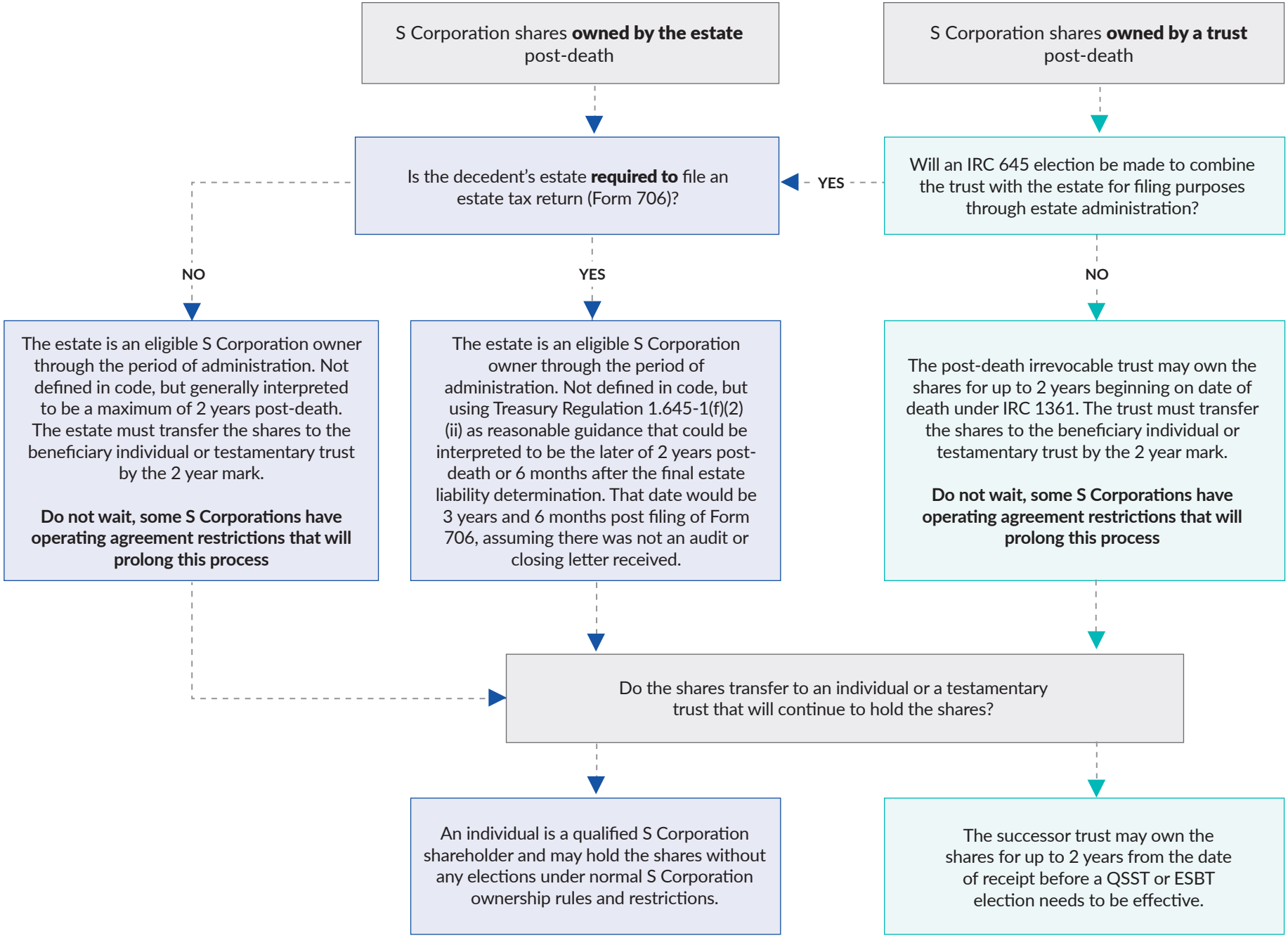
S Corporation shares **owned by the estate** post-death
S Corporation shares **owned by a trust** post-death
Is the decedent's estate **required to** file an estate tax return (Form 706)?
YES
Will an IRC 645 election be made to combine the trust with the estate for filing purposes through estate administration?
NO
YES
NO
The estate is an eligible S Corporation owner through the period of administration. Not defined in code, but generally interpreted to be a maximum of 2 years post-death. The estate must transfer the shares to the beneficiary individual or testamentary trust by the 2 year mark.
Do not wait, some S Corporations have operating agreement restrictions that will prolong this process
The estate is an eligible S Corporation owner through the period of administration. Not defined in code, but using Treasury Regulation 1.645-1(f)(2)(ii) as reasonable guidance that could be interpreted to be the later of 2 years post-death or 6 months after the final estate liability determination. That date would be 3 years and 6 months post filing of Form 706, assuming there was not an audit or closing letter received.
The post-death irrevocable trust may own the shares for up to 2 years beginning on date of death under IRC 1361. The trust must transfer the shares to the beneficiary individual or testamentary trust by the 2 year mark.
Do not wait, some S Corporations have operating agreement restrictions that will prolong this process
Do the shares transfer to an individual or a testamentary trust that will continue to hold the shares?
An individual is a qualified S Corporation shareholder and may hold the shares without any elections under normal S Corporation ownership rules and restrictions.
The successor trust may own the shares for up to 2 years from the date of receipt before a QSST or ESBT election needs to be effective.