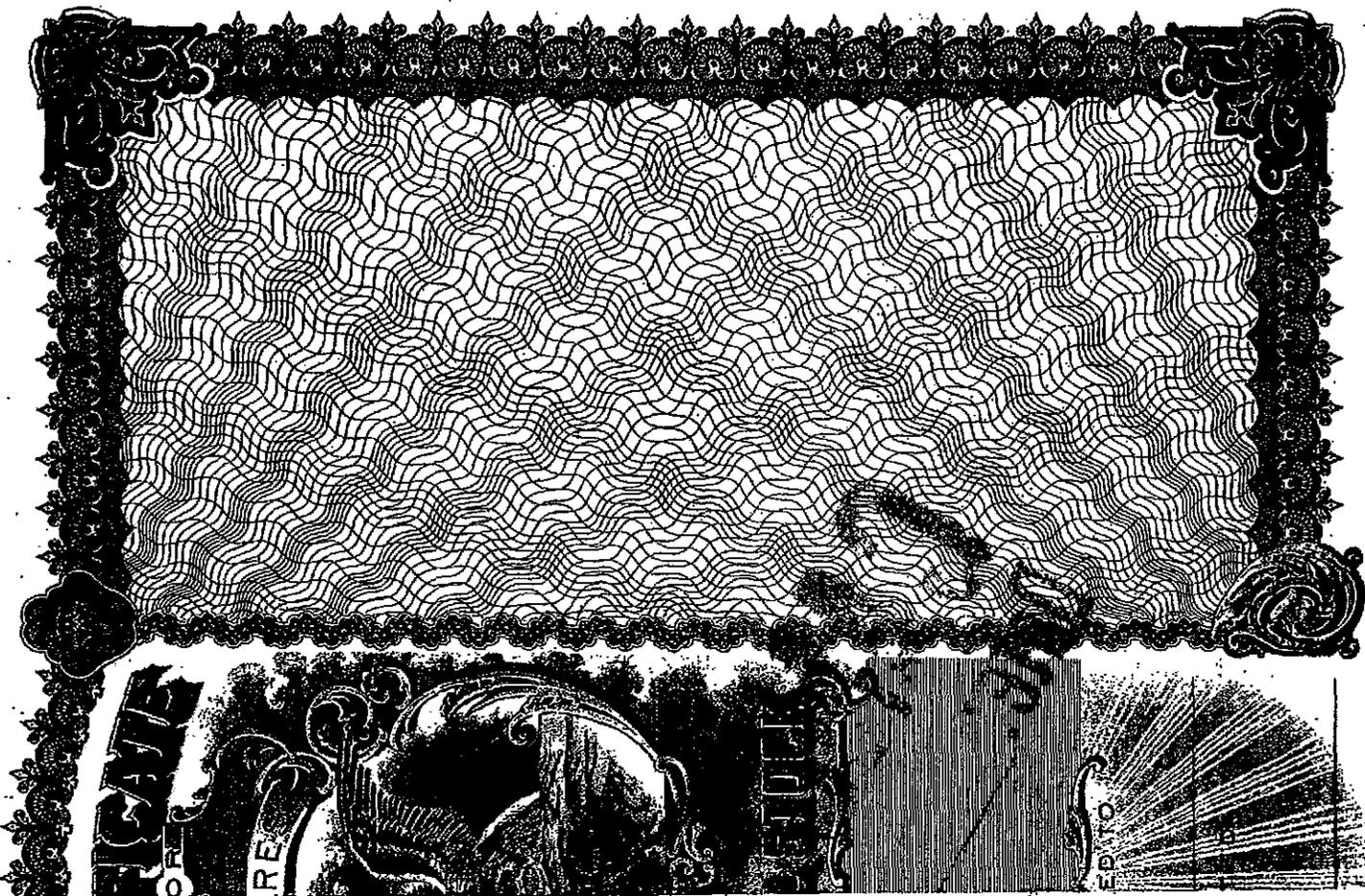


INCORPORATED UNDER THE LAWS OF

State of Ohio

Shares

*[Faint, mostly illegible text, likely the terms and conditions of the share certificate.]*



CHIMERA CORPORATION

Form S1-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for social security or identifying number]

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000

all OF THE SHARES REPRESENTED BY THE ATTACHED CERTIFICATE (No. 002) AND DO HEREBY IRREVO-

CABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 28, 2000

*Keith A. Brown, Trustee*

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated May 29, 1986

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR. WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

CERTIFICATE NUMBER <u>2</u>	ISSUED TO <u>Keith A. Brown</u>	NUMBER ORIGINAL CERTIFICATE <u>1</u>	RECEIVED CERTIFICATE NO. _____
FOR <u>450</u> SHARES	<u>Trustee under that certain Revocable Living Trust Agreement dated May 29, 1986</u>	NUMBER ORIGINAL SHARES <u>500</u>	FOR _____ SHARES
DATED <u>1/1/96</u>	FROM WHOM TRANSFERRED <u>Keith A. Brown</u>	NUMBER OF SHARES TRANSFERRED <u>450</u>	DATED _____
	DATED <u>2/15/94</u>	RE-ISSUED IN CERTIFICATE NO. <u>2 &amp; 3</u>	



**CANCELLED**  
Date: 3-1-2005

NUMBER

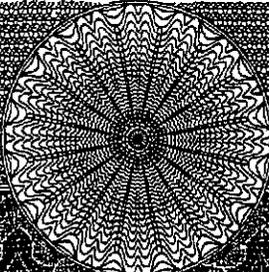
SHARES

INCORPORATED UNDER THE LAWS OF THE STATE OF OHIO  
POLY SHAPES CORPORATION

This Certifies that Keith A. Brown, Trustee under that certain Revocable Living Trust Agreement dated May 29, 1986 is the owner of four hundred fifty (450) fully paid and non-assessable shares without par value of **POLY SHAPES CORPORATION** transferable only on the books of the Corporation by the holder hereof in person, or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

Witness the seal of the Corporation, and the signatures of its duly authorized officers.

Dated January 1, 1996



SEE REVERSE FOR CERTAIN DEFINITIONS



NUMBER

SHARES



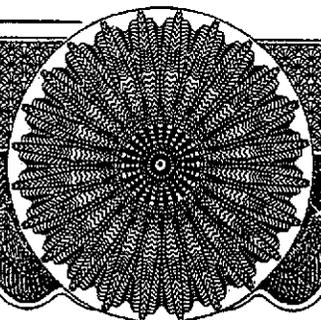
GLOBAL PAPER PACKAGING CORPORATION

This Certificate that Keith A. Brown, Trustee, D/T (Keith A. Brown, Revocable Living Trust) is the owner of four hundred (400) fully paid and

non-assessable shares of the Global Paper Packaging Corporation, transferable only on the books of the Corporation to the holder hereof in person or by duly authorized Attorney-in-fact or other person of this Certificate, properly endorsed.

In Witness Whereof, the Global Paper Packaging Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation.

Dated July 1, 1976



**CANCELLED**

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL RESALES, PLEDGES, HYPOTHECATIONS OR OTHER TRANSFERS OF THESE SECURITIES SHALL BE MADE ONLY TO PERSONS OF THE STATE OF OHIO.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A STATUTORY CLAUSE OF THE OHIO STOCK CERTIFICATE ACT, SECTION 1701.591. ANY PURCHASE OF THESE SECURITIES SHALL BE SUBJECT TO THE AGREEMENT AND SHALL BE SUBJECT TO THE AGREEMENT AMONG GLOBAL FILM & PAC CORPORATION AND DALE A. KUCAJ, TRUSTEE DATED APRIL 1, 1998 AND REST OF THE AGREEMENT WILL MAIL TO COPY OF SUCH AGREEMENT WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

The following abbreviations, when used in full according to applicable laws or regulations, shall be deemed to be full and complete names of the parties:

TEN COM — as tenants in common  
 TEN ENT — as tenants by the entirety  
 JT TEN — as joint tenants with right of survivorship and not as tenants in common

For value received, the undersigned

PLEASE PRINT OR TYPEWRITE

represented by the within Certificate  
 shares on the books of the within  
 Dated, \_\_\_\_\_

In presence of \_\_\_\_\_

GLOBAL FILM & PACKAGING CORPORATION

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Redacted box]

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000

all OF THE SHARES REPRESENTED BY THE ATTACHED CERTIFICATE (No. 8 ) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 28, 2000

*Keith A. Brown*  
 Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 1 Shares

From whom transferred  
Original Issue

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19\_\_

Issued to Keith A. Brown, Trustee U/D/T  
(Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated November 16, 19 98

Dated	19
NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES
	NO. OF SHARES TRANSFERRED

THE STATE OF OHIO



**CANCELLED**

**DATE:**

This Certifies that Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated 05/29/86 is the owner of one (1) full, paid and non-assessable Shares of the Capital Stock of the \_\_\_\_\_ named Corporation transferable only on the books of the Corporation and which is hereof by person, or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, this Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal hereunto affixed, this 16th day of November A.D. 1998

Noel P. Brown SECRETARY-TREASURER  
Keith A. Brown PRESIDENT

NO PAR

Appendix Page No. 198

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL REALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR BUSINESS ORGANIZATION SHALL BE MADE ONLY TO PERSONS OR BUSINESS ORGANIZATIONS WHO ARE RESIDENT WITHIN THE STATE OF OHIO.

The following shall be construed as conditions, in addition to.

JT TEN A  
of  
to  
TEN COM A

*For Value*  
PLEASE INSERT SOCIAL SECURITY IDENTIFYING NUMBER

[ ]

*represented irrevocably,*

*to transfer to Corporation,*

*Dated*

*1986*

TRILogy INVESTMENTS, INC.

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

**For Value Received,** I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[ ]

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated

December 28, 2000

all of the shares

REPRESENTED BY THE ATTACHED CERTIFICATE (NO. 1) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 28, 2000

*Keith A. Brown Trustee*

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dated May 29, 1986

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 500 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000

Dated December 28, ~~19~~ 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated February 26, 19 98		
No. ORIGINAL CERTIFICATE	No. OF ORIGINAL SHARES	No. OF SHARES TRANSFERRED
-1-	-500-	-500-

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO

SHARES



**CANCELLED**

This Certificate is issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000 is the owner of five hundred (500) fully paid and non-assessable Shares of the Capital Stock of the above named Corporation transferable only on the books of the Corporation by the holder hereof, in person, or by duly authorized Attorney, upon surrender of this Certificate, properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed, this 28th day of December, A.D. 2000

Noel Brown  
Noel Brown, SECRETARY-TREASURER

Keith A. Brown  
Keith A. Brown, PRESIDENT

NO  
PAR



DATE: 10/24/2000	DOCUMENT ID 200029702218	DESCRIPTION DOMESTIC/DISSOLUTION (DIS)	FILING 35.00	EXPED 10.00	PENALTY .00	CERT .00	COPY .00
---------------------	-----------------------------	---	-----------------	----------------	----------------	-------------	-------------

**Receipt**

This is not a bill. Please do not remit payment.

CAVITCH FAMILO DURKIN & FRUTKIN  
ATTN SUZANNE M FULLERTON  
E OHIO BLDG 14TH FL  
CLEVELAND, OH 44114-2876

# STATE OF OHIO

**Ohio Secretary of State, J. Kenneth Blackwell**

971701

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
**DELPHI REALTY CORPORATION**  
and, that said business records show the filing and recording of:

Document(s)  
**DOMESTIC/DISSOLUTION**

Document No(s):  
**200029702218**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 20th day of September,  
A.D. 2000.

Ohio Secretary of State



Prescribed by **J. Kenneth Blackwell**

Please obtain fee amount and mailing instructions from the Forms Inventory List (using the 3 digit form # located at the bottom of this form). To obtain the Forms Inventory List or for assistance, please call Customer Service:

Central Ohio: (614)-466-1015 Toll Free: 1-877-SOS-FILE (1-877-767-3453)

Expedite this form

Yes

## CERTIFICATE OF DISSOLUTION BY SHAREHOLDERS OF

FIRST: Delphi Realty Corporation  
(Exact Name of Corporation)  
971701  
(Charter Number)

Keith A. Brown, who is President  
(name) (title)

of the above named Ohio corporation, articles of incorporation of which were filed in the office of the Secretary of State on March 19, 1997 do hereby certify that:  
(date)

SECOND: The place where its principal office in Ohio is or is to be located is :  
Westlake, Ohio CUYAHOGA  
(city, township, or village) (county)

THIRD: The names and complete street addresses of the DIRECTORS are:  
(A.P.O. Box address cannot be accepted.)

NAME	STREET	CITY & STATE	ZIP CODE
<u>Keith A. Brown</u>	<u>29287 Grand Court</u>	<u>Westlake, Ohio</u>	<u>44145</u>
<u>Dale Kucaj</u>	<u>3125 Clark Parkway</u>	<u>Westlake, Ohio</u>	<u>44145</u>
<u>Jeffery L. Petras</u>	<u>2617 Dartmoor Road</u>	<u>Cleveland Heights OH</u>	<u>44118</u>

FOURTH: The names and complete street addresses of the OFFICERS are:  
(A.P.O. Box address cannot be accepted.)

NAME	STREET	CITY & STATE	ZIP CODE
<u>Keith A. Brown</u>	<u>29287 Grand Court</u>	<u>Westlake, Ohio</u>	<u>44145</u>
<u>Dale Kucaj</u>	<u>3125 Clark Parkway</u>	<u>Westlake, Ohio</u>	<u>44145</u>
<u>Jeffery L. Petras</u>	<u>2617 Dartmoor Road</u>	<u>Cleveland Heights OH</u>	<u>44118</u>

1. DATE 7/8/1998 DOCUMENT NO 199817001164 DESCRIPTION DOMESTIC/DISSOLUTION

	FILING	EXPED	PENALTY	CERT	COF
	35.00	0.00	0.00	0.00	0.00
TOTAL	35.00	0.00	0.00	0.00	0.00

Return To:  
CAVITCHFAMILO DURKIN & FRUTKIN  
THE E OHIO BLDG 14TH FL  
CLEVELAND, OH 44114-2876

-----cut along the dotted line-----



*The State of Ohio*  
Certificate

*Secretary of State - Bob Taft*

**727175**

*It is hereby certified that the Secretary of State of Ohio has custody of the business records for MANSFIELD CAPITAL CORPORATION and that said business records show the filing and recording of:*

Document(s)  
DOMESTIC/DISSOLUTION

Document No(s):  
199817001164

United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the Secretary  
of State at Columbus, Ohio, This 1st day of  
June, A.D. 1998



*Bob Taft*

Bob Taft  
Secretary of State

**MANSFIELD CAPITAL CORPORATION  
CERTIFICATE OF DISSOLUTION  
CHARTER NO. 727175**

KEITH A. BROWN, President, and DALE A. KUCAJ, Secretary, of MANSFIELD CAPITAL CORPORATION f.k.a. MANSFIELD FOUNDRY CORPORATION f.k.a. MANSFIELD ACQUISITION CORPORATION, an Ohio corporation, do hereby certify as follows:

1. The name of the relevant corporation is MANSFIELD CAPITAL CORPORATION.
2. A resolution of dissolution of said corporation has been adopted and is presently in full force and effect.
3. On May 13, 1998, by a writing pursuant to Section 1701.54 of the Ohio Revised Code, signed by all of the shareholders and directors of said Corporation, the shareholders and directors adopted the aforesaid resolution of dissolution of said corporation.
4. The place where said corporation's principal office is located is Westlake, Cuyahoga County, Ohio.
5. The names and addresses of the Directors, officers, and Statutory Agent of MANSFIELD CAPITAL CORPORATION are as follows:

Keith A. Brown, Director, President  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

Dale A. Kucaj, Director, Secretary and Treasurer  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

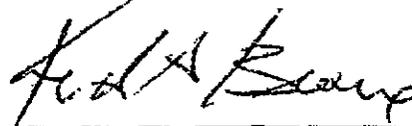
Dale A. Kucaj, Statutory Agent  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

Frank Calandra, Jr., Director  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

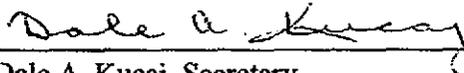
Jack Calandra, Director  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

Noel Brown, Director  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

IN WITNESS WHEREOF, said KEITH A. BROWN, President, and DALE A. KUCAJ,  
Secretary, of MANSFIELD CAPITAL CORPORATION, acting for and on behalf of said  
corporation, have hereunto subscribed their names on this 13 day of May, 1998.



Keith A. Brown, President



Dale A. Kucaj, Secretary

FADEPTCORP\CHIMERA\MANSFIEL.DIS

**J. Kenneth Blackwell**  
Secretary of State

**FIFTH:** The name and Ohio address of the statutory agent is:

Dale A. Kucaj 30400 Detroit Avenue, Suite 203  
(name) (street and number)  
Westlake, Ohio 44145  
(city, village or township) (zip code)

(A.P.O. Box address cannot be accepted.)

NOTE: IF the statutory agent listed in item "FIFTH" has changed or differs from the agent currently appearing on the corporate records in the Secretary of State's office, the named agent must acknowledge and accept the appointment as statutory agent.

**ACCEPTANCE OF APPOINTMENT**

The undersigned, \_\_\_\_\_, named herein as the statutory agent for the corporation named herein,  
(print name)  
hereby acknowledges and accepts the appointment as statutory agent for said corporation.

\_\_\_\_\_  
(Signature of Statutory Agent)

**SIXTH:** The undersigned have been authorized to execute and file this certificate by a resolution adopted  
(Check one of the following)

- at a special meeting of the shareholders of said corporation, notice of which was given to all shareholders of every class, whether entitled to vote or not, by the votes cast in person or by proxy by the holders of record of shares entitling them to exercise \_\_\_\_\_ % of the voting power
- in a writing signed under provisions of Section 1701.54 of the Revised Code by all of the shareholders who would be entitled to a notice of a meeting held for such purpose) declaring that the corporation elects to wind up its affairs and dissolve

IN WITNESS WHEREOF, the above signed officer acting for and on behalf of the corporation have hereunto subscribed his/her names on October 6, 2000  
(date)

Signature: \_\_\_\_\_

(Authorized Officer)

Name: Keith A. Brown, President

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 75 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000

Dated December 28, 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated October 1, 19 99

NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
-9-	-75-	-75-

Received Certificate No. \_\_\_\_\_

for \_\_\_\_\_ Shares

on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO



**This Certifies that** Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000 is the owner of Seventy-five (75) fully paid and non-assessable Shares of the Capital Stock of the above named Corporation, transferable only on the books of the Corporation, by the holder hereof, in person, or by duly authorized Attorney, upon surrender of this Certificate, properly endorsed.

*In Witness Whereof, the said Corporation, has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed, this* 28th day of December A.D. 2000

Dale A. Kucaj SECRETARY-TREASURER      Keith A. Brown PRESIDENT

DATE: 12-28-2000

Appendix Page No. 207

INCORPORATED UNDER THE LAWS OF

the State of Ohio

Shares

No. [Redacted]



THIS CERTIFICATE THAT

Keira A. Brown, Trustee U/D/T Keira A. Brown  
Revocable Trust, dated December 22, 2000

owns and is entitled to receive

Five Hundred (500)

shares of common stock

of the corporation of  
each of the capital stock

CHIMERA CORPORATION

transferred to the holder of this certificate by the Board of Directors of the Corporation on the date hereon set forth, and the same are duly recorded in the books of the Corporation.

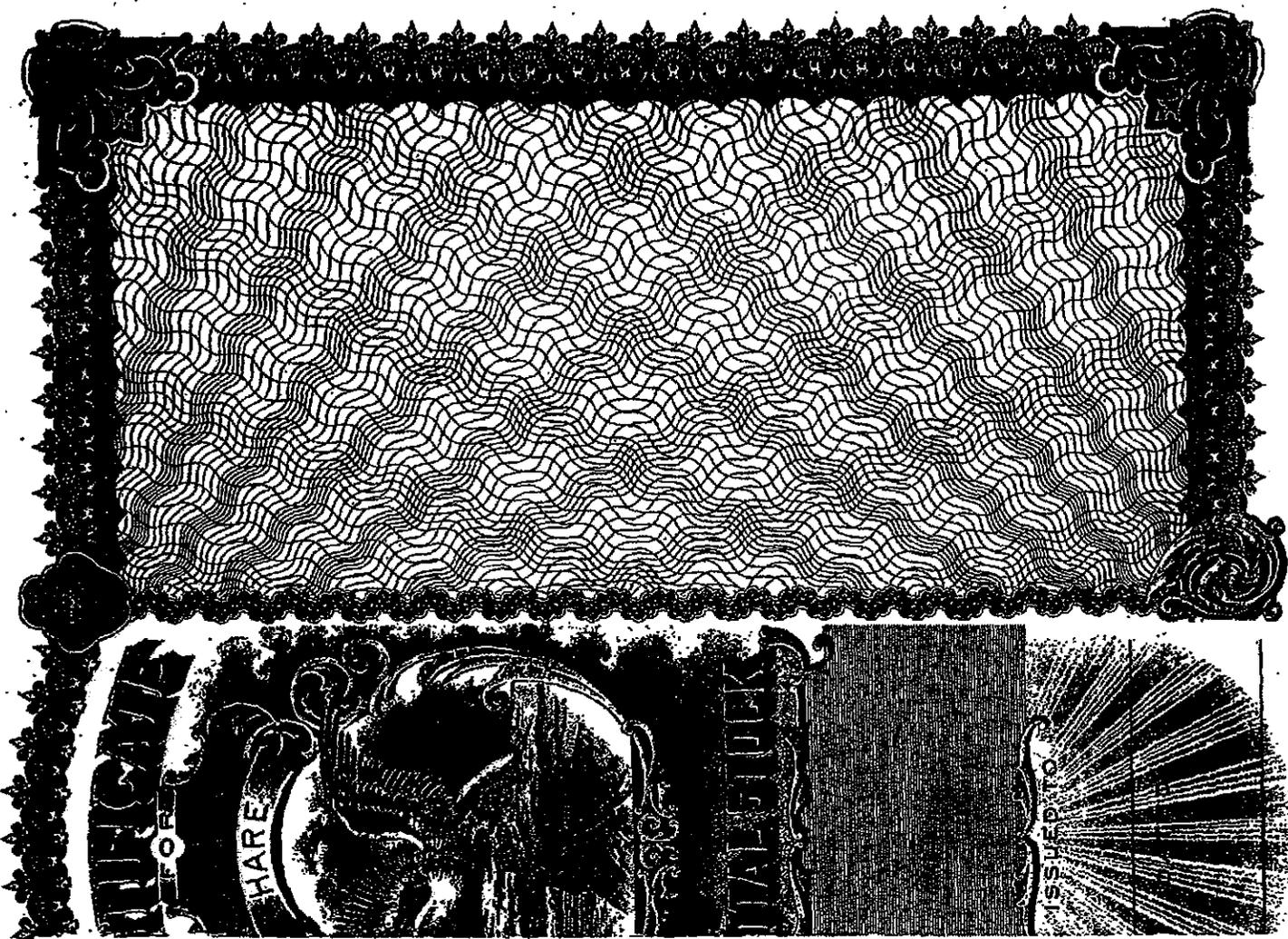
In Witness Whereof, I, the undersigned, Secretary of the Corporation, have hereunto set my hand and the seal of the Corporation at Columbus, Ohio, this 22nd day of December, 2000.

Keira A. Brown, President

SHARES

[Redacted]

EACH



Form SI-E Stock Certificate Assignment

CHIMERA CORPORATION

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty rectangular box for social security or identifying number]

Noel Brown, Trustee of the Keith A. Brown Flite Trust dated December 14, 2001

all OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. -3-) AND DO HEREBY IRREVO-

CABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15, 2001

[Handwritten signature of Keith A. Brown]

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OF ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 400 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000

Dated December 28, 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated <u>March 1,</u> <u>2000</u>		
NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
-6-	-400-	-400-

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19\_\_\_\_

THE STATE OF OHIO



**This Certifies that** Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) is the owner of four hundred (400) fully paid and non-assessable Shares of the Capital Stock of the above named Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officer and its name to be hereunto affixed this 28th day of December 2000.

Keith A. Brown  
Keith A. Brown, PRESIDENT

Keith A. Brown  
Keith A. Brown, PRESIDENT



Appendix Page No. 210

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED BY A CORPORATION SUBJECT TO A STATUTORY CLOSE CORPORATION AGREEMENT UNDER OHIO REVISED CODE SECTION 1701.591. ANY PURCHASER OR TRANSFEREE OF THESE SHARES IS BOUND BY THE AGREEMENT AND SHALL BE CONSIDERED A PARTY TO THE AGREEMENT. SAID CLOSE CORPORATION AGREEMENT WAS ENTERED INTO AS OF THE 1ST DAY OF JANUARY, 1996 AND AMENDED ON MARCH 1, 2000, BY AND BETWEEN POLY SHAPES CORPORATION, AND ITS SHAREHOLDERS, AND RESTRICTS THE FREE TRANSFERABILITY OF SAID SHARES. THE CORPORATION WILL MAIL TO THE HOLDER OF THIS CERTIFICATE, WITHOUT CHARGE, A COPY OF SUCH AGREEMENT WITHIN FIVE (5) DAYS AFTER RECEIVING A WRITTEN REQUEST THEREFOR.

15-12

POLY SHAPES CORPORATION

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for social security or other identifying number]

Noel Brown, Trustee of the Keith A. Brown Flite Trust dated December 14, 2001

all OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. 7-) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15, 2001

*Keith A. Brown*

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN GREAT PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.



THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL REALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR BUSINESS ORGANIZATION SHALL BE MADE ONLY TO PERSONS OR BUSINESS ORGANIZATIONS WHO ARE RESIDENT WITHIN THE STATE OF OHIO.

THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED BY A CORPORATION SUBJECT TO A STATUTORY CLOSE CORPORATION AGREEMENT UNDER OHIO REVISED CODE SECTION 1701.591. ANY PURCHASER OR TRANSFEREE OF THESE SHARES IS BOUND BY THE AGREEMENT AND SHALL BE CONSIDERED A PARTY TO THE AGREEMENT. SAID CLOSE CORPORATION AGREEMENT WAS ENTERED INTO AS OF THE 1ST DAY OF JULY, 1999, BY AND AMONG GLOBAL FILM & PACKAGING CORPORATION, KEITH A. BROWN, TRUSTEE U/D/T (KEITH A. BROWN REVOCABLE LIVING TRUST) DATED MAY 29, 1986, JAMES R. HENDERSHOT AND DALE A. KUCAJ, TRUSTEE U/D/T (DALE A. KUCAJ ELECTING SMALL BUSINESS TRUST) DATED APRIL 1, 1998 AND RESTRICTS THE FREE TRANSFERABILITY OF SAID SHARES. THE CORPORATION WILL MAIL TO THE HOLDER OF THIS CERTIFICATE,

GLOBAL FILM & PACKAGING CORPORATION

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

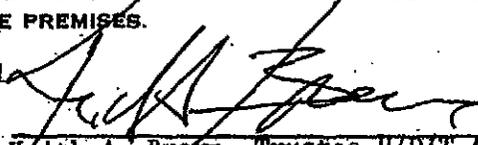
For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

Noel Brown, Trustee of the Keith A. Brown Flite Trust, dated December 14, 2001

all \_\_\_\_\_ OF THE SHARES REPRESENTED BY THE ATTACHED CERTIFICATE (No. -9-) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15 2001

  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 1 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A.

Brown Revocable Trust) dated December 28, 2000

Dated December 28, 12 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A.  
Brown Revocable Living Trust) dtd 05/29/86

Dated <u>November 16,</u> <u>19</u> 98		
NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
<u>1</u>	<u>1</u>	<u>1</u>

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO

**CANCELLED**

This Certificate is issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable  
one (1) 12/28/00 12/28/00 is the owner of  
fully paid and non-assessable Shares of  
the Capital Stock of the above named Corporation transferable only on the books of the  
Corporation by the holder hereof, in person, or by duly authorized Attorney upon  
surrender of this Certificate, properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers  
and its corporate Seal to be hereunto affixed, this 28th day of December 12/28 2000

Noel P. Brown, SECRETARY-TREASURER      Keith A. Brown, PRESIDENT

NO. 111

Appendix Page No. 214

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL RESALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR BUSINESS ORGANIZATION SHALL BE VOID.

OR  
THE

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN ON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

TRILOGY INVESTMENTS, INC.

THE OHIO LEGAL BLANK CO., CLEVELAND

Form 81-E Stock Certificate Assignment

shall  
from  
JT  
TEN

PLA  
11/11  
11/11  
11/11

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for social security or other identifying number]

Noel Brown, Trustee of the Keith A. Brown Flite Trust dated December

14, 2001

all OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. 5-) AND DO HEREBY IRREVO-

CABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15, 2001

*[Handwritten signature of Keith A. Brown]*

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE OF THE ASSIGNOR MUST CORRESPOND WITH THE NAME AS WRITTEN ON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

attest  
attest  
attest

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 500 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A.

Brown Revocable Trust) dated December 28, 2000

Dated December 28, ~~19~~ 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A.  
Brown Revocable Living Trust) dtd 05/29/86

Dated February 26, 19 98		
NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
-1-	-500-	-500-

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO



**CANCELLED**

This Certificate is hereby issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable  
Trust) dated December 28, 2000 is the owner of  
five hundred (500) fully paid and non-assessable Shares of  
the Capital Stock of the above named Corporation transferable only on the books of the  
Corporation. It may be transferred hereof, in person or by duly authorized Attorney upon  
surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers  
and its Corporate Seal to be hereunto affixed this 28th day of December A.D. ~~19~~ 2000

Noel Brown, SECRETARY-TREASURER  
Keith A. Brown, PRESIDENT



<b>DATE:</b> 10/24/2000	<b>DOCUMENT ID</b> 200029702218	<b>DESCRIPTION</b> DOMESTIC/DISSOLUTION (DIS)	<b>FILING</b> 35.00	<b>EXPED</b> 10.00	<b>PENALTY</b> .00	<b>CERT</b> .00	<b>COPY</b> .00
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**Receipt**

This is not a bill. Please do not remit payment.

CAVITCH FAMILO DURKIN & FRUTKIN  
 ATTN SUZANNE M FULLERTON  
 E OHIO BLDG 14TH FL  
 CLEVELAND, OH 44114-2876

# STATE OF OHIO

**Ohio Secretary of State, J. Kenneth Blackwell**

971701

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**DELPHI REALTY CORPORATION**

and, that said business records show the filing and recording of:

Document(s)  
**DOMESTIC/DISSOLUTION**

Document No(s):  
**200029702218**



Witness my hand and the seal of  
 the Secretary of State at Columbus,  
 Ohio this 20th day of September,  
 A.D. 2000.

United States of America  
 State of Ohio  
 Office of the Secretary of State

Ohio Secretary of State



Prescribed by **J. Kenneth Blackwell**

Please obtain fee amount and mailing instructions from the Forms Inventory List (using the 3 digit form # located at the bottom of this form). To obtain the Forms Inventory List or for assistance, please call Customer Service:

Central Ohio: (614)-466-1015 Toll Free: 1-877-SOS-FILE (1-877-767-3453)

Expedite this form  Yes

### CERTIFICATE OF DISSOLUTION BY SHAREHOLDERS OF

FIRST: Delphi Realty Corporation  
(Exact Name of Corporation)  
971701  
(Charter Number)

Keith A. Brown, who is President  
(name) (title)

of the above named Ohio corporation, articles of incorporation of which were filed in the office of the Secretary of State on March 19, 1997 do hereby certify that:  
(date)

SECOND: The place where its principal office in Ohio is or is to be located is :  
Westlake, Ohio CUYAHOGA  
(city, township, or village) (county)

THIRD: The names and complete street addresses of the DIRECTORS are:  
(A P.O. Box address cannot be accepted.)

NAME	STREET	CITY & STATE	ZIP CODE
Keith A. Brown	29287 Grand Court	Westlake, Ohio	44145
Dale Kucaj	3125 Clark Parkway	Westlake, Ohio	44145
Jeffery L. Petras	2617 Dartmoor Road	Cleveland Heights OH	44118

FOURTH: The names and complete street addresses of the OFFICERS are:  
(A P.O. Box address cannot be accepted.)

NAME	STREET	CITY & STATE	ZIP CODE
Keith A. Brown	29287 Grand Court	Westlake, Ohio	44145
Dale Kucaj	3125 Clark Parkway	Westlake, Ohio	44145
Jeffery L. Petras	2617 Dartmoor Road	Cleveland Heights OH	44118

1. DATE 7/8/1998 DOCUMENT NO 199817001164 DESCRIPTION DIS DOMESTIC/DISSOLUTION

	FILING	EXPED	PENALTY	CERT	COI
	35.00	0.00	0.00	0.00	0.
TOTAL	35.00	0.00	0.00	0.00	0.

Return To:  
CAVITCHFAMILO DURKIN & FRUTKIN  
THE E OHIO BLDG 14TH FL  
CLEVELAND, OH 44114-2876

cut along the dotted line



*The State of Ohio*  
Certificate

Secretary of State - Bob Taft

727175

*It is hereby certified that the Secretary of State of Ohio has custody of the business records for MANSFIELD CAPITAL CORPORATION and that said business records show the filing and recording of:*

Document(s)  
DOMESTIC/DISSOLUTION

Document No(s):  
199817001164

United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the Secretary  
of State at Columbus, Ohio, This 1st day of  
June, A.D. 1998



*Bob Taft*  
Bob Taft  
Secretary of State

**MANSFIELD CAPITAL CORPORATION  
CERTIFICATE OF DISSOLUTION  
CHARTER NO. 727175**

KEITH A. BROWN, President, and DALE A. KUCAJ, Secretary, of MANSFIELD CAPITAL CORPORATION f.k.a. MANSFIELD FOUNDRY CORPORATION f.k.a. MANSFIELD ACQUISITION CORPORATION, an Ohio corporation, do hereby certify as follows:

1. The name of the relevant corporation is MANSFIELD CAPITAL CORPORATION.
2. A resolution of dissolution of said corporation has been adopted and is presently in full force and effect.
3. On May 13, 1998, by a writing pursuant to Section 1701.54 of the Ohio Revised Code, signed by all of the shareholders and directors of said Corporation, the shareholders and directors adopted the aforesaid resolution of dissolution of said corporation.
4. The place where said corporation's principal office is located is Westlake, Cuyahoga County, Ohio.
5. The names and addresses of the Directors, officers, and Statutory Agent of MANSFIELD CAPITAL CORPORATION are as follows:

Keith A. Brown, Director, President  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

Dale A. Kucaj, Director, Secretary and Treasurer  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

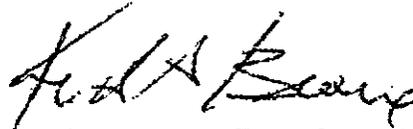
Dale A. Kucaj, Statutory Agent  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

Frank Calandra, Jr., Director  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

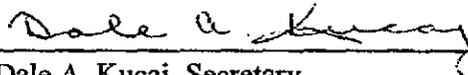
Jack Calandra, Director  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

Noel Brown, Director  
30400 Detroit Road, Suite 203  
Westlake, Ohio 44145-1855

IN WITNESS WHEREOF, said KEITH A. BROWN, President, and DALE A. KUCAJ,  
Secretary, of MANSFIELD CAPITAL CORPORATION, acting for and on behalf of said  
corporation, have hereunto subscribed their names on this 13 day of May, 1998.



Keith A. Brown, President



Dale A. Kucaj, Secretary

F:\DEPT\CORP\CHIMERA\MANSFIELD.DIS

**J. Kenneth Blackwell**  
Secretary of State

**FIFTH:** The name and Ohio address of the statutory agent is:

Dale A. Kucaj 30400 Detroit Avenue, Suite 203  
(name) (street and number)  
Westlake, Ohio 44145  
(city, village or township) (zip code)  
(A.P.O. Box address cannot be accepted.)

NOTE: IF the statutory agent listed in item "FIFTH" has changed or differs from the agent currently appearing on the corporate records in the Secretary of State's office, the named agent must acknowledge and accept the appointment as statutory agent.

**ACCEPTANCE OF APPOINTMENT**

The undersigned, \_\_\_\_\_, named herein as the statutory agent for the corporation named herein,  
(print name)  
hereby acknowledges and accepts the appointment as statutory agent for said corporation.

\_\_\_\_\_  
(Signature of Statutory Agent)

**SIXTH:** The undersigned have been authorized to execute and file this certificate by a resolution adopted  
(Check one of the following)

- at a special meeting of the shareholders of said corporation, notice of which was given to all shareholders of every class, whether entitled to vote or not, by the votes cast in person or by proxy by the holders of record of shares entitling them to exercise \_\_\_\_\_ % of the voting power
- in a writing signed under provisions of Section 1701.54 of the Revised Code by all of the shareholders who would be entitled to a notice of a meeting held for such purpose) declaring that the corporation elects to wind up its affairs and dissolve

IN WITNESS WHEREOF, the above signed officer acting for and on behalf of the corporation have hereunto subscribed his/her names on October 6, 2000  
(date)

Signature: \_\_\_\_\_

(Authorized Officer)

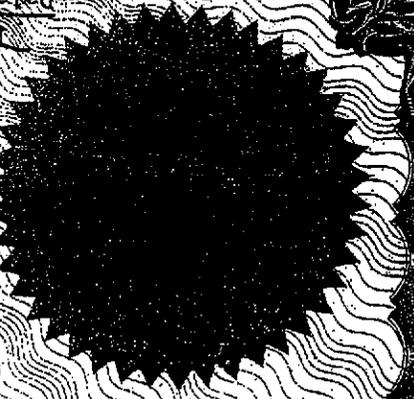
Name: Keith A. Brown, President

GOES TO

EACH

SHARES

*[Faint, mostly illegible text, likely bleed-through from the reverse side of the document]*



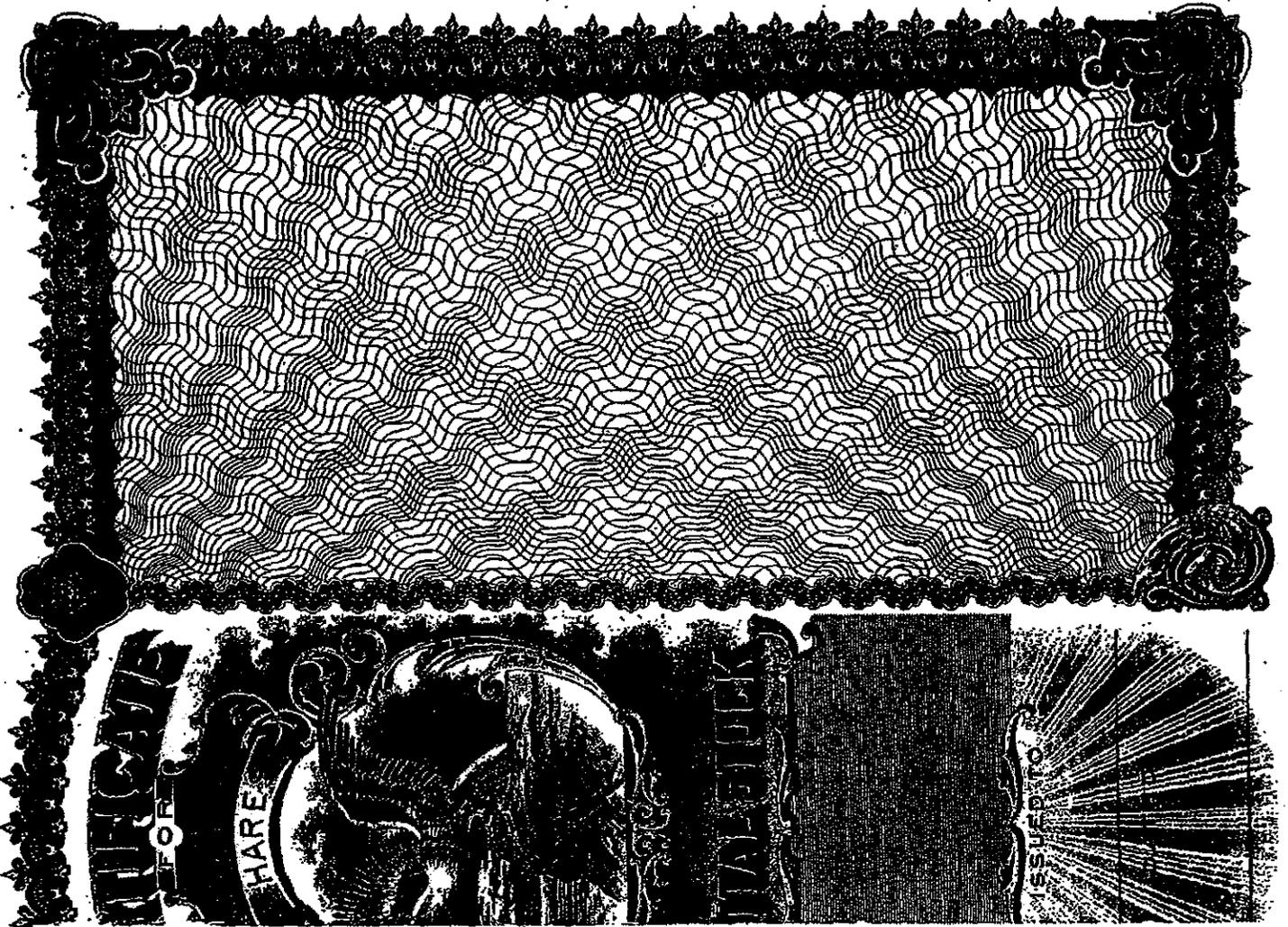
THIS CERTIFICATE IS VALID ONLY WHEN SIGNED BY THE PRESIDENT AND TWO TRUSTEES OF THE COMPANY.



Shares

the State of Ohio

INCORPORATED UNDER THE LAWS OF



CHIMERA CORPORATION

Form S1-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for Social Security or other identifying number]

Noel Brown, Trustee of the Keith A. Brown Flite Trust dated December 14, 2001

all OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. 3) AND DO HEREBY IRREVO.

CABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15, 2001

[Handwritten signature of Keith A. Brown]

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**

*For 400 Shares*

Issued to Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000  
Dated December 28, 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated March 1, 2000

NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
-6-	-400-	-400-

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO

SHARES



**This Certifies that** Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000 is the owner of  
four hundred (400) fully paid and non-assessable Shares of  
the Capital Stock of the above named Corporation, transferable only on the books of the  
Corporation by the holder hereof in person or by duly authorized Attorney upon  
surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers  
and its name to be hereunto attested this 28th day of December, 2000

NOT A  
NO PAR

  
 Keith A. Brown,  
PRESIDENT

Appendix Page No. 225

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED BY A CORPORATION SUBJECT TO A STATUTORY CLOSE CORPORATION AGREEMENT UNDER OHIO REVISED CODE SECTION 1701.591. ANY PURCHASER OR TRANSFEREE OF THESE SHARES IS BOUND BY THE AGREEMENT AND SHALL BE CONSIDERED A PARTY TO THE AGREEMENT. SAID CLOSE CORPORATION AGREEMENT WAS ENTERED INTO AS OF THE 1ST DAY OF JANUARY, 1996 AND AMENDED ON MARCH 1, 2000, BY AND BETWEEN POLY SHAPES CORPORATION, AND ITS SHAREHOLDERS, AND RESTRICTS THE FREE TRANSFERABILITY OF SAID SHARES. THE CORPORATION WILL MAIL TO THE HOLDER OF THIS CERTIFICATE, WITHOUT CHARGE, A COPY OF SUCH AGREEMENT WITHIN FIVE (5) DAYS AFTER RECEIVING A WRITTEN REQUEST THEREFOR.

15-16

POLY SHAPES CORPORATION

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for identifying number]

Noel Brown, Trustee of the Keith A. Brown Flite Trust dated December 14, 2001

all OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. 7-) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15, 2001

*Keith A. Brown*

Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**

For 400 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A.

Brown Revocable Trust) dated December 28, 2000

Dated December 28, ~~20~~ 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated <u>July 1,</u> <u>19 99</u>	
NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES
-8-	-400-
NO. OF SHARES TRANSFERRED	
-400-	

Received Certificate No. \_\_\_\_\_  
for \_\_\_\_\_ Shares  
on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO



**This Certifies that** Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated December 28, 2000 is the owner of four hundred (400) fully paid and non-assessable Shares of the Capital Stock of the above named Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

*Date: 12/28/00*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 28th day of December 05/28/2000

Dale A. Kucaj      Keith A. Brown  
Dale A. Kucaj,      SECRETARY-TREASURER      Keith A. Brown,      PRESIDENT

Appendix Page No. 227

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL RESALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR BUSINESS ORGANIZATION SHALL BE MADE ONLY TO PERSONS OR BUSINESS ORGANIZATIONS WHO ARE RESIDENT WITHIN THE STATE OF OHIO.

THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED BY A CORPORATION SUBJECT TO A STATUTORY CLOSE CORPORATION AGREEMENT UNDER OHIO REVISED CODE SECTION 1701.591. ANY PURCHASER OR TRANSFEREE OF THESE SHARES IS BOUND BY THE AGREEMENT AND SHALL BE CONSIDERED A PARTY TO THE AGREEMENT. SAID CLOSE CORPORATION AGREEMENT WAS ENTERED INTO AS OF THE 1ST DAY OF JULY, 1999, BY AND AMONG GLOBAL FILM & PACKAGING CORPORATION, KEITH A. BROWN, TRUSTEE U/D/T (KEITH A. BROWN REVOCABLE LIVING TRUST) DATED MAY 29, 1986, JAMES R. HENDERSHOT AND DALE A. KUCAJ, TRUSTEE U/D/T (DALE A. KUCAJ ELECTING SMALL BUSINESS TRUST) DATED APRIL 1, 1998 AND RESTRICTS THE FREE TRANSFERABILITY OF SAID SHARES. THE CORPORATION WILL MAIL TO THE HOLDER OF THIS CERTIFICATE,

GLOBAL FILM & PACKAGING CORPORATION

Form 81-E Stock Certificate Assignment

THE OHIO LEGAL BLANK CO., CLEVELAND

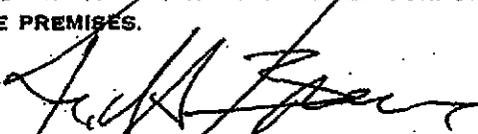
**For Value Received,** I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

Noel Brown, Trustee of the Keith A. Brown Flite Trust, dated December 14, 2001

all \_\_\_\_\_ OF THE SHARES REPRESENTED BY THE ATTACHED CERTIFICATE (No. -9-) AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15 2001

  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WHERE  
REQUIRED  
PASTE  
REVENUE  
STAMPS  
ON  
REVERSE  
SIDE

**CERTIFICATE**



For 1 Shares

Issued to Keith A. Brown, Trustee U/D/T (Keith A.

Brown Revocable Trust) dated December 28, 2000

Dated December 28, 19 2000

From whom transferred  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable Living Trust) dtd 05/29/86

Dated November 16, 19 98

NO. ORIGINAL CERTIFICATE	NO. OF ORIGINAL SHARES	NO. OF SHARES TRANSFERRED
1	1	1

Received Certificate No. \_\_\_\_\_

for \_\_\_\_\_ Shares

on \_\_\_\_\_ 19 \_\_\_\_\_

THE STATE OF OHIO

SHARES

This Certificate

one (1)

is the owner of  
Keith A. Brown, Trustee U/D/T (Keith A. Brown Revocable  
Trust) dated December 28, 2000

*fully paid and non-assessable Shares of  
the Capital Stock of the above named Corporation transferable only on the books of the  
Corporation by the holder hereof, in person, or by duly authorized Attorneys upon  
surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers  
and duly authorized Attorneys hereunto affixed this 28th day of December 19 2000

Noel P. Brown, SECRETARY-TREASURER

Keith A. Brown, PRESIDENT

**CANCELLED**  
**DATE**

Appendix Page No. 229

THE CORPORATION WILL MAIL TO THE HOLDER OF THE SHARES REPRESENTED BY THIS CERTIFICATE A COPY OF THE EXPRESS TERMS OF SUCH SHARES, WITHOUT CHARGE, WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN REQUEST THEREFOR.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND, FOR A PERIOD OF AT LEAST NINE (9) MONTHS FROM THE DATE OF THE LAST SALE BY THE CORPORATION OF THE SECURITIES IN THE OFFERING OF WHICH THESE SECURITIES ARE A PART, ALL RESALES, PLEDGES, HYPOTHECATIONS, OR OTHER TRANSFERS OF THESE SECURITIES BY ANY PERSON OR BUSINESS ORGANIZATION QUATERS

OR  
TE

TRILOGY INVESTMENTS, INC.

THE OHIO LEGAL BLANK CO., CLEVELAND

Form 81-E Stock Certificate Assignment

10/2  
11/11  
11/11

TEN  
shall  
from  
JT.

For Value Received, I HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for Social Security or other identifying number]

Noel Brown, Trustee of the Keith A. Brown Flite Trust dated December

14, 2001

all \_\_\_\_\_ OF THE SHARES

REPRESENTED BY THE ATTACHED CERTIFICATE (No. -5-) AND DO HEREBY IRREVO-

CABLY CONSTITUTE AND APPOINT Thomas M. Cawley ATTORNEY TO TRANSFER THE SAID SHARES ON THE BOOKS OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED December 15, 2001

*[Handwritten Signature]*

Keith A. Brown, Trustee D/D/T (Keith A. Brown Revocable Trust) dated 12/28/00

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

NOTICE: THE SIGNATURE OF THE ASSIGNOR MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

certificate  
therein  
indicates