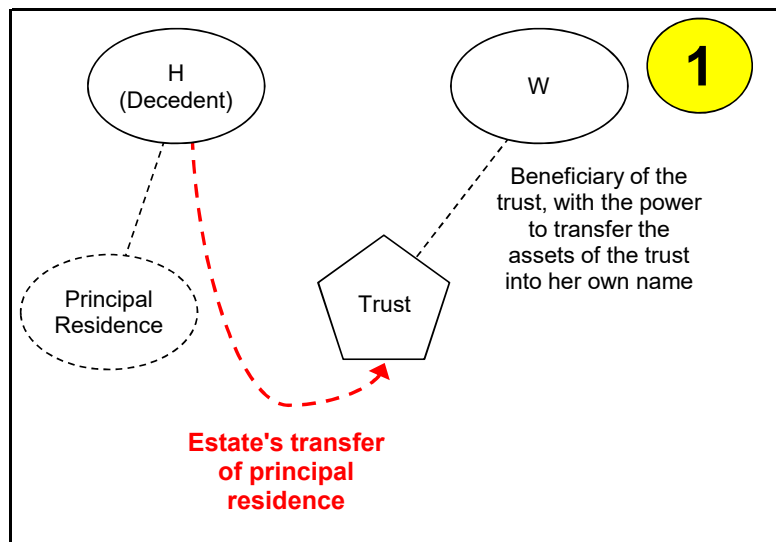
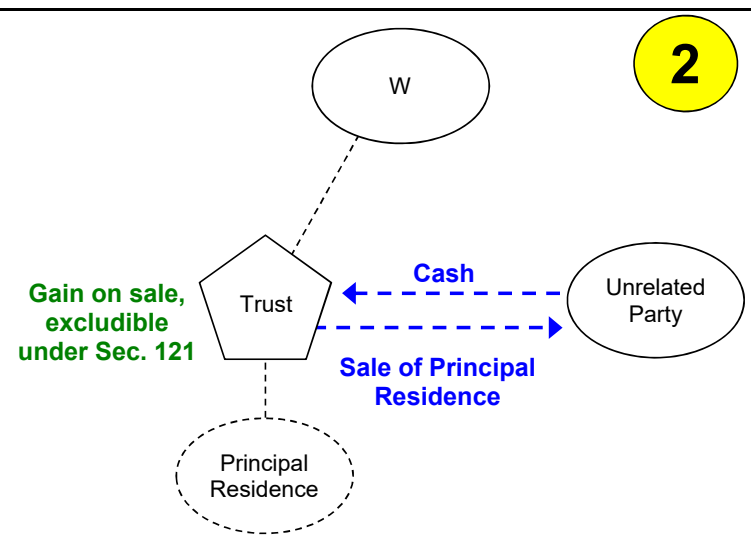


**Beneficiary/Owner of Grantor Trust
Qualifies for Section 121 Exclusion**

Establishment of Trust



Sale of Principal Residence



H died in 1978. H's will provided for the establishment of a marital deduction trust for the benefit of H's surviving spouse W. The trust agreement gave W the unrestricted power to vest the entire trust corpus or trust income in any person, including W. At the time of H's death, H and W had lived in their principal residence since 1970. H and W's principal residence was made part of the corpus of the marital trust in 1979, the year the trust was established. The residence continued to be W's principal residence until 1983, when it was sold at a price in excess of its adjusted basis. In computing W's 1983 federal income tax return, W treated the gain from the sale of the residence as excludable from gross income under section 121.

Section 678(a)(1) provides that a person other than the grantor shall be treated as the owner of any portion of a trust over which the person has the sole power to vest the trust corpus or income in that person. Section 671 provides that if a grantor or other person is treated as the owner of any portion of a trust, then those items of income, deductions, and credits against tax of the trust that are attributable to that portion of the trust must be included in computing the taxable income and credits of the grantor or other person.

In the present case, under H's will, W had the sole power to vest the trust corpus or income therefrom in any person, including W. Therefore, under section 678, W is treated as the owner of the entire trust for federal income tax purposes, and must, under section 671, include items of income, deductions, and credits attributable to the trust in computing W's taxable income and credits. Since W is treated as the owner of the entire trust under sections 678 and 671, the sale by the trust will be treated for federal income tax purposes as if made by W. Therefore, W may exclude from gross income the gain from the sale of the trust property.