Tax Intensive

Wednesday
October 18, 2023

Tax Intensive

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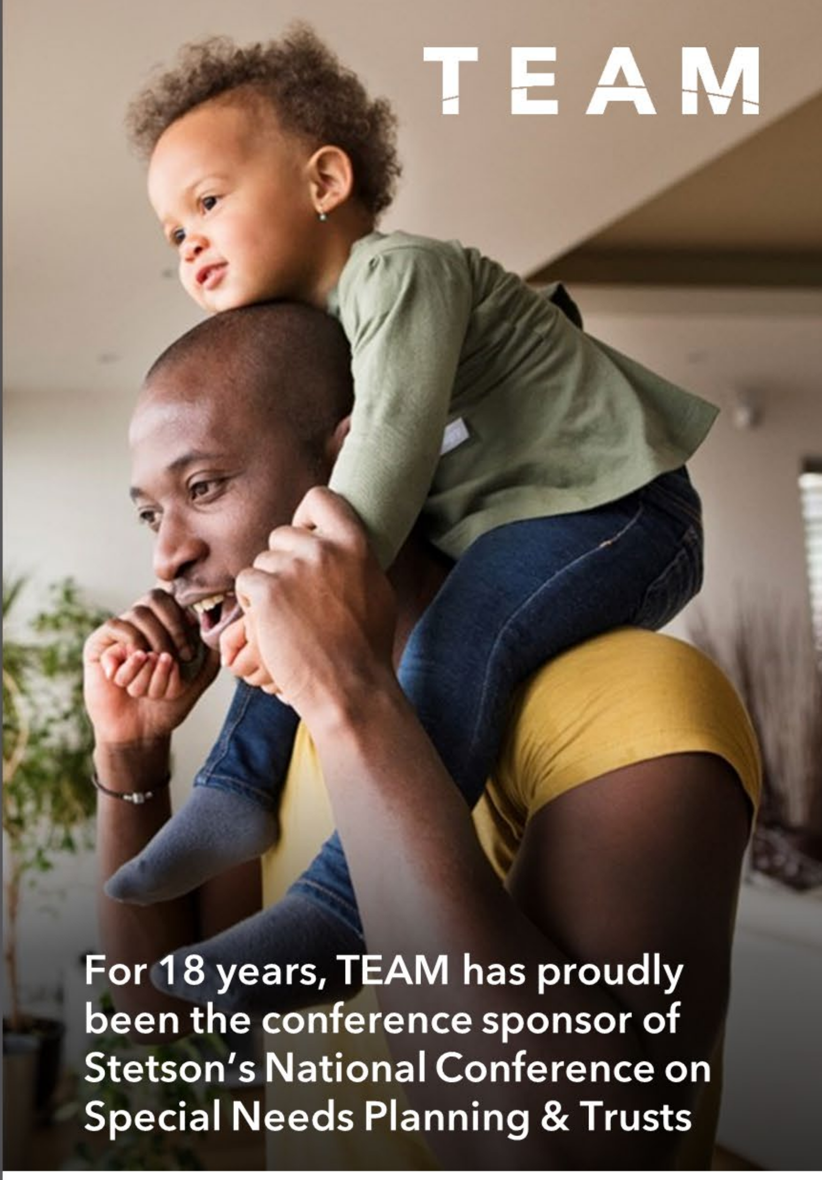

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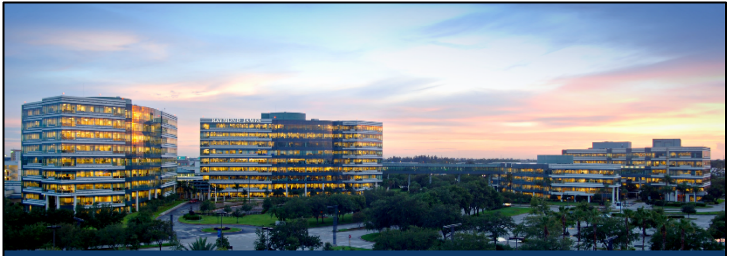

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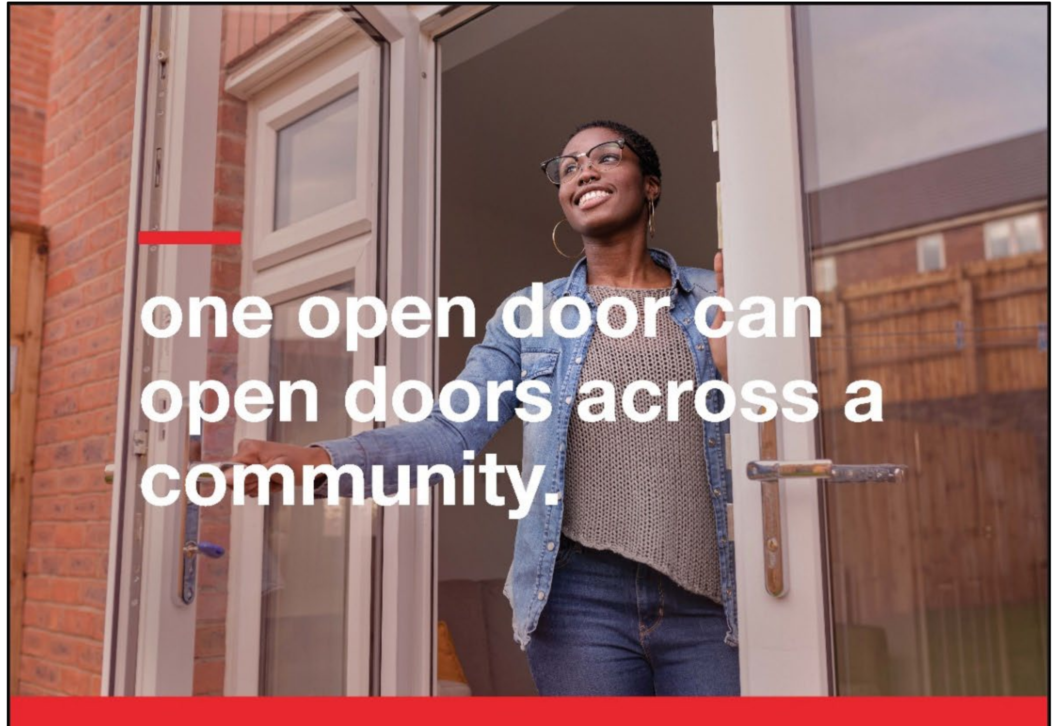

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A 'LIVE' Demonstration of the Preparation of a 1041

Checklist of Considerations and Information Need to Prepare Form 1041

- If your client is a decedent's estate, determine:

    name of estate as it appears on its application for an employer identification number (an EIN can be applied for online or by mailing or faxing Form SS-4, Application for Employer Identification Number),

    name and title of fiduciary,

    address,

    employer identification number,

    date entity created (date of decedent's death), and

    tax year - If this is the first return for the estate, consider whether a fiscal tax year should be adopted. Also, items of income, deduction, and credits must be allocated between the decedent's final return and the estate's first return.

- If your client is a trust, determine:

    name of trust as it appears on its application for an employer identification number (an EIN can be applied for online or by mailing or faxing Form SS-4, Application for Employer Identification Number),

    name and title of fiduciary,

    address,

    employer identification number,

    date entity (trust) was created, and

    type of entity (simple or complex trust or grantor trust).

- For a trust that is treated as owned by one or more grantors or other persons, the trustee may use an alternate method of reporting, instead of filing Form 1041. Generally, under the alternate reporting methods, a trustee must furnish information to any payor who is required to make any type of information return (including Form 1099 or Schedule K-1) with respect to the trust. Specifically, if the trust is treated as owned by one grantor (or by one other person), the trustee must provide (depending on which alternate method the trustee chooses to use to report):

    the grantor's name and taxpayer identification number (TIN), and the address of the trust, or

    the name, TIN, and address of the trust.

- If the trust is treated as owned by more than one grantor or other person, the trustee must furnish the trust's name, taxpayer identification number (TIN), and address to all payors, and

file with IRS the appropriate Form 1099. Additional information, such as items necessary for completion of the grantor's individual tax return, must be provided to the grantor.

- If this is the initial (first) or final return for the estate or trust, consider whether Form 56 (Notice Concerning Fiduciary Relationship) should be filed to notify IRS of the creation or termination of a fiduciary relationship. Use of this form is voluntary.
- If you don't already have one, get a copy of last year's return for the estate or trust, including all supporting forms and schedules, along with last year's workpapers, etc.
- If the estate's or trust's return for last year has been examined by IRS or state or local taxing authorities, obtain and review copies of revenue agents' reports.

Review a copy of decedent's will (if decedent died testate) or trust instrument (including any amendments), which should be in the file. Determine how the income of the estate or trust is allocated among estate or trust and the beneficiaries. In the case of a trust, determine the date the trust terminates. If you are filing for a complex trust, determine the trust's accounting income under the governing instrument and local law. If it is the first year of an estate, determine whether there is a qualified revocable trust for which an election may be made to treat the trust as part of the estate.

- For each beneficiary of the estate or trust, determine: name, social security number or other identifying number, address, date of birth, etc.
- Determine the basis of all assets received by the estate or trust from a decedent or a grantor.
- Determine whether the estate or trust received any earnings (salary, wages, and other compensation) of any individual under a contract assignment or similar arrangement. Such earnings are taxed to the person who actually earned the income. A trust receiving such earnings is a grantor trust.
- Determine whether the estate or trust (or its more-than-50% owned corporation) had an interest in a foreign bank account. If so, FinCEN Form 114 may be required.
- Determine whether the estate or trust received a distribution from, was a grantor of or made any transfers to a foreign trust in existence during the tax year. If so, Form 3520 may be required.
- Determine whether the estate or trust made or received a below-market interest rate loan. If it made the loan, determine the imputed interest income. If it received the loan, determine the imputed interest expense.

INCOME

- Interest income. List all items of taxable interest income reported to the estate or trust on Form 1099 information returns.
- Examine last year's return for items of interest income not reported to the estate or trust this year. Determine whether the item should properly be omitted this year.
- With respect to each bond owned by the estate or trust, determine (i) whether it received Form 1099-OID, and (ii) whether it purchased the bond during 2022. If the bond was purchased during 2022, determine whether (iii) it purchased the bond at a premium, and

(iv) the amount of accrued interest it paid in 2022. If the estate or trust purchased the bond at a premium during a prior year, determine whether it elected to amortize that premium in prior years.

  - If the return is for an estate, determine whether any of the interest income is income in respect of a decedent for which a deduction of estate tax is allowable. If it is the year of death, determine whether interest income reported on the decedent's Forms 1099-INT includes interest earned after the date of death that should be reported on the estate's return.
  - Determine whether the estate or trust received qualified residence interest from seller-financed mortgages. If so, the question to that effect on the return must be answered yes, and certain information about the buyer must be attached to the return.

- Dividends. List all items of dividend income reported to the estate or trust on Form 1099 information returns. Determine capital gain portion, including the capital gain rate group, and nontaxable portion. Determine what portion of the dividend income, if any, is qualified dividend income.
  - Examine last year's return for items of dividend income not reported to the estate or trust this year. Determine whether the item should properly be omitted this year.
  - If the return is for a decedent's estate, determine whether any of the dividends received by the estate were payable to stockholders of record on a date before the decedent's death. These dividends are treated as income in respect of a decedent. Determine whether dividends reported on the decedent's Forms 1099-DIV include dividends earned after the date of death that should be reported on the estate's return.
- Business income. Determine whether the estate or trust operated a trade or business. If so, the income and expenses of the business must be reported on Schedule C (Form 1040) or Schedule C-EZ (Form 1040). The net profit or loss from the business is reported on Line 3 of Form 1041.
  - If the return is for the estate of a cash-basis decedent, determine whether any business income items were accrued but were uncollected at the time of the decedent's death, such as trade accounts receivable at date of death. These items are considered income in respect of a decedent. Also determine whether any business expenses accrued before the decedent's death; these expenses are treated as deductions in respect of a decedent and can qualify for deduction on both the estate's income tax return and the estate tax return filed for the estate.
- Sale or exchange of securities. Obtain the following information with respect to each security that was sold, exchanged or became worthless during the year: description (including name of issuer and, where relevant, date of maturity or number of shares); date acquired; date sold; sales price; cost or other basis; adjustments to basis.
  - Adjustments to basis must be properly taken into consideration. These adjustments to basis include the following: (i) broker's commissions (ii) stock dividends and splits; (iii) reinvested cash dividends; (iv) interest previously taken

into income under an election under the accrued market discount rules; and (v) interest taken into income under the original issue discount rules.

  - Obtain information to determine whether accrued market discount rules apply to bonds that were sold, exchanged or became worthless.
  - Examine Form 1099-B for each of the above transactions. If the broker advised the fiduciary that what was reported to IRS was gross sales price less commissions and option premiums, that net amount should be reported on Schedule D.
  - Wash sales. With respect to securities listed above, determine whether the estate or trust (a) incurred a loss, and (b) within 30 days before or after that sale, purchased substantially the same security.
  - Examine last year's Schedule D, and determine the amount of and character of any capital loss carryforward from 2021 to 2022.
  - Determine whether any property sold was qualified small business stock and, if so, whether any portion of the gain is excludible under Code Sec. 1202 or can be deferred by having the estate or trust make an election under Code Sec. 1045. Also determine the amount of the exclusion and the amount of gain from these transactions subject to the 28% rate.

- Sales or exchanges of property other than securities. Obtain the following information with respect to each item that was disposed of during the year: description; date acquired; date sold; sales price; cost or other basis; and adjustments to basis.
  - Adjustments to basis must be properly taken into consideration. These adjustments to basis include the following: (i) selling costs; (ii) miscellaneous acquisition costs, e.g., broker's fees, attorney's fees, sales taxes; (iii) improvements while owned.
  - For each item that is subject to depreciation, if you don't already have the amount of accumulated depreciation taken in prior years, obtain that information.
  - Examine the Form 1099-B or 1099-S for each of the above transactions to determine the amounts that should be reported to IRS.
  - For sales of real estate, obtain the settlement sheets from when the estate or trust sold the property.
  - If the disposition was by a deferred payment sale: (i) obtain contracts, etc. evidencing the terms of the sale; (ii) review these documents to determine if there was adequate stated interest.
  - Consider whether you have all relevant information regarding prior year deferred payment sales for which payments were received in 2022. If a decedent's estate received payments on an installment obligation acquired by the decedent before death on the sale of property, the income from the installment payments is taxed to the estate in the same manner as it would have been taxed to the decedent had he or she lived and received the payment.
  - For each item sold at a gain in 2022 that the estate or trust used in business or in a rental property, examine the estate's or trust's 2017-2021 returns, to determine if the estate or trust sold any business/rental property at a loss in 2017-2021.

- Determine gain or loss from collectibles and unrecaptured Code Sec. 1250 gain.
- If property sold or exchanged was acquired by gift and the trust's basis is determined by using the donor's basis, determine the donor's holding period. In that case, the trust's holding period includes the donor's holding period.
- Determine whether any property acquired from a decedent was sold within 12 months after the decedent's death. If the basis for the property is determined by reference to value at the date of the decedent's death or on the alternate valuation date, the property is considered to be held for more than 12 months, and the gain or loss is long-term capital gain or loss.
- If the estate or trust received a lump-sum distribution from a qualified employee benefit plan, examine Form 1099-R to determine if any portion of the distribution qualifies for long-term capital gain treatment.
- Determine whether any stock included in a decedent's estate was redeemed. Redemption proceeds received by the estate or trust may qualify for capital gain treatment.
- Determine whether the estate or trust distributed property in kind to a beneficiary in satisfaction of a right to receive a specific dollar amount or a right to receive specific property other than that distributed. If the distribution is in satisfaction of such a right, the estate or trust may have to recognize gain or loss (only estates may recognize loss).
- Determine whether the estate or trust made noncash distributions of property in kind to beneficiaries, and, if so, whether the estate or trust should elect to recognize gain on the distributions under Code Sec. 643(e)(3) (neither estates nor trusts may recognize loss).

- Rental income. For each rental property:
  - Obtain the following data: (i) kind and location of property; (ii) total rent received; (iii) advertising costs; (iv) auto & travel; cleaning and maintenance; commissions; insurance; legal/professional fees; management fees; repairs; supplies; taxes; utilities; wages and salaries; condo/coop fees.
  - Obtain the following data regarding capital assets (including capital improvements) purchased in 2022 for use as or with respect to rental properties: (i) description of asset; (ii) % of use in nonrental activities; (iii) date use began in the rental activity; (iv) cost; (v) description of and cost of trade-in, if any.
  - Determine whether the estate or trust in 2022 (i) converted any capital asset purchased in prior years from rental to nonrental use or (ii) increased the percentage of nonrental use of a capital asset used both for rental and nonrental use. (If yes to (i) or (ii), identify the asset and determine the 2022 rental-use percentage.)
- Rental of real property. For each item of real estate that the estate or trust rented to others:
  - Determine whether the property is low income housing.
  - Determine if the return is for a decedent's estate, whether the decedent was actively participating in the activity in the year of death.
  - Partnership, estate, trust, S corporation income or loss.

  - Examine the Schedule K-1 (and K-2 and K-3, if applicable) from each of these entities of which the estate or trust was a partner, beneficiary, or shareholder.
  - Determine whether any of the activities of the entity are passive activities.
  - Determine whether the full amount of depreciation recapture is properly reported.

- Determine that state tax refunds are included in income.
- Determine whether the estate or trust has income from discharge of indebtedness which should be included in income.
- If the return is for a decedent's estate, determine whether the estate received any salary, bonuses, commissions or other compensation for services of a cash-basis decedent which must be included in the estate's return. Such compensation is considered income in respect of a decedent.
- Determine the amount of tax-exempt interest income received by the estate or trust. This amount must be disclosed under "Other Information" on page 2 of the return. Also, a computation of the allocation of expenses between tax-exempt income and taxable income must be attached to the return. Tax-exempt interest received is also used to compute the charitable deduction on Schedule A, Form 1041 and the income distribution deduction on Schedule B, Form 1041.

DEDUCTIONS AND LOSSES

- Interest expense.
  - If the proceeds of a loan were used for more than one purpose, determine the proper allocation of interest expense to qualified residence interest, other personal interest, passive interest, investment interest, business interest, tax-exempt interest, etc. If there is more than one activity, etc. in any of these categories, allocate to the specific activity, etc. Within the "investment" category, break out separately any interest incurred to purchase or carry market discount bonds or short-term debt obligations.
  - Consider whether you have enough information to properly deal with any investment interest carryforward to 2022.
  - Determine whether the estate or trust paid qualified residence interest on seller-financed mortgages. If so, find out the buyer's name, address and taxpayer identifying number.
  - For taxable bonds acquired after '87, amortizable bond premium is treated as an offset to the interest income on the bonds, instead of as a separate interest deduction.
  - Determine the amount, if any, of interest expense incurred or continued to purchase or carry obligations generating tax-exempt income. If interest is attributable to both taxable and tax-exempt income, it must be allocated to determine the deductible portion.
- Taxes.
  - Obtain the amounts paid, divided into the following categories: state and local income taxes; real estate taxes; personal property taxes; generation-skipping

transfer (GST) tax on income distributions; and other state and local taxes paid or accrued in a trade or business, or for the production or collection of income, or the management, maintenance or conservation of property held for the production of income.
  - Determine that these amounts do not include penalties; interest; federal income taxes; federal duties and excise taxes; estate, inheritance, succession, or gift taxes (except estate tax attributable to income in respect of a decedent, see below).
  - Determine whether all fiduciary fees, attorney, accountant and return preparer fees, and other deductions not subject to the 2% of adjusted gross income (AGI) floor on miscellaneous itemized deductions are properly deducted (please note that miscellaneous itemized deductions are not available for tax years 2018 through 2025, see below). But no deduction is allowed for expenses allocable to tax-exempt income or expenses allowed as a deduction for federal estate tax purposes.
- If the estate or trust has tax-exempt income, fiduciary fees and other indirect expenses must be allocated between taxable and tax-exempt income. Only the portion attributable to taxable income is deductible. A computation of the allocation of expenses must be attached to the return.
- If any administration expenses or casualty or theft losses deducted on the estate's or trust's income tax return could have been deducted for estate tax purposes, the deduction will not be allowed for income tax purposes, unless a statement and waiver are filed. The statement and waiver do not have to be filed with the income tax return, but may be filed for association with the return at any time before the income tax year is closed.
- For tax years before 2018, and after 2025, determine which deductions are subject to the 2%-of-AGI floor on miscellaneous itemized deductions, and compute AGI for purposes of the floor.
- Charitable deduction.
  - Verify that all charitable contributions were made under the terms of the will or trust instrument and were from gross income. Contributions out of corpus (other than gross income allocated to corpus) don't qualify for deduction on the income tax return.
  - If the estate or trust had tax-exempt income, determine the portion of the tax-exempt income allocable to the charitable deduction. The charitable deduction must be reduced by that portion.
  - Determine whether deductions for income set aside for charitable purposes are proper.
  - Determine whether an election should be made to deduct charitable contributions for the immediately preceding tax year instead of for the year in which paid.
  - If the return is for a trust, Form 1041-A must also be filed, unless all of the net income is required to be distributed currently.
  - Inquire if written acknowledgments from the donee organizations were obtained for contributions made in excess of $250. Determine if, for cash contributions (regardless of amount), the estate or trust maintains a bank record, or a receipt,

letter, or other written communication from the donee organization indicating the name of the organization, the date of the contribution, and the amount of the contribution.
    - Determine if Form 8283 or qualified appraisal is required for non-cash donations.

- Income distribution deduction.
    - Compute the distributable net income (DNI) on Schedule B of Form 1041. DNI is not only a ceiling on the fiduciary's deduction, but is also a ceiling on the amounts taxable to beneficiaries. It also determines the character of distributions to beneficiaries.
    - If the return is for a complex trust or for an estate and amounts were paid or credited to a beneficiary within the first 65 days after the close of the entity's tax year for which you are preparing the return, consider whether the election should be made to "push-back" distribution and treat all or a portion of these amounts as paid or credited on the last day of the tax year.
    - If the return is for a complex trust or an estate, determine whether the separate share rule applies.
    - If the return is for a foreign complex trust, a domestic trust that was once a foreign trust, or a pre-March 1, '84 domestic trust to which the multiple trust rules would apply and the total amount of distributions to beneficiaries is more than the trust's accounting income, the trust may be subject to the "throwback" rules and may be required to complete Schedule J (Form 1041), unless the trust had no previously accumulated income.
- Determine whether the estate or trust is entitled to deduct estate tax (including generation-skipping transfer tax) attributable to income in respect of a decedent. Also compute each beneficiary's share of the deduction.
- Nonbusiness bad debts and worthless investments (other than worthless traded securities). For each such bad debt or investment, determine: (a) description of debt or investment; (b) date it went bad; (c) evidence that it is bad; (d) date acquired; (e) bad amount.
- Casualty and theft gains and losses. Obtain the following information regarding each such gain or loss: (i) property description; (ii) whether the property is business, income-producing or personal use property; (iii) date of acquisition; (iv) original cost; (v) depreciation taken in prior years; (vi) estimated market value before casualty or theft; (vii) estimated market value after casualty or theft; (viii) insurance reimbursement.
- Depreciation, depletion, and amortization. Determine the proper allocation of these deductions between the estate or trust and the beneficiaries (including charities).
- If the return is for the final year of the estate or trust, compute the unused losses and excess deductions to be transferred to the beneficiaries.
    - If the trust or estate has qualified business income, the deduction attributable to the entity's share of qualified items is reported on Line 20. Reporting statements must be attached to each beneficiary's Schedule K-1.

CREDITS, TAXES, AND PAYMENTS

- Foreign tax credit. With respect to any income that is earned from a foreign source or from a U.S. possession, e.g. Puerto Rico, determine the amount of income taxes paid to the foreign country or its political subdivisions, or to a U.S. possession. Consider whether the holding period is met for taxes paid on dividends.
- Other credits. Determine whether any of the following credits is available: gasoline and special fuels credit (Form 4136); nonconventional fuels credit (Form 8907); the investment credit (Form 3468); the work opportunity credit (Form 5884); the biofuel producer credit (Form 6478); the research credit (Form 6765); the low-income housing credit (Form 8586); the disabled access credit (Form 8826); the enhanced oil recovery credit (Form 8830); the plug-in electric vehicle credit (Form 8834); the renewable electricity and refined coal production credit (Form 8835); the empowerment zone employment credit (Form 8844); the Indian employment credit (Form 8845); the credit for employer social security and Medicare taxes paid on certain employee tips (Form 8846); the orphan drug credit (Form 8820); the qualified zone academy bond credit (Form 8860); biodiesel and renewable diesel fuels credit (Form 8864); new markets credit (Form 8874); general credits from an electing large partnership (Form 3800); credit for small employer pension plan startup costs (Form 8881); credit for employer-provided child care facilities and services (Form 8882); low sulfur diesel fuel production credit (Form 8896); railroad track maintenance credit (Form 8900); new energy efficient home credit (Form 8908); alternative motor vehicle credit (Form 8910); alternative fuel vehicle refueling property credit (Form 8911); credit to holders of tax credit bonds (Form 8912); agricultural chemicals security credit (Form 8931); credit for employer differential wage payments (Form 8932); credit for carbon dioxide sequestration (Form 8933); plug-in electric drive motor vehicle credit (Form 8936); credit for small employer heath insurance premiums (Form 8941); qualified sick and family leave credit (Schedule G, lines 17 and 18); and new employee retention credit (Form 7200).
    - Determine if any portion of the above credits is allocable to beneficiaries.
- Other Taxes and Payments.
    - Household employment taxes. Determine whether: (i) for FICA purposes, the estate or trust paid any one household employee cash wages of $2,400 or more in 2022 ($2,600 for 2023). In figuring this amount, combine amounts paid by the trust or estate with amounts paid by the decedent or beneficiary; (ii) for FUTA purposes, the estate or trust paid total cash wages of $1,000 or more in any calendar quarter in 2021 or 2022 to household employees; and (iii) for income tax purposes, the estate or trust withheld any federal income tax during 2022 at the request of the household employee. Schedule H of Form 1040 is used to report household employment taxes. Bear in mind that the trust's or estate's estimated tax calculations must include the required payments of FICA, FUTA and withheld income tax with respect to domestic service employees.
    - Alternative minimum tax (AMT). An estate or trust computes its AMT by determining distributable net income on a minimum tax basis (distributable net alternative minimum taxable income or DNAMTI). The estate or trust then allocates to each beneficiary his or her proportionate share of the income distribution deduction on a minimum basis. Schedule I of Form 1041 is used by

the fiduciary to compute: (1) the estate's or trust's alternative minimum taxable income; (2) the income distribution deduction on a minimum tax basis; and (3) the estate's or trust's AMT. Schedule I must be completed if the estate or trust takes an income distribution deduction, regardless of whether it is liable for the AMT. If the estate or trust doesn't take an income distribution deduction and it isn't subject to the AMT, Schedule I need not be completed.

- If the estate or trust received a qualifying lump-sum distribution from a qualified employee benefit plan, determine the tax consequences of the distribution to the estate or trust.
- Determine whether the estate or trust is liable for any investment credit recapture or low-income housing credit recapture.
- Determine whether estimated tax payments were made for 2022 and whether any overpayment from 2021 was applied toward 2022 estimated tax.
- Determine whether any payment was made with a request for extension of time to file.
- Consider whether to make the election to have any part of an overpayment of estimated tax for 2022 treated as a payment of estimated tax made by a beneficiary or beneficiaries. The election is made on Form 1041-T, which must be filed on or before the 65th day after the close of the estate's or trust's tax year. A decedent's estate can make this election only for its final year.
- Determine whether estimated tax payments should be made for 2023.

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THE AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL

2023 TAX TABLES

Including Certain Provisions in SECURE 2.0 Relating to Plan Distributions

COMPILING EDITORS

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SELECTED FEDERAL[1] TAX RETURN DUE DATES

April 18, 2023	First estimated installment, calendar year 1041s, and 709s
April 18, 2023[2]	1040s, and taxes on 1040s for 2022
May 15, 2023	Form 990
June 15, 2023	Second estimated installment
September 15, 2023	Third estimated installment
October 2, 2023	2022 1041s with 5½ month extension
October 16, 2023	2022 1040s with 6-month extension
January 16, 2024	Fourth estimated installment

[1] State tax deadline extensions may vary.
[2] Table does not include extensions for certain disaster areas.

TAX TABLES

Revised through April 18, 2023

Although care was taken to make these Tax Tables an accurate, handy reference, they should not be relied upon as the final basis for action. Neither the College nor the individual editors and advisors (who have volunteered their time and experience in the preparation of the tables) assume any responsibility for the accuracy of the information contained in the tables.

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INCOME TAX

Married Filing a Joint Return
[or surviving spouse as defined in IRC 2(a)]
Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $22,000	-0-	10%
$22,000	$2,200	12%
$89,450	$10,294	22%
$190,750	$32,580	24%
$364,200	$74,208	32%
$462,500	$105,664	35%
$693,750	$186,601.50	37%

“Taxable income” means:

1. Adjusted gross income (AGI) as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $27,700** increased by $1,500 for each taxpayer who is blind or who is over age 65 (or, if both, by $3,000), and
3. Any deduction for qualified business income (QBI).

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. “Miscellaneous deductions” are not allowed. The deduction for state and local taxes is limited to $10,000.

**If either taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of (a) $1,250 or (b) $400, plus earned income [IRC 63(c)(5)].

For federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex.

Head of Household
[as defined in IRC 2(b) and, if married living apart with dependent child, see IRC 7703(b)]
Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $15,700	-0-	10%
$15,700	$1,570	12%
$59,850	$6,868	22%
$95,350	$14,678	24%
$182,100	$35,498	32%
$231,250	$51,226	35%
$578,100	$172,623.50	37%

"Taxable income" means:

1. Adjusted gross income ("AGI") as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $20,800** increased by $1,850 if taxpayer is blind or over age 65 (or, if both, by $3,700 [IRC 63(f)]), and
3. Any deduction for qualified business income (QBI).

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $10,000.

**If either taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of (a) $1,250 or (b) $400, plus earned income [IRC 63(c)(5)].

Single Individual
Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $11,000	-0-	10%
$11,000	$1,100	12%
$44,725	$5,147	22%
$95,375	$16,290	24%
$182,100	$37,104	32%
$231,250	$52,832	35%
$578,125	$174,238.50	37%

"Taxable income" means:

1. Adjusted gross income (AGI) as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $13,850 ** increased by $1,850 if taxpayer is blind or over age 65 (or, if both, by $3,700), and
3. Any deduction for qualified business income (QBI).

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $10,000.

**If taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of (a) $1,250 or (b) $400, plus earned income [IRC 63(c)(5)].

KIDDIE TAX—Unearned income of a child under age 18, and in some cases age 18 to 23, is taxed for 2023 at the parent's marginal rate [IRC 1(g)]. For 2023, the first $1,250 of a child's unearned income qualifies for the standard deduction, the next $1,250 is taxed at the child's income tax rate, and unearned income above $2,500 is taxed at the parent's marginal income tax rate.

Married Filing a Separate Return

Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $11,000	-0-	10%
$11,000	$1,100	12%
$44,725	$5,147	22%
$95,375	$16,290	24%
$182,100	$37,104	32%
$231,250	$52,832	35%
$346,875	$93,300.75	37%

"Taxable income" means:

1. Adjusted gross income (AGI) as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $13,850** increased by $1,500 if taxpayer is blind or over age 65 (or, if both, by $3,000), but if either spouse itemizes deductions, the other has a zero standard deduction [IRC 63(c)(6)], and
3. Any deduction for qualified business income (QBI).

A portion of Social Security benefits ("SSB") may be included in gross income [IRC 86]. The amount included is the lesser of:

a. 85% of SSB or
b. 85% of MAGI-PLUS.***

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $5,000.

**If the taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of $1,250 or the sum of earned income plus $400 [IRC 63(c)(5)].

***MAGI-PLUS is AGI (without any SSB) plus IRC 135 excludable tuition bond income; IRC 137 excludable employee adoption assistance benefit; IRC 221 interest deduction on education loans; IRC 222 qualified tuition; IRC 911, 931, and 933 excludable foreign earned income; tax exempt interest; and 50% of SSB.

NOTE: For any taxable year in which one spouse dies, the surviving spouse must file either a joint return or a married filing separately return [IRC 6013(d)(1)(B)].

Trusts and Estates

No attempt is made here to describe the tax rules applicable to special kinds of irrevocable trusts (such as **charitable trusts, QSFs, ESBTs, QSSTs, bankruptcy estates, legal life estates, qualified plan trusts**, and so on).

To the extent that any portion of an irrevocable trust is treated as a grantor trust under IRC 671, the grantor reports the income, deductions, and credits attributable to that portion as though the grantor owned that portion.

Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $2,900	-0-	10%
$2,900	$290	24%
$10,550	$2,126	35%
$14,450	$3,491	37%

Tax Years Beginning in 2022

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $2,750	-0-	10%
$2,750	$275	24%
$9,850	$1,979	35%
$13,450	$3,239	37%

"Taxable income" means:

1. Gross income as defined in IRC 61,
2. Less itemized deductions (other than miscellaneous itemized deductions),
3. Less other deductions "which would not have been incurred if the property were not held in such trust or estate,"
4. Less distribution deduction under IRC 651 or 661, and
5. Less a personal exemption under IRC 642(b) of:

   $600 for an estate,

   $300 for a trust that is required to distribute all of its income currently, or

   $100 for all other trusts.

A. Quarterly estimated tax payments are required for all trust taxable years, and for all estate taxable years ending after the second anniversary of death. For this purpose, a trust:
   1. All of which was treated as owned by a decedent and
   2. To which the residue of the decedent's estate will pass by (or, if there is no will, which is the trust primarily responsible for paying debts, taxes, and expenses) is treated like an estate [IRC 6654(l)].

B. Trust tax years, except for wholly charitable trusts, must close on December 31 [IRC 645].

C. The "65 day" and "separate share" rules under IRC 663 (b) and (c) apply to both "complex" trusts under IRC 661 and 662 and estates.

D. Losses on transactions between an estate and its beneficiaries or trusts and their beneficiaries are disallowed, but losses that result from an estate's satisfaction of a pecuniary bequest are not disallowed [IRC 267(b)(13)].

E. Certain revocable trusts are treated as part of an estate for income tax purposes,
   1. If a trustee of a decedent's revocable trust and the decedent's executor, if any, irrevocably elect such treatment on a statement attached to the estate's timely filed (including extensions) first year income tax return, and
   2. If the decedent's revocable trust was a "qualified revocable trust"—that is, it was treated as owned by the decedent under IRC 676 by reason of the decedent's power to revoke such trust [without regard to IRC 672(e)], then such trust will be taxed as part of the estate (subject to estate, rather than trust, income tax rules) for tax years of the estate ending before the "applicable date"—which is:
      a. The second anniversary of the decedent's death or
      b. If an estate tax return is required to be filed, the date which is the 6-month anniversary of the final determination of estate tax. A qualified revocable trust can be a portion of a revocable trust (for example, one spouse's portion of a married couple's joint revocable trust).

Capital Gains Rates and Rules
For Individuals

A. Maximum capital gains rates.

Capital assets held for more than one year are taxed at long term capital gains rates. Short-term gains (on assets held one year or less) are included in ordinary income. Prior to 2018, noncorporate taxpayers paid tax on net capital gains at a tax rate of (a) 20% if the gain would be taxed at the 39.6% rate if it were ordinary income; (b) 15% if the gain would be taxed at the 25%, 28%, 33%, or 35% rate if it were ordinary income; and (c) 0% if the gain would be taxed at a 10% or 15% rate if it were ordinary income. However, for 202, long-term capital gains are taxed at their own brackets as follows:

	Single	Joint or Surviving Spouse	Head of Household	Married Filing Separately
0% tax bracket	$0–44,625[2]	$0–89,250	$0–59,750	$0–44,625
15% tax bracket	$44,625–492,300[3]	$89,250–553,850	$59,750–523,050	$44,625–276,900
20% tax bracket	over $492,300	over $553,850	over $523,050	over $276,900

Special rates apply to capital gain on unrecaptured section 1250 gain (a maximum rate of 25%) and capital gain on collectibles (a maximum rate of 28%). The benefit of these maximum rate provisions does not apply to the extent net capital gain is elected to be included in investment income for purposes of computing deductible investment interest expense under IRC 163(d).

In addition, the 3.8% net investment income tax includes net gain included in gross income from the disposition of property other than certain property held in a trade or business. In the case of an individual, the 3.8% tax is imposed on the lesser of net investment income or the excess of modified adjusted gross income over the threshold amount. The threshold amount is $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case.

B. Net capital losses.

Net capital losses are deductible against ordinary income up to $3,000 ($1,500 for married filing separately) per year [IRC 1211(b)]. For carryover purposes, under IRC 1212(b)(2), such capital loss ("CL") deduction "uses up" net short-term capital losses ("STCL") first, and is the lesser of:

1. Such CL deduction [that is, such $3,000 (or $1,500) amount or the lesser amount of net CL] or
2. Taxable income after adding back (a) said CL deduction and (b) personal exemptions (with any allowable deduction over gross income for such year taken into account as negative taxable income).

The remaining current year net STCL (the excess of STCL over LTCG) and net LTCL (the excess of LTCL over STCG) are carried over to future years (but not beyond death—see Rev. Rul. 74-175).

C. Dividend income.

Dividends are taxed at the same rates as ordinary income, except for qualified dividends which are taxed at capital gains rates. [IRC 1(h)(11)].

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[2] $2,800 for an estate or trust.

[3] $13,700 for an estate or trust.

Alternative Minimum Tax [IRC 55]

Exemption Amounts

2023

Single	$81,300
Married filing jointly	$126,500
Married filing separately	$63,250
Trusts and estates	$28,400

Excess Taxable Income Above Which 28% Tax Rate Applies

Married filing separately	$110,350
Joint returns, unmarried, trusts and estates	$220,700

Amounts Used to Determine Phaseout of Exemption

Single	$578,150
Married filing jointly	$1,156,300
Married filing separately	$578,150
Trusts and estates	$94,600

The AMT exemption amounts and the dollar amounts at which the phase-out of the basic AMT exemption amount begins are indexed for inflation. Certain nonrefundable personal credits may offset AMT liability.

Long-Term Care Insurance Premiums Allowed As "Medical Care" [IRC 213(d)(10)]

Attained Age before Close of the Tax Year	2023 Maximum Premium Deduction	2022 Maximum Premium Deduction
40 or less	$480	$450
More than 40, but no more than 50	$890	$850
More than 50, but no more than 60	$1,790	$1,690
More than 60, but no more than 70	$4,770	$4,510
More than 70	$5,960	$5,640

Health Savings Accounts (HSA)

Limit on Deductible Contributions [IRC 223]

Self-Only Coverage: For taxable years beginning in 2023, the term "high deductible health plan" as defined in IRC 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,650 and not more than $3,950, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $5,300.

Family Coverage: For taxable years beginning in 2023, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $5,300 and not more than $7,900, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $9,650.

Mileage Rates for Deduction Purposes

	2023	2022
Business	$.655	$.585
Charitable	$.14	$.14
Medical/Moving	$.22	$.18

Section 199A

Tax law changes which became effective on January 1, 2018, permit individuals a 20% deduction from qualified business income from a partnership, S corporation, or sole proprietorship. The deduction is limited to the greater of (1) 50% of the W-2 wages with respect to the trade or business, or (2) the sum of 25% of the W-2 wages, plus 2.5% of the unadjusted basis immediately after acquisition of all qualified property (generally, tangible property subject to depreciation under IRC 167). Taxpayers with taxable years beginning in 2023 and taxable income for the year of less than $182,100 ($364,200 for married filing jointly) are not subject to the W-2 wage limitations, and the limitation is phased in for taxpayers with taxable income above those thresholds. Income from specified service businesses is not excluded from qualified business income for taxpayers with taxable income under the same threshold amounts. A full discussion of this complex new section is beyond the scope of this publication.

Corporate Income Tax

1. Corporations are taxed at a flat 21% rate.
2. Corporate net capital gains (whether short-term or long-term) are taxable income taxed at the same rates as corporate ordinary income.
3. Excess corporate capital losses are subject to a 3-year carryback and 5-year carry forward (as short-term capital loss) but may be used only to reduce corporate capital gains [IRC 1212(a)].
4. The NOL deduction for a tax year is equal to the lesser of (1) the aggregate of the NOL carryovers to such year, plus the NOL carry-backs to such year or (2) 80% of taxable income (determined without regard to the deduction) [IRC 172(a)]. Generally, NOLs can no longer be carried back but are allowed to be carried forward indefinitely [IRC 172(b)(1)(A)].

Personal holding company penalty tax—if a corporation is a “personal holding company,” it must pay a penalty tax of 20% on its “undistributed personal holding company income” less any “deficiency dividend” under IRC 547 [IRC 541].

Corporate alternative minimum tax (AMT) has been repealed for years beginning after 2017.

SOCIAL SECURITY

General Rules

2023 Social Security and Medicare Taxes

a. An employer pays a 7.65% FICA tax, consisting of:
   1) 6.20% Social Security tax on the first $160,200 of an employee's wages (maximum tax is $9,932.40 [6.20% of $160,200]), plus
   2) 1.45% Medicare tax on the employee's total wages (no ceiling).
b. An employee pays:
   1) 6.20% Social Security tax on the first $160,200 of wages (maximum tax is $9,932.40 [6.20% of $160,200]), plus
   2) 1.45% Medicare tax on the first $200,000 of wages ($250,000 for joint returns; $125,000 for married taxpayers filing a separate return), plus
   3) 2.35% Medicare tax (regular 1.45% Medicare tax plus 0.9% additional Medicare tax) on all wages in excess of $200,000 ($250,000 for joint returns; $125,000 for married taxpayers filing a separate return).

Maximum Allowable Retirement "Earnings"

a. If under full retirement age, $1 is deducted from benefits for every $2 earned over earnings limit—$21,240 in 2023.
b. Full retirement age depends on year of birth. For persons born after 1959, full retirement age is 67 years.
c. In the year in which full retirement age is reached, $1 in benefits is deducted for every $3 earned above $56,520, but only earnings before the month in which full retirement age is reached are counted.
d. Beginning with the month of the birthday in which full retirement age is attained, all earnings are ignored.

Social Security Full Retirement Age

Year of Birth	Full Retirement Age	Age 62 Reduction (in Months)	Maximum Reduction
1937 and earlier	65	36	20.00%
1938	65 and 2 months	38	20.83%
1939	65 and 4 months	40	21.67%
1940	65 and 6 months	42	22.50%
1941	65 and 8 months	44	23.33%
1942	65 and 10 months	46	24.17%
1943-1954	66	48	25.00%
1955	66 and 2 months	50	25.83%
1956	66 and 4 months	52	26.67%
1957	66 and 6 months	54	27.50%
1958	66 and 8 months	56	28.33%
1959	66 and 10 months	58	29.17%
1960 and later	67	60	30.00%

Social Security Delayed Retirement Credits

Social Security benefits are increased if retirement is delayed beyond full retirement age. Delayed retirement credits max out at age 70. If retirement is delayed, Medicare is still available at age 65.

Year of Birth	Yearly Rate of Increase	Monthly Rate of Increase
1933–1934	5.5%	11/24 of 1%
1935–1936	6.0%	1/2 of 1%
1937–1938	6.5%	13/24 of 1%
1939–1940	7.0%	7/12 of 1%
1941–1942	7.5%	5/8 of 1%
1943 or later	8.0%	2/3 of 1%

Federal Income Taxation of Social Security Benefits

Determining if Subject to Taxation: Social Security payments, including disability and survivor benefits, are partially subject to taxation if modified adjusted gross income (MAGI), plus one-half of such benefits, exceed the "Base Amount" of $32,000 (if married filing jointly), $25,000 (for most other individuals), and zero (for married individuals filing separately but not living apart for the entire year). MAGI is AGI for regular tax purposes, with a number of possible adjustments, plus exempt interest [IRC 86].

If Taxable, Amount of Benefits Subject to Taxation: If subject to taxation, the amount of such benefits which are taxable will generally be the lesser of: (A) 50% of such Social Security payments or (B) one-half of the amount by which MAGI exceeds the Base Amount. However, if MAGI and one-half of such benefits exceed the Adjusted Base Amount of $44,000 (if married filing jointly), $34,000 (for most other individuals) or zero (for married individuals filing separately but not living apart for the entire year), then a complex formula can subject up to 85% of such Social Security payments to taxation [IRC 86].

ESTATE AND GIFT TAX

Tax Exclusion, Credits, and Exemption Amounts

1998–2023 Transfers

Year	Estate Tax Applicable Exclusion Amounts*	Applicable Estate Tax** Credit Amounts***	Gift Tax Lifetime Exemption	Starting Tax Rate on Estate (or Gift) above Exclusion Amount
1998	$625,000	$202,050	$625,000	37%
1999	$650,000	$211,300	$650,000	37%
2000	$675,000	$220,550	$675,000	37%
2001	$675,000	$220,550	$675,000	37%
2002	$1,000,000	$345,800	$1,000,000	41%
2003	$1,000,000	$345,800	$1,000,000	41%
2004	$1,500,000	$555,800	$1,000,000	45%
2005	$1,500,000	$555,800	$1,000,000	45%
2006	$2,000,000	$780,800	$1,000,000	46%
2007	$2,000,000	$780,800	$1,000,000	45%
2008	$2,000,000	$780,800	$1,000,000	45%
2009	$3,500,000	$1,455,800	$1,000,000	45%
2010	$5,000,000	$1,730,800	$1,000,000	35%
2011	$5,000,000	$1,730,800	$5,000,000	35%
2012	$5,120,000	$1,772,800	$5,120,000	35%
2013	$5,250,000	$2,045,800	$5,250,000	40%
2014	$5,340,000	$2,081,800	$5,340,000	40%
2015	$5,430,000	$2,117,800	$5,430,000	40%
2016	$5,450,000	$2,125,800	$5,450,000	40%
2017	$5,490,000	$2,141,800	$5,490,000	40%
2018	$11,180,000	$4,417,800	$11,180,000	40%
2019	$11,400,000	$4,505,800	$11,400,000	40%
2020	$11,580,000	$4,577,800	$11,580,000	40%
2021	$11,700,000	$4,625,800	$11,700,000	40%
2022	$12,060,000	$4,769,800	$12,060,000	40%
2023	$12,920,000	$5,113,800	$12,920,000	40%

*The "applicable exclusion amount" is the taxable amount that would produce each year's credit amount shown above if that taxable amount were subject to tax computed on the unified transfer tax rate table [**see** IRC 2010(c)]. The applicable exclusion amount is indexed for inflation for years after 2011. The applicable exclusion amount for the surviving spouse of a deceased spouse dying after 12/31/2010 includes the "deceased spousal unused exclusion amount" ("DSUE Amount").

**The estate and gift tax exemption amounts were not the same for years 2004-2010, and credit shown only applies to the estate tax.

*******The applicable credit is reduced by 20% of the prior law's lifetime $30,000 specific gift tax exemption used in the calculation of taxable gifts made after September 8, 1976, and before 1977 [IRC 2010(b)].

Special Estate Reduction Limits

Special Use Valuation—Maximum reduction is $1,310,000 in 2023, up from $1,230,000 in 2022. Amount is adjusted for inflation annually [IRC 2032A].

Qualified Conservation Easement—Maximum exclusion is $500,000 [IRC 2031(c)].

Annual Gift Tax Exclusion IRC 2503(b)

Calendar Years	Amount
1932 through 1938	$5,000
1939 through 1942	$4,000
1943 through 1981	$3,000
1982 through 2001	$10,000
2002 through 2005	$11,000
2006 through 2008	$12,000
2009 through 2012	$13,000
2013 through 2017	$14,000
2018 through 2021	$15,000
2022	$16,000
2023	$17,000

Former Maximum Credit for State Death Taxes

Taxable Estate	Adjusted Taxable Estate*	Credit on Left Column Bracket Amount	Credit Rate on Excess over Bracket Amount
$100,000	$40,000	-0-	0.8%
$150,000	$90,000	$400	1.6%
$200,000	$140,000	$1,200	2.4%
$300,000	$240,000	$3,600	3.2%
$500,000	$440,000	$10,000	4.0%
$700,000	$640,000	$18,000	4.8%
$900,000	$840,000	$27,600	5.6%
$1,100,000	$1,040,000	$38,800	6.4%
$1,600,000	$1,540,000	$70,800	7.2%
$2,100,000	$2,040,000	$106,800	8.0%
$2,600,000	$2,540,000	$146,800	8.8%
$3,100,000	$3,040,000	$190,800	9.6%
$3,600,000	$3,540,000	$238,800	10.4%
$4,100,000	$4,040,000	$290,800	11.2%
$5,100,000	$5,040,000	$402,800	12.0%
$6,100,000	$6,040,000	$522,800	12.8%
$7,100,000	$7,040,000	$650,800	13.6%
$8,100,000	$8,040,000	$786,800	14.4%
$9,100,000	$9,040,000	$930,800	15.2%
$10,100,000	$10,040,000	$1,082,800	16.0%

*"Adjusted taxable estate" means the taxable estate reduced by $60,000 [IRC 2011(b)]. **NOTE:** Although not applicable for federal estate tax purposes for decedents dying after 12/31/04, several states still base their state death tax on the credit for state death taxes.

GENERATION-SKIPPING TRANSFER TAX

GST Tax Exemption

1998–2023 Transfers

Year	GST Exemption*	Flat Tax Rate
1998	$1,000,000	55%
1999	$1,010,000	55%
2000	$1,030,000	55%
2001	$1,060,000	55%
2002	$1,100,000	50%
2003	$1,120,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	$5,000,000	0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%
2016	$5,450,000	40%
2017	$5,490,000	40%
2018	$11,180,000	40%
2019	$11,400,000	40%
2020	$11,580,000	40%
2021	$11,700,000	40%
2022	$12,060,000	40%
2023	$12,920,000	40%

*Indexed for inflation for years after 2011.

Generation-Skipping Transfer Tax Rules

The term "**generation-skipping transfer**" (GST) means a taxable distribution, taxable termination, or direct skip, all as defined in IRC 2612.

Effective Dates

The GST tax applies to **any GST made after 10/22/86**, the date of enactment [TRA '86 §1433(b) *et seq*.]. **However—**

1. **Pre-enactment period**—transfers made **after 09/25/85** and before 10/23/86 are to be **treated as though made on 10/23/86.**
2. **Grandfathered trusts**—any trust which was **"irrevocable" on 09/25/85** (other than a general power of appointment or "estate" type marital trust) is "grandfathered"—that is, the GST tax applies to it only to the extent that a taxable distribution or taxable termination involves property added (or deemed added) to the trust after 09/25/85.

3. **Incompetent persons**—any transfer of assets included in the gross estate of a decedent who was mentally incompetent on **10/22/86** and did not regain competence before death is exempt (except assets transferred to the incompetent person after 08/03/90 or from a post-10/21/88 QTIP trust).

Rates, Exemptions, and Definitions

A. **The GST tax rate** is the maximum federal estate tax rate, for example, 40% after 2012. To reflect the extent to which the transferor's GST exemption is allocated to the trust (or transfer), the 40% rate is multiplied by the trust's (or transfer's) **"inclusion ratio"** (described below) to produce the **"applicable rate"** [IRC 2641]. This rate is then applied to the taxable amount of the generation-skipping transfer to determine the GST tax on that transfer [IRC 2602]. If the transfer is a taxable distribution or termination, the taxable amount includes the GST tax itself - like the estate tax, the GST tax is tax inclusive [IRC 2621(b) and 2622]. On the other hand, direct skips, like the gift tax, are tax exclusive [IRC 2623].
B. **The GST exemption** is equal to the estate tax exemption beginning in 2004. The trust's (or transfer's) **inclusion ratio is one minus the "applicable fraction."** The numerator of the applicable fraction is the amount of GST exemption allocated to the trust (or transfer), and the denominator is the value of the property transferred, net of transfer taxes thereon [IRC 2641],
    1. **Allocations of a transferor's GST exemption** are normally made on the transferor's timely filed gift or estate tax return reporting the transfer. However, **unless that return directs otherwise (or an election out is made on a prior return),** unused (that is, not previously allocated) GST exemption is **automatically allocated** (i) to lifetime direct skips; (ii) to "indirect skips" to GST trusts; (iii) after death, to direct skips occurring at decedent's death and then to trusts of which the decedent is the transferor and from which taxable distributions or terminations might occur [IRC 2632(b) and (c)]. GST exemption may be **retroactively allocated** to certain trusts in the case of an unusual order of deaths [IRC 2632(d)].
    2. **"ETIP period"**—with two exceptions [**see** Treas. Reg. §§26.2632-1(c)(2)(ii)(A) and (B)], GST exemption is not allocable to any transfer as long as the transferred property would be includable (except under IRC 2035) in the transferor's or transferor's spouse's estate if either were to die. The end of such estate tax inclusion period becomes the transfer and valuation date for exemption allocation purposes [IRC 2642(f)].
C. **Annual exclusion gifts** to an individual skip person have a zero inclusion ratio for GST tax purposes. This rule applies to annual exclusion gifts to a skip person trust only if its assets are exclusively for, and will be includable in the gross estate of, the trust beneficiary [IRC 2642(c)].
D. **"Reverse QTIP election"**—the creator of a QTIP trust (or the creator's executor) may elect under IRC 2652(a)(3) to continue to be treated as the transferor of that trust after the creator's spouse's death.
E. In the case of a GST nonexempt trust, subjecting its assets to the gift and/or estate tax of a person (such as the child of the grantor who is that trust's primary beneficiary) will, on distribution (or the child's death), **change the "transferor"** of such assets to that child. This will have the effect of eliminating from GST tax what would otherwise have been a taxable termination on the child's death to the child's children. This is so because the determination as to whether an event is a GST is made by reference to the most recent transfer subject to the estate or gift tax—which establishes the identity of the transferor and thus the identity of the skip and non-skip persons [Treas. Reg. § 26.2611-1].

F. **Tuition and medical expense** direct payments [under IRC 2503(e)] are exempt from the GST tax [IRC 2642(c)(3)]. In addition, transfers from a trust which transfers would be exempt from gift tax under IRC 2503(e) if made by an individual are exempt from GST tax [IRC 2611(b)].
G. Under the **predeceased child exemption**, if an individual who is a descendant of a parent of transferor (or of a transferor's spouse or former spouse) dies before his or her parent, his or her issue will all move up one generation; provided, in the case of an individual who is not a lineal descendant of the transferor, that the transferor has no lineal descendants at the time of the transfer [IRC 2651(e)].
H. **Descendants who survive 90 days or less** will be treated as having predeceased the transferor if either the governing instrument or local law so provides [Treas. Reg. § 26.2651-1(a)(2)(iii)].

OTHER INFLATION-ADJUSTED NUMBERS

Description	2023	2022
Annual Exclusion Gifts [IRC 2503(b)(2)]	$17,000	$16,000
Non-Citizen Spouse Annual Exclusion [IRC]	$175,000	$164,000
Reportable Gifts Received from Foreign Persons [IRC 6039F]	$18,567	$17,339
Decrease in Value of Qualified Real Property in Decedent's Gross Estate [IRC 2032A(a)]	$1,310,000	$1,230,000
Estate Tax Installment Payment Interest 2% Portion [IRC 6166 & 6601(j)]	$1,750,000	$1,640,000

NOTE: The first two items go up in $1,000 increments and the last two in $10,000 increments. The third item goes up in actual dollar-amount increments.

TREASURY UNISEX ACTUARIAL TABLE EXAMPLES

The current IRS actuarial tables incorporate the IRS updated mortality assumptions that became effective on May 1, 2009. In May 2022, proposed new actuarial tables were issued, based on mortality experience around 2010. For the period from January 1, 2021, to the effective date of regulations implementing the new tables, either the current or proposed tables may be used. IRC 7520 generally requires use of an interest rate equal to 120% of the applicable federal mid-term rate (rounded to the nearest 2/10ths of 1%). However, if a charitable contribution is allowable for any part of the assets transferred, the taxpayer may elect to use the 7520 rate for the month in which the valuation date occurs or for either of the 2 months preceding that month.

These Example Tables Use the 7520 Rate for February 2023 of 4.6% and the Proposed New Mortality Tables.

Single Life

Present value of an **annuity for life** and also of **life income** and **remainder** interests

Age	Annuity*	Life Estate	Remainder
0	38.3436	.76687	.23313
10	36.2021	.72404	.27596
25	31.768	.63536	.36464
40	26.0634	.52127	.47873
50	21.5904	.43181	.56819
55	16.0626	.38365	.61635
60	16.733	.33466	.66534
65	14.2943	.28589	.71411
70	11.8701	.2374	.7626
75	9.5385	.19077	.80923
80	7.4324	.14865	.85135
85	5.6216	.11243	.88757
90	4.1434	.08287	.91713

Table S—Based on Life Table 2010CM (PROPOSED)

Interest at 4.6%

Age	Annuity*	Life Estate	Remainder
0	20.74550	0.95429	0.04571
10	20.42350	0.93948	0.06052
25	19.34550	0.88989	0.11011
40	17.48800	0.80445	0.19555
50	15.60970	0.71805	0.28195
55	14.48150	0.66615	0.33385
60	13.20540	0.60745	0.39255
65	11.76910	0.54138	0.45862
70	10.19870	0.46914	0.53086
75	8.53060	0.39242	0.60758
80	6.83370	0.31435	0.68565
85	5.20580	0.23947	0.76053
90	3.81290	0.17539	0.82461
95	2.75310	0.12664	0.87336
100	2.01680	0.09277	0.90723

IRS Mortality Table 2000CM

IRS mortality assumptions under IRC 7520 were previously based on Mortality Table 2000CM, which shows on a unisex basis how many lives are living (lx) at each age between birth (age 0) and age 109. In May 2022, proposed new actuarial tables were issued based on mortality experience around 2010. For the period from January 1, 2021 to the effective date of regulations implementing the new tables, either the correct or proposed tables may be used. To calculate the probability of survival from one age to another age, divide the lx value for the older age by the lx value for the younger age.

Age x	l_x	Age x	l_x	Age x	l_x
0	100000	37	96921	74	66882
1	99305	38	96767	75	64561
2	99255	39	96600	76	62091
3	99222	40	96419	77	59476
4	99197	41	96223	78	56721
5	99176	42	96010	79	53833
6	99158	43	95782	80	50819
7	99140	44	95535	81	47694
8	99124	45	95268	82	44475
9	99110	46	94981	83	41181
10	99097	47	94670	84	37837
11	99085	48	94335	85	34471
12	99073	49	93975	86	31114
13	99057	50	93591	87	27799
14	99033	51	93180	88	24564
15	98998	52	92741	89	21443
16	98950	53	92270	90	18472
17	98891	54	91762	91	15685
18	98822	55	91211	92	13111
19	98745	56	90607	93	10773
20	98664	57	89947	94	8690
21	98577	58	89225	95	6871
22	98485	59	88441	96	5315
23	98390	60	87595	97	4016
24	98295	61	86681	98	2959
25	98202	62	85691	99	2122
26	98111	63	84620	100	1477
27	98022	64	83465	101	997
28	97934	65	82224	102	650
29	97844	66	80916	103	410
30	97750	67	79530	104	248
31	97652	68	78054	105	144
32	97549	69	76478	106	81
33	97441	70	74794	107	43
34	97324	71	73001	108	22
35	97199	72	71092	109	11
36	97065	73	69056	110	0

Table 2010CM (PROPOSED)

Age x	l_x	Age x	l_x	Age x	l_x
0	100,000.00	37	97,193.66	74	71,177.55
1	99,382.28	38	97,058.84	75	69,174.83
2	99,341.16	39	96,915.25	76	67,044.59
3	99,313.80	40	96,761.20	77	64,773.93
4	99,292.72	41	96,595.51	78	62,366.05
5	99,276.45	42	96,416.30	79	59,795.50
6	99,261.55	43	96,220.61	80	57,080.84
7	99,248.33	44	96,005.41	81	54,213.71
8	99,236.50	45	95,768.60	82	51,205.27
9	99,226.09	46	95,509.98	83	48,059.88
10	99,217.03	47	95,229.06	84	44,808.51
11	99,208.80	48	94,923.45	85	41,399.79
12	99,199.98	49	94,589.88	86	37,895.25
13	99,188.21	50	94,225.50	87	34,313.98
14	99,170.64	51	93,828.33	88	30,700.82
15	99,145.34	52	93,398.01	89	27,106.68
16	99,111.91	53	92,934.52	90	23,586.75
17	99,070.69	54	92,438.08	91	20,198.02
18	99,021.50	55	91,907.95	92	16,996.17
19	98,964.16	56	91,342.02	93	14,032.08
20	98,898.61	57	90,737.24	94	11,348.23
21	98,824.20	58	90,090.97	95	8,975.661
22	98,741.32	59	89,401.06	96	6,931.559
23	98,652.16	60	88,665.95	97	5,218.261
24	98,559.87	61	87,883.66	98	3,823.642
25	98,466.80	62	87,051.88	99	2,722.994
26	98,373.71	63	86,167.86	100	1,882.108
27	98,280.09	64	85,226.77	101	1,261.083
28	98,185.51	65	84,221.59	102	818.2641
29	98,089.05	66	83,142.34	103	513.7236
30	97,989.90	67	81,978.28	104	311.8784
31	97,887.47	68	80,728.83	105	183.0200
32	97,781.58	69	79,387.95	106	103.8046
33	97,672.13	70	77,957.53	107	56.91106
34	97,559.20	71	76,429.84	108	30.17214
35	97,442.53	72	74,797.63	109	15.47804
36	97,321.14	73	73,049.33	110	0.00000

LIFE EXPECTANCY TABLES

Examples

Age	Male[1]	Female[1]	Unisex[2]	Age	Male[1]	Female[1]	Unisex[2]
0	76.3	81.2	N/A	60	21.7	24.7	24.2
10	66.9	71.7	71.7	65	18.0	20.6	20.0
20	57.2	61.8	61.9	70	14.5	16.6	16.0
30	47.9	52.1	52.2	75	11.2	13.0	12.5
40	38.7	42.6	42.5	80	8.4	9.8	9.5
50	29.8	33.4	33.1	85	6.0	7.0	6.9
55	25.6	28.9	28.6	90	4.1	4.9	5.0

1. 2015 National Center for Health Statistics (male and female rates) not used for taxes.
2. IRC 72 and Treas. Reg. § 1.72-9, Table V (unisex rates used to determine gross income from annuities).

QUALIFIED PLANS

Retirement Plan Contribution Limits

Traditional IRA [IRC 408]	2023	2022
Maximum Contribution	$6,500	$6,000
Catch-Up Contribution (Age 50 or more)	$1,000	$1,000
*Phaseout of Deduction Begins at:		
Modified AGI, Married-Joint Returns	$116,000	$109,000
Modified AGI, Single Returns	$73,000	$68,000
*Deduction is Eliminated After:		
Modified AGI, Married-Joint Returns	$136,000	$129,000
Modified AGI, Single Returns	$83,000	$78,000

*IRA contribution cannot exceed earned income. Phaseout of deduction applies only to taxpayers who actively participate in an employer-sponsored retirement plan.

Roth IRA [IRC 408A]	2023	2022
*Maximum Contribution	$6,500	$6,000
Catch-Up Contribution (Age 50 or more)	$1,000	$1,000
*Phaseout of Allowed Contribution Begins at:		
Modified AGI, Married-Joint Returns	$218,000	$204,000
Modified AGI, Single Returns	$138,000	$129,000
*Contribution is Eliminated After:		
Modified AGI, Married-Joint Returns	$228,000	$214,000
Modified AGI, Single Returns	$153,000	$144,000

*IRA contribution cannot exceed earned income. No contributions are tax deductible.

Simplified Employee Pension IRA (SEP-IRA) [IRC 408(k)]	2023	2022
Employer's Maximum Contribution	$66,000	$61,000
Simple IRA [IRC 408(p)]		
Employee's Maximum Contribution	$15,500	$14,000
Employee Catch-Up Contribution (Age 50 or more)	$3,500	$3,000
IRC 403(b), 401(k) and Roth 401(k) Plans		
Keogh Profit-Sharing Plan Contribution Limit	$66,000	$61,000
IRC 403(b) and 401(k) Plans		
Elective Deferral Limits	$22,500	$20,500
Catch-Up Contributions (Non-Simple Only)	$7,500	$6,500
IRC 415(c) Limit on All Contributions to a Plan	$66,000	$61,000
Maximum Benefit for Defined Benefit Plan	$265,000	$245,000
IRC 401(a)(17) Annual Compensation Limit	$330,000	$305,000

Various Rules Relating to Distributions from Qualified Retirement Plans and IRAs

SPECIAL ALERT: SECURE 2.0 BECAME LAW ON December 29, 2022.

The SECURE Act—The Setting Every Community Up for Retirement Enhancement Act of 2019—was signed into law on December 20, 2019. The provisions in the SECURE Act affecting qualified plans and IRAs (sometimes jointly referred to as "retirement plans") applied almost immediately, i.e., "to plan years beginning after December 31, 2019." **See** Section 401(b) of the SECURE Act (simply referred to as the "SECURE Act").

The SECURE Act contains two primary effective date rules (as well as other effective date provisions relating to specific situations). In general, the SECURE Act applies in the case of qualified plan participants and IRA owners (sometimes jointly referred to as "participants") who die after December 31, 2019. In addition, the SECURE Act applies to successor beneficiaries in the case of participants who died before January 1, 2020, having named a designed beneficiary ("DB") who is taking distributions using a life expectancy method, where the DB dies after December 31, 2019. Other effective date rules in the Act apply to collectively bargained plans and governmental plans.

The SECURE Act contained some provisions applicable to living participants, such as changing the age component of the participant's Required Beginning Date ("RBD") to 72. The SECURE 2.0 Act of 2022, found at Division T of the Consolidated Appropriations Act, 2023 (simply referred to as "SECURE 2.0"), has made further changes to the age component of RBD (now referred to in IRC Section 401(a)(9)(C)(i)(I) as the "Applicable Age"). (**Note:** SECURE 2.0 begins at page 817 and continues through page 946 of the Consolidated Appropriations Act.) In the case of an individual who attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033, the Applicable Age is 73; and in the case of an individual who attains age 74 after December 31, 2032, the Applicable Age is 75. **See** Section 107(c) of SECURE 2.0.

Three of the most significant changes made by the SECURE Act are (i) the creation of a separate category of "designated beneficiaries," referred to as "eligible designated beneficiaries" ("EDBs"); (ii) the imposition of a new "10-year rule" in the case of beneficiaries of the participant's retirement plan who are DBs but not EDBs; and (iii) the allowance of a new type of trust for disabled and chronically ill beneficiaries (two categories of EDBs) called an "Applicable Multi-Beneficiary Trust."

Based on work done by ACTEC's SECURE Act Guidance Task Force, ACTEC submitted two letters to the Treasury, one dated July 14, 2020, and the other dated July 29, 2020, making comments and recommendations regarding numerous provisions in the SECURE Act and requesting the issuance of regulations to clarify certain provisions in the SECURE Act. In the meantime, beneficiaries and their advisors have been making certain assumptions regarding the interpretation of various provisions in the SECURE Act, including the application of the new 10-year rule. Some of those assumptions have turned out to be "different" from the Treasury Department's interpretation of the SECURE Act.

On February 24, 2022, the Treasury Department published proposed regulations (simply referred to as the "proposed regulations") addressing the required minimum distribution rules (the "RMD Rules"), as a result of the SECURE Act. The proposed regulations and the preamble total 275 pages. ACTEC submitted comments to the proposed regulations on May 24, 2022. There are too many provisions in the proposed regulations to cover in this summary. **Note:** At the time of this writing,

the proposed regulations are still proposed regulations and not final regulations. Therefore, only some of the proposed regulations will be discussed in this summary.

Probably the most surprising provisions in the proposed regulations are the provisions explaining the 10-year rule that applies to DBs, to successor beneficiaries of EDBs, and to the participant's minor child once that child reaches the age of majority. **If the participant dies before RBD** and the participant's beneficiary is a DB, so that the 10-year rule applies, that 10-year rule is applied like the 5-year rule, but with the ultimate distribution date being December 31 of the year that contains the 10th anniversary of the participant's death. In that case, no distributions are required prior to the ultimate distribution date. On the other hand, **if the participant dies on or after RBD** (hereafter simply referred to as "after RBD") and the participant's beneficiary is a DB, so that the 10-year rule applies, that DB must take RMDs after the participant's death during distribution years 1 through 9 of the period of the 10-year rule, and then take full distribution of the balance by December 31 of the year that contains the 10th anniversary of the participant's death. In other words, in the case of the death of the participant after RBD with a beneficiary who is a DB, that version of the 10-year rule retains RMDs as under prior law (i.e., maintains the "at least as rapidly rule"), but with a cessation of RMDs when year 10 is reached, the year requiring distribution of the entire remaining balance by year end.

In addition, if the beneficiary of the participant's retirement plan is the participant's minor child (one type of EDB), RMDs must be distributed to (or for the benefit of) the minor child, starting the year after the participant's death. When the child reaches age 21, which is the age of majority per the proposed regulations, the child becomes a DB and is subject to the 10-year rule. Assuming the child does not die before reaching age 31, the full remaining balance will need to be distributed by the time the child reaches age 31 (i.e., 10 years after reaching the age of majority). Further, if an EDB who is taking RMDs on a life expectancy basis dies before the entire amount has been distributed, the beneficiary of the EDB will continue taking RMDs in the same manner as under prior law, but with a full distribution of the entire remaining amount (if any) by December 31 of the year that contains the 10th anniversary of the EDB's death.

Except in the case where the participant dies before RBD, the interpretation of the 10-year rule in the proposed regulations is not what was expected by most professionals who have been advising clients with respect to distributions from retirement plans once the SECURE Act became effective. What this means is that if these provisions in the proposed regulations become final, certain beneficiaries who should have taken an RMD during calendar year 2021 (because the participant died after RBD in the year 2020), but did not do so because they thought the new 10-year rule would be applied exactly like the existing 5-year rule regardless of whether the participant died before or after RBD, have failed to take their RMD for 2021. Failure to take the full amount of an RMD (or other required distribution) incurred a 50% penalty prior to SECURE 2.0. Because the proposed regulations were not yet final as of the fourth quarter of 2022, these same taxpayers may have been unsure regarding whether an RMD was required for year 2022 as well.

Failure to take the full amount of an RMD (or other required distribution) incurs a penalty (excise tax), unless waived. Prior to SECURE 2.0, that penalty was a 50% penalty on the shortfall. Note the unfairness of imposing the penalty in the particular situation described in the prior paragraph: the SECURE Act became effective January 1, 2020, but the proposed regulations were not published until February 24, 2022 (nearly 26 months later). Note further that this interpretation in the proposed regulations was not consistent with the IRS's Publication 590-B, *Distributions from Individual Retirement Accounts (IRAs)*, which was issued on May 13, 2021. Fortunately, on October 7, 2022, the IRS published Notice 2022-53, providing relief to taxpayers and qualified plan administrators with respect to this particular situation. Per Notice 2022-53, if the participant's beneficiary (taxpayer) in this particular situation failed to take his/her 2021 (and 2022) RMD (the

"specified RMD"), the IRS will not impose the usual under-distribution penalty. In addition, if the taxpayer in this situation already paid the under-distribution penalty, the taxpayer can obtain a refund. Further, if the administrator of a qualified plan failed to pay the specified RMD to applicable plan participants during this time period, that failure will not disqualify the plan. The Notice does not say that no RMDs were required in years 2021 and 2022 in this particular situation, only that the penalty will not be imposed on taxpayers (and qualified plans) that failed to satisfy the applicable RMD requirement during these years.

SECURE 2.0 changed the amount of the penalty for failure to take the full amount of an RMD (or other required distribution) from 50% of the under-distributed amount to 25% of the under-distributed amount, with an even lower penalty amount (10%) if the taxpayer is able to correct the under-distribution during the "correction window." **See** Section 302 of SECURE 2.0. Of course, in some cases, the taxpayer may be able to obtain a complete waiver of the under-distribution penalty by filing Form 5329, Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts, if the taxpayer is able to show "reasonable error" and that the taxpayer took "reasonable steps" to correct the error.

Federal Spousal Rights in Qualified Retirement Plans

If the participant participates in a defined benefit plan, the participant's surviving spouse is entitled to a qualified pre-retirement survivor annuity ("QPSA") or qualified joint and survivor annuity ("QJSA"), depending on whether the participant dies before or after the "annuity starting date" (that is, the first day of the first period for which an amount is payable as an annuity [regardless of when or whether payment is actually made] or, in the case of benefits not payable in the form of an annuity, the date on which all events have occurred that entitle the participant to the benefit). Each benefit must be at least 50% of the participant's benefit.

The QPSA or QJSA form of benefit may be waived by the participant if his/her spouse consents (one is not a "spouse" until after the marriage, so a pre-marital consent is ineffective). A spousal consent to a QPSA or QJSA waiver may be specific (requiring a new spousal consent if the participant changes the named beneficiary and/or, in the case of a QJSA, the form of benefit) or general (in which case the participant may change beneficiaries or benefit form without further spousal consent). A spousal consent may be revocable or irrevocable.

A QPSA waiver may only be made on or after the participant's attainment of age 35. A QJSA waiver may only be made within 180 days prior to the annuity starting date. If the participant participates in a defined contribution plan, such as a profit-sharing or stock bonus plan, different rules apply if the plan is exempt from the QPSA and QJSA rules. The plan will be exempt from the QPSA and QJSA rules if (i) benefits are not paid in annuity form; (ii) 100% of the death benefits are payable to the spouse; and (iii) the plan is not a transferee of assets from a plan subject to the QPSA/QJSA rules. In the case of a defined contribution plan, the participant may waive, and the spouse may consent to the waiver of, payment of the plan benefits to the spouse on the participant's death. A spouse has no right to any distributions from an exempt profit-sharing or stock bonus plan that are made during the participant's lifetime.

Minimum Distribution Rules

NOTE: Although the proposed regulations address both defined contribution plans and defined benefit plans, the following sections relate solely to defined contribution plans (and IRAs).

The required minimum distribution rules (RMD Rules) in IRC Section 401(a)(9) are basically income tax rules that apply to defined contribution plans (such as 401(k) plans), Section 403(b) annuities, certain governmental and tax-exempt employee plans, and certain eligible deferred-compensation plans (collectively, "qualified plans"). The RMD rules also apply to IRAs. **See** IRC 401(a)(9), 403(b)(10), 408(a)(6), 457(d)(2)). Although "qualified distributions" from Roth IRAs are not subject to income tax, the SECURE Act also changed the distribution periods applicable to Roth IRAs after the participant's death. **See** Roth IRAs, *infra*. In general, the RMD Rules provide the amount and timing of distributions that must be taken from retirement plans by living participants and by beneficiaries of participants after the death of the participant.

Through the end of 2022, the penalty for failure to take a required distribution (of any type) was 50% of the deficiency. Fortunately, SECURE 2.0 dropped the "regular" penalty for under-distributions to 25% and provided a 10% penalty in cases where the under-distribution is corrected in a timely manner (during the "correction window"). **See** IRC 4974. (The proposed regulations provided an exception to the penalty in the case of the participant's final RMD [which presumably is helpful in cases where the participant dies late in the year]; the penalty is waived as long as the participant's final RMD is distributed to the participant's beneficiary by the beneficiary's tax return filing date, including extensions, for the year during which the participant's final RMD should have been taken.

Life expectancy tables. In certain cases, RMDs are determined using the applicable life expectancy table. The life expectancy tables contain "denominators" (representing years of life expectancy). These denominators used to be called "divisors," but, per the proposed regulations, the term "applicable divisor" must be replaced with the term "applicable denominator," because the 2002 final regulations refer to the applicable divisor as the applicable distribution period, and that will not be a correct reference in view of certain amendments to the RMD Rules made by the SECURE Act.

The life expectancy tables are found in Treas. Reg. § 1.401(a)(9)-9 and consist of (i) the Uniform Lifetime Table (applicable to a living participant and reflecting the joint life expectancy of the participant and an assumed beneficiary who is 10 years younger than the participant); (ii) the Joint and Last Survivor Table (applicable to a living participant whose more than 10 years younger spouse is the participant's sole beneficiary and reflecting the joint life expectancy of the participant and the participant's more than 10 years younger spouse); and (iii) the Single Life Table (applicable after the participant's death in the case of certain beneficiaries who are entitled to a life expectancy distribution and to certain beneficiaries during distribution years 1 through 9 of the applicable 10-year rule). Pursuant to final regulations published on November 12, 2020, new life expectancy tables for purposes of the RMD Rules became effective January 1, 2022. Two of those tables are printed, *infra*.

Distributions During Participant's Lifetime

Required Beginning Date. RMDs to the participant from the participant's retirement plan must begin no later than the participant's RBD. For IRA owners and 5% (or more) owners of the employer sponsoring the qualified plan, RBD is April 1 following the year the participant reaches the "applicable age" (a term added by SECURE 2.0). IRC 401(a)(9)(C)(i). For plan participants who are not 5% owners, if the plan so provides, RBD is April 1 of the calendar year following the later of (i) the year in which the participant reaches the applicable age and (ii) the year in which the participant retires. **See** IRC 401(a)(9)(C)(ii). Per SECURE 2.0, for participants who attain age 72 after December 31, 2022, and attain age 73 before January 1, 2033, the applicable age is 73. For participants who attain age 74 after December 31, 2032, the applicable age is 75. The first

"distribution calendar year" is the calendar year prior to the year in which RBD occurs. A Roth IRA owner does not have an RBD, because no RMDs are required during the Roth IRA owner's lifetime. **See** IRC 408A(c)(4).

Minimum Distribution Amount. The RMD for each distribution calendar year through and including the year of the participant's death, is determined using the Uniform Lifetime Table, unless the participant's spouse is the participant's sole beneficiary and the spouse is more than 10 years younger than the participant, in which case the RMD is determined using the Joint and Last Survivor Table. In each case, the prior year-end balance of the retirement plan is divided by the applicable denominator from the applicable table for the age of the participant (or the joint ages of the participant and the participant's more than 10 years younger sole beneficiary spouse, if applicable) to determine the RMD for that year. Because a new applicable denominator is obtained from the Uniform Lifetime Table (or Joint and Last Survivor Table, as applicable) each year, a living participant's life expectancy is being recalculated. The participant's more than 10 years younger spouse will only be treated as the participant's sole beneficiary for purposes of using the applicable denominators from the Joint and Last Survivor Table if either (i) the spouse is named as the participant's sole, outright beneficiary or (ii) a conduit trust for the benefit of the participant's spouse is named as the participant's sole beneficiary. **See** Trusts as Beneficiaries, *infra.*

Distributions After Participant's Death

Post-Death Distribution Periods. The SECURE Act made significant changes to the RMD Rules applicable to the participant's beneficiaries after the participant's death. The initial question is whether the participant is deemed to have a "designated beneficiary" as of the "determination date." The determination date (not a defined term) is September 30 of the year following the year of the participant's death. If the participant does not have a designated beneficiary (DB) as of the determination date, the applicable distribution rule differs, depending on whether the participant dies before or on or after RBD (as indicated above, "on or after RBD" will simply be referred to as "after RBD"). If the participant has a designated beneficiary, the applicable distribution period after the participant's death depends on the type of designated beneficiary. In some cases involving multiple designated beneficiaries of a single retirement plan, separate account treatment may be possible. **See** Separate Accounts, *infra.*

Designated Beneficiary. Not every beneficiary of the participant's retirement plan is a designated beneficiary. DBs must be individuals. Therefore, an entity, such as a charity, estate, or "non-qualifying trust," cannot be a DB (but **see** Trusts as Beneficiaries, *infra*). DBs are those individuals designated as beneficiaries of the participant's retirement plan as of the participant's date of death who remain beneficiaries of the retirement plan on the determination date. In the case of multiple beneficiaries of a single retirement plan, beneficiaries who are not DBs can often be "removed" by the determination date via qualified disclaimers and cash-outs of their shares. On the other hand, if a named beneficiary survives the participant but then dies prior to the determination date, that beneficiary is still a beneficiary of the participant's retirement plan (unless that beneficiary disclaimed or cashed out his/her interest, or unless that beneficiary is deemed to have predeceased the participant pursuant to a simultaneous death provision under applicable state law). Per the proposed regulations, certain other actions taken after the participant's death can affect the determination of the participant's "countable" beneficiaries (discussed *infra*). Most significantly, per the SECURE Act, there are now two different types of designated beneficiaries: (i) "eligible designated beneficiaries" and (ii) "other designated beneficiaries."

Eligible Designated Beneficiary. Certain DBs will be treated as eligible designated beneficiaries ("EDBs"). The five categories of individuals who qualify as EDBs are: (i) the participant's surviving

spouse, (ii) the participant's minor child, (iii) a disabled individual, (iv) a chronically ill individual, and (v) an individual not in any other category who is not more than 10 years younger than the participant. Some sort of life expectancy distribution (not the same for all EDBs) will be available to an EDB after the participant's death.

Other Designated Beneficiary. DBs who are not EDBs are Other Designated Beneficiaries (ODBs), which is not a defined term. The SECURE Act basically eliminated the traditional life expectancy distribution method as the distribution period for ODBs. ODBs are subject to the new 10-year rule, whether the participant dies before or after RBD. Note, however, that per the proposed regulations, the particular 10-year rule applicable to a particular ODB depends on whether the participant dies before or after RBD.

Distribution Rules if Participant's Beneficiary Is Not a DB. Entities (charities, estates, and non-qualifying trusts) are not DBs. **The SECURE Act did not change the RMD rules applicable to these beneficiaries (non-DBs).** Distributions after the participant's death when there is no DB depend on whether the participant dies before or after RBD.

A. **Participant's Death Before RBD with No DB.** If the participant dies before RBD without having a DB, the 5-year rule applies. Pursuant to the 5-year rule, 100% of the inherited retirement plan must be distributed by December 31 of the year that contains the 5th anniversary of the participant's death. No distributions have to be taken during the first 4 years of the post-death period pursuant to the 5-year rule, but the entire inherited IRA must be fully distributed by the end of the 5th year.

B. **Participant's Death After RBD with No DB.** If the participant dies after RBD without having a DB, the participant's remaining single life expectancy, not recalculated (the participant's "ghost life expectancy"), is the applicable distribution method. RMDs to the beneficiary must commence by December 31 of the year following the year of the participant's death. For the first distribution year, the prior year end balance of the inherited retirement plan is divided by the applicable denominator from the Single Life Table for the age the participant attained (or would have attained) in the year of death. That applicable denominator is reduced by one in each subsequent year to calculate the RMD in each subsequent year.

Participant's Final RMD. If the participant dies after RBD without having taken the full amount of the RMD from the participant's retirement plan prior to death, then that RMD (or the shortfall) must be distributed by December 31 of the year of the participant's death to the participant's beneficiary/beneficiaries. Failure to take the participant's final RMD incurs an under-distribution penalty, unless a waiver is obtained. As noted earlier, the proposed regulations provide for a waiver of the penalty for failure to take the participant's final RMD by December 31 of the year of death as long as the beneficiary takes the participant's final RMD by the due date, including extensions, of the beneficiary's tax return for the year of the participant's death. In addition, as noted above, SECURE 2.0 reduced the under-distribution penalty from 50% to 25% and, in applicable cases, to 10%.

Distribution Rules if Participant's Beneficiary Is a DB. The applicable distribution rules after the participant's death depend on the type of DB (EDB or ODB) and, in the case of EDBs, the particular type of EDB. For ODBs, based on the proposed regulations, the distribution method also varies depending on whether the participant dies before or after RBD. All ODBs are now subject to the 10 year rule (or, more accurately, to one of the 10 year rules).

A. **Other Designated Beneficiary.** If the beneficiary is an ODB, the new 10 year rule applies to distributions from the beneficiary's inherited IRA after the participant's death. The 10 year rule applies to an ODB whether the participant dies before or after RBD, but, per the proposed regulations, the form of the 10 year rule differs based on whether the participant dies before or after RBD.

1. **Participant Dies Before RBD.** If the participant dies before RBD and the beneficiary is an ODB, the 10 year rule applies like the 5 year rule. That is, 100% of the inherited IRA must be distributed by December 31 of the year that contains the 10th anniversary of the participant's death. No distributions are required (although they are permitted) prior to the ultimate distribution date.

2. **Participant Dies After RBD.** The proposed regulations provide that if the participant dies after RBD and the participant's beneficiary is an ODB, the ODB must take required minimum distributions (RMDs) from the ODB's inherited IRA during years 1 through 9 of the period provided by the 10 year rule and must fully withdraw all remaining amounts in the inherited IRA by December 31 of the year that contains the 10th anniversary of the participant's death. As noted in the preamble to the proposed regulations, if the participant dies after RBD, distributions to the ODB after the participant's death "must satisfy section 401(a)(9)(B)(i) [the "at least as rapidly rule"] as well as section 401(a)(9)(B)(ii) [the 10 year rule]."

B. **Eligible Designated Beneficiaries (EDBs).** The distribution rules for EDBs vary depending on the particular type of EDB.

1. **Participant's Spouse.** To qualify for EDB treatment as the participant's surviving spouse, the named beneficiary of the participant's retirement plan must be either the participant's spouse, outright, or a conduit trust for the benefit of the participant's spouse. An accumulation trust for the spouse will *not* qualify for the surviving spouse EDB rule. **See** Prop. Reg. § 1.401(a)(9)-4(f)(6)(ii), Example 2(C). The SECURE Act did not change the IRA rollover option available to the participant's surviving spouse named as the outright beneficiary of the participant's retirement plan. If the participant's surviving spouse rolls over the participant's retirement plan to an IRA in the spouse's name (or assumes the participant's IRA as his/her own), the spouse will thereafter be treated as the participant of that IRA and the RMD Rules applicable to a living participant will apply.

   But what are the options if the participant's spouse (i) cannot make the spousal IRA rollover (because the participant's plan is distributable to a conduit trust for the spouse); or (ii) does not want to make a spousal IRA rollover, either because the participant's spouse is "too young" to take distributions from his/her IRA rollover without a penalty or the participant's spouse is "much older" than the participant was at death. SECURE 2.0 added a benefit but also a "trap" for certain surviving spouses.

   a. <u>Prior to SECURE 2.0</u>, the surviving spouse could "automatically" remain in the position of being the participant's beneficiary and, in that case, (i) if the participant died before RBD, RMDs did not have to commence until December 31 of the year when the participant would have reached age 72 (2022 age component of RBD); and (ii) once RMDs commenced, they

were based on the spouse's life expectancy per the Single Life Table, recalculated each year, with some exceptions. Note that in cases where there is a delay in commencement of RMDs after the participant's death, the spouse is able to take discretionary distributions from the inherited retirement plan at any time prior to the commencement date without a penalty, regardless of the spouse's age.

b. If the participant died before RBD, in some cases, the spouse may have been required to use, or may have had the option to use, the 10-year rule, rather than the spouse's life expectancy, depending on the terms of the retirement plan (or the participant's election). If the participant died after RBD, the spouse was required to commence RMDs by December 31 of the year following the year of the participant's death, and those RMDs were based on the spouse's single life expectancy, recalculated each year, unless the participant's ghost life expectancy exceeded the spouse's life expectancy, in which case, the applicable distribution period would have been the deceased participant's ghost life expectancy (i.e., the longer of the two rules applied).

   If the spouse's life expectancy was the distribution period, to determine the RMD for the applicable distribution year, the prior year-end balance of the inherited retirement plan was divided by the applicable denominator from the Single Life Table for the age the spouse had attained (or would have attained) in that distribution calendar year. Each year, the spouse obtained a new applicable denominator from the Single Life Table for the spouse's attained age (or age the spouse would have attained) in that year to calculate that year's RMD. In that way, the spouse's life expectancy was being recalculated. The participant's spouse is the only type of beneficiary of a deceased participant who is permitted to recalculate life expectancy.

c. Section 327 of SECURE 2.0, which is effective for years beginning after December 31, 2023, allows the participant's spouse to elect to be treated as the participant of the participant's plan or IRA in order to obtain certain benefits. This means the spouse is not doing a rollover to an IRA in the spouse's name or treating the participant's IRA as owned by the spouse (i.e., the spouse is not becoming the participant but is remaining in the position of being the participant's beneficiary). The benefits of making the "Section 327 election" are (i) RMDs do not have to commence until December 31 of the year when the participant would have reached the "applicable age" (age 73 for 2023), which is basically the same as before SECURE 2.0, and (ii) once RMDs commence, they are determined using the Uniform Lifetime Table, rather than the Single Life Table (although Section 327(b), which is difficult to understand in view of Section 327(a), creates an issue regarding whether the Uniform Lifetime Table can be used if the participant dies before RBD). As noted in Distributions During Participant's Lifetime, supra, the applicable denominators in the Uniform Lifetime Table are based on the participant's life expectancy plus 10 years, which provides a longer distribution period than the applicable denominators in the Single Life Table. The "trap" in Section 327 is that the spouse must timely make this election (including providing notice to the Plan Administrator) to obtain these benefits. If the spouse fails to make the election, these particular benefits would not be available. In that case, presumably the "old rule"

would still apply, but that is not entirely clear. NOTE: Prior to SECURE 2.0, the participant's surviving spouse could obtain the delayed commencement date in the situation where the participant died before RBD with the spouse as sole beneficiary without having to make an election. In that case, before SECURE 2.0, once RMDs to the spouse as beneficiary commenced, they were based on the spouse's life expectancy per the Single Life Table, recalculated each year.

Commentators have pointed out that one situation where Section 327 would likely be considered (because the spousal rollover option would not be available) is when the participant's plan or IRA is distributable to a conduit trust for the spouse, which might be the case in a second marriage situation. While the remainder beneficiaries of the conduit trust might desire the election to be made (to reduce the amount of the RMDs payable to the participant's spouse during his/her life), it appears from the plain language of the provision that the election must be made by the spouse (and not by the trustee of the trust). In many second marriage cases, the participant's surviving spouse is not likely to want to reduce the amount of his/her RMDs.

There are additional issues relating to the election per Section 327. Prior to SECURE 2.0, it was common for a spouse named as the participant's outright beneficiary who was well under age 59½ at the time of the participant's death to remain in the position of being the participant's beneficiary until the spouse reached age 59½, at which point the spouse would roll over the participant's plan or IRA to an IRA in the spouse's name. (Participants under age 59½ cannot usually take distributions from their IRA without a penalty.) Thus, another issue relating to the Section 327 election is whether, if the spouse makes the election, which is "irrevocable," can the spouse still roll over the participant's plan or IRA to an IRA in the spouse's name at a later time.

Another issue relating to the Section 327 election is, if the election is made, is it the participant's age or the surviving spouse's age that is used to determine RMDs per the Uniform Lifetime Table once they commence. The statute literally says that if the election is made, the surviving spouse shall be treated as if he/she "is" the employee (participant). An ACTEC Task Force is in the process of submitting numerous comments to Treasury regarding Section 327 of SECURE 2.0.

2. **Participant's Minor Child.** Only the participant's minor child (and not someone else's minor child) can qualify for this category of EDB. If the beneficiary of the participant's retirement plan is (i) the participant's minor child, outright, or via a custodian pursuant to the Uniform Transfers to Minors Act (UTMA), or (ii) a conduit trust for the benefit of the participant's minor child, RMDs to the minor child prior to complete distribution per the 10-year rule (**see** below), will be based on the minor child's life expectancy, not recalculated, per the Single Life Table. The proposed regulations appear to allow an accumulation trust for the minor child to work as well, as long as the trust terminates on the later of (i) one year after the participant's death and (ii) the minor child reaching age 31. **See** age 31 trust, *infra*.

If the participant dies before RBD, the minor child may be required to use or may have the option to use the 10-year rule, rather than the minor child's life expectancy, depending on the terms of the retirement plan (or the participant's election). Distributions to the minor child from the inherited IRA must commence by December 31 of the year following the year of the participant's death. To calculate the RMD for the first distribution year, the prior year-end balance of the inherited IRA is divided by the applicable denominator for the age the child has attained (or would have attained) in the first distribution year. In each subsequent year, the prior year's applicable denominator is reduced by one to calculate that year's RMD. Once the minor child reaches the age of majority, the 10-year rule applies.

The proposed regulations provide that the age of majority is 21. Having a definite age for the age of majority is one provision in the proposed regulations that is an improvement over the SECURE Act as written. Once the participant's child reaches age 21 (which is when the child converts from an EDB to an ODB), the RMDs that were begun the year after the participant's death would continue until the minor child reaches age 31. Assuming the child does not die prior to reaching age 31, the full amount remaining in the child's inherited IRA must be distributed to the child when the child reaches that age.

The members of ACTEC's task force that prepared comments to the proposed regulations believe that RMDs continue to the child for years 1 through 9 of the period covered by the 10-year rule (i.e., during the time the child is between ages 21 and 31), regardless of when the participant died. That is analogous to the rule applicable when an EDB dies and there is a "transition" from an EDB to an ODB. In any event, assuming the child does not die prior to reaching age 31, the full amount remaining in the child's inherited IRA must be distributed to the child when the child reaches age 31.

3. **Disabled and Chronically Ill Beneficiaries.** Disabled beneficiaries and chronically ill beneficiaries are two of the five categories of EDBs. The definitions of these EDBs are in subsections (III) and (IV) of IRC 401(a)(9)(E)(ii). For purposes of the RMD Rules, the term "disabled" means disabled within the meaning of Section 72(m)(7) and the term "chronically ill" means chronically ill within the meaning of Section 7702B(c)(2), with some exceptions. The beneficiary's status as disabled or chronically ill is determined as of the participant's date of death. The proposed regulations provide that, if an individual has been determined to be disabled by the Social Security Administration, that determination is sufficient for purposes of the RMD Rules. However, that is not the only way for an individual to qualify as disabled. Appropriate documentation confirming that the individual is disabled or chronically ill must be provided to the plan administrator (which includes an IRA custodian) by October 31 of the year following the year of the participant's death.

   The SECURE Act recognizes that normally, a participant who wants to provide benefits to a disabled or chronically ill beneficiary from a retirement plan will name a trust for the disabled or chronically ill beneficiary as beneficiary of the retirement plan, rather than naming such individual as the outright beneficiary of the retirement plan (although it is possible to name a disabled or chronically ill beneficiary as an outright beneficiary and obtain EDB treatment for that individual). Prior to the SECURE Act, the trust created for the benefit of a disabled or chronically ill beneficiary was usually structured (in terms of the

RMD Rules) as a qualified see-through trust in the form of an accumulation trust, rather than in the form of a conduit trust. In the case of a trust drafted as an accumulation trust, no amounts withdrawn from an inherited IRA that belong to the trust have to be distributed "forthwith" (upon receipt) to the current beneficiary of the trust. Instead, the Trustee can accumulate all or any portion of those withdrawn amounts in the trust. In contrast, all amounts withdrawn from the inherited IRA that belongs to a conduit trust must always be distributed upon receipt to the current beneficiary of the trust.

Per the SECURE Act, in the case of the participant's spouse and a not more than 10 years younger beneficiary, to obtain EDB treatment when a trust for the benefit of the EDB individual is named as beneficiary (rather than the individual being named outright), the trust must be in the form of a conduit trust. In most cases, a conduit trust will not be the best choice for a disabled or chronically ill beneficiary. Thus, IRC 401(a)(9)(H)(iv) and (v) provide special rules applicable to a new type of trust for the benefit of disabled and chronically ill beneficiaries called an "Applicable Multi-Beneficiary Trust" ("AMBT").

In essence, the AMBT is a specialized form of accumulation trust that can be used for disabled and chronically ill beneficiaries. Per IRC 401(a)(9)(H)(v), as added by the SECURE Act, an Applicable Multi-Beneficiary Trust is a trust that has more than one beneficiary, all of which are DBs (but **see** SECURE 2.0 discussion, *infra*) and at least one of which is a disabled or chronically ill beneficiary. Per the proposed regulations, there are two types of AMBTs: Type I and Type II. IRC 401(a)(9)(H)(iv) provides that if, per the terms of the trust named as beneficiary of the participant's retirement plan, (i) the trust is to be divided immediately upon the participant's death into separate trusts for each beneficiary or (ii) no individual other than a disabled or chronically ill beneficiary has any right to the participant's retirement plan until the death of all such EDBs, clause (ii) of IRC 401(a)(9)(H) (the exception to the 10-year rule for EDBs) shall be applied separately with respect to the portion of the participant's interest in the retirement plan payable to the trust for the benefit of the disabled or chronically ill beneficiary. These provisions override the separate account rule in the case of an Applicable Multi-Beneficiary Trust that is a sub-trust of a trust named as beneficiary of the participant's retirement plan (i.e., a Type I AMBT), as long as the other sub-trusts only have DBs as beneficiaries (and qualify for DB treatment) and the trust named as beneficiary (such as the participant's revocable trust) is divided "immediately" upon the participant's death into separate trusts. The term "immediately" needs to be clarified by final regulations.

Per the proposed regulations, a Type II AMBT must "identify" one or more disabled and/or chronically ill individuals as the sole beneficiaries entitled to the participant's plan benefits distributable to the trust, and must state that no individuals other than the disabled and/or chronically ill beneficiaries have any right to any of the participant's plan benefits until after the death of all disabled and chronically ill individuals who are beneficiaries of the trust. Presumably, the EDBs in this category could be identified in a manner other than by name. RMDs to the AMBT are based on the life expectancy of the oldest disabled or chronically ill beneficiary of the trust. This was not clear per the SECURE Act, but is clear from the proposed regulations.

Using the life expectancy of the disabled/chronically ill beneficiary to determine RMDs is a departure from the pre–SECURE Act rules applicable to accumulation trusts, in which RMDs were determined using the life expectancy of the oldest DB (taking into account all "countable" beneficiaries of the trust, including at least first-tier remainder beneficiaries). Thus, if the AMBT is properly structured, the remainder beneficiaries of the trust are ignored for purposes of calculating the RMDs distributable to the trust during the life or lives of the disabled and chronically ill beneficiary/beneficiaries. Note, however, if the participant dies before RBD, the disabled/chronically ill beneficiary may be required to use or may have the option to use the 10-year rule, rather than the disabled/chronically ill beneficiary's life expectancy, depending on the terms of the retirement plan (or the participant's election). A Supplemental Needs Trust ("SNT") could be drafted to qualify as an AMBT. However, certain provisions that are sometimes included in SNTs (such as permitting the distribution of "incidental benefits" to family members of the special needs beneficiary and "poison pill" provisions) probably need to be eliminated to qualify the SNT as an AMBT.

Fortunately, the proposed regulations allow trusts to be modified by court action after the participant's death. Those modifications will be taken into account if accomplished (i.e., effective) by September 30 of the year following the year of the participant's death (i.e., the determination date). The modified terms of the trust must be provided to the plan administrator by October 31 of the year following the year of the participant's death. In view of these qualification deadlines, very quick action will be needed to modify the trust if the participant dies late in the year.

More guidance is needed in regard to several AMBT issues. **NOTE:** SECURE 2.0 made an important change applicable to a Type II AMBT. A Supplemental Needs Trust (SNT) is now permitted to have a charity as the remainder beneficiary of the trust and still qualify as an AMBT. **See** Section 337 of SECURE 2.0.

4. **Beneficiaries Not More Than Ten Years Younger Than the Participant.** An individual who is not in any other EDB category and who is "not more than ten years younger" than the participant (which includes an individual older than the participant) is a type of EDB who will be referred to as an NMTTYYB. The proposed regulations determine whether this rule applies using the actual birthdates of the participant and the beneficiary (not birth years). To qualify for this EDB category, either the NMTTYYB is named as the outright beneficiary or a conduit trust for the NMTTYYB is named as the beneficiary of the participant's retirement plan. RMDs to this type of EDB will be based on the single life expectancy of the EDB, not recalculated, except as noted in the following.

   If the participant dies after RBD, the NMTTYYB uses the longer of the NMTTYYB's life expectancy or the participant's ghost life expectancy. If the participant dies before RBD, the NMTTYYB may be required to use or may have the option to use the 10 year rule, rather than the NMTTYYB's life expectancy, depending on the terms of the retirement plan (or the participant's election). Assuming a life expectancy distribution based on the NMTTYYB's life expectancy applies, the first RMD must be taken by December 31 of the year following the year of the participant's death. In that case, to determine the RMD in the first distribution year, the prior year-end balance of the inherited IRA is divided by

the applicable denominator from the Single Life Table for the age the NMTTYB has attained (or would have attained) in the first distribution year. That denominator is reduced by one in each subsequent distribution year to determine the RMD in each of those future years. The participant's "ghost life expectancy" was explained in the "No DB" section, *supra*. If the NMTTYYB is using the participant's ghost life expectancy (rather than the NMTTYYB's life expectancy), when the applicable denominator would have been one or less than one had the NMTTYYB's life expectancy been used to calculate RMDs, the "termination point" is reached and the entire remaining balance in the inherited IRA must be distributed to the NMTTYYB.

Roth IRAs. Even though "qualified distributions" from Roth IRAs after the participant's death are not subject to income tax, the distribution rules per the SECURE Act applicable after the death of the participant also apply to Roth IRAs. Note that, because a Roth IRA participant has no RMDs during life, regardless of the Roth IRA participant's age at death, the Roth IRA participant is deemed to have died before RBD. Thus, if a non-DB is the beneficiary of a Roth IRA, the 5-year rule will apply. If an ODB is the beneficiary of a Roth IRA, the 10-year rule will apply (i.e., the 10-year rule that is applicable when the participant dies before RBD). If an EDB is the beneficiary of a Roth IRA, the post-death distribution rule applicable to that particular type of EBD will apply.

Distributions After the Death of an EDB

Per the SECURE Act, after the death of an EDB who was taking RMDs using a life expectancy distribution method, the beneficiary of the EDB is subject to the 10-year rule. That is true even if the EDB's beneficiary would qualify as an EDB. In this case, the EDB's beneficiary must continue taking RMDs after the EDB's death based on the EDB's distribution period until the earlier to occur of (i) exhaustion of the inherited IRA or (ii) December 31 of the year that contains the 10th anniversary of the EDB's death.

Trusts as Beneficiaries

If a trust named as beneficiary of the participant's retirement plan meets the four trust regulatory requirements, then the beneficiaries of the trust are treated as the beneficiaries of the participant's retirement plan. The four trust regulatory requirements are (i) the trust is a valid trust under state law, or would be but for the fact that there is no corpus; (ii) the trust is irrevocable or will, by its terms, become irrevocable upon the participant's death; (iii) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the participant's retirement plan are "identifiable" from the trust instrument; and (iv) the required documentation is provided to the plan administrator by October 31 of the year following the year of the participant's death. Per the proposed regulations, if a trust meets the four trust regulatory requirements, it is a "see-through trust," which means that the beneficiaries of the trust are treated as the beneficiaries of the participant's retirement plan.

Prior to the SECURE Act, the final regulations that were published in April 2002 recognized two types of qualified see-through trusts, which were not named as such in the final regulations, but which were referred to by practitioners as "accumulation trusts" (**see** Treas. Reg. § 1.401(a)(9)-5, Q & A-7(c)(3), Example 1) and "conduit trusts" (**see** Treas. Reg. § 1.401(a)(9)-5, Q & A-7(c)(3), Example 2). The proposed regulations actually use these terms and define them. The proposed regulations also define "current beneficiary" and "secondary beneficiary." A conduit trust must specifically provide that the entire amount distributed from the inherited retirement plan to the

trust (whether the amount distributed is the RMD or a larger amount) must be distributed out of the trust "forthwith" (i.e., upon receipt) to the current beneficiary of the trust. Because the conduit trust is merely a "flow through," remainder beneficiaries of the conduit trust, who are referred to as "secondary beneficiaries," do not have to be taken into account for purposes of identifying all beneficiaries of the conduit trust with an interest in the participant's retirement plan and, therefore, the current beneficiary of the conduit trust is treated as the sole beneficiary of the participant's retirement plan payable to the trust.

On the other hand, an accumulation trust does *not* have to provide that amounts distributed to the trust from the inherited IRA that belongs to the trust will be distributed from the trust to the current beneficiary in the year the distribution is made. Thus, distributions from the inherited IRA that belongs to the trust can be accumulated in the trust. For that reason, both the current beneficiary and at least "first tier" remainder beneficiaries (because they might receive those distributed amounts in the future) must be taken into account for purposes of identifying all beneficiaries of the accumulation trust who have an interest in the participant's retirement plan. Often second tier and other remainder beneficiaries of accumulation trusts must be taken into account as well. The proposed regulations describe two different types of secondary beneficiaries, one of which is taken into account and the other of which is not. If a particular secondary beneficiary of an accumulation trust (such as a second tier remainder beneficiary of the trust) would only receive an interest in the participant's plan (including accumulations) due to the death of *another* secondary beneficiary (i) who survived the participant (such as the first tier remainder beneficiary of the trust) and (ii) who would have received all interests in the plan upon the death of the current beneficiary but who died before the current beneficiary's interest terminated, that particular secondary beneficiary (i.e., the second tier remainder beneficiary) is not taken into account.

The use of retirement plan benefits to pay post death expenses (including taxes) after the September 30 determination date means that the participant's estate (a non DB) has an interest in the participant's retirement plan. As noted earlier, the SECURE Act added a new type of trust for disabled and chronically ill EDBs: the Applicable Multi-Beneficiary Trust (discussed supra). In addition, the proposed regulations add a new type of trust that can be used for any "young beneficiary" that may be referred to as an "age 31 trust." If the trust provides that the entire interest in the plan will be distributed free of trust to the beneficiary by the later of (i) the end of the year after the participant's death and (ii) the end of the 10th year after the beneficiary reaches age 21 (i.e., when the beneficiary reaches age 31), the current beneficiary will be treated as the sole beneficiary of the trust for purposes of the trust rules. Thus, all "secondary beneficiaries" (i.e., remainder beneficiaries) of the age 31 trust would be ignored.

The proposed regulations provide that the mere possession by the current beneficiary of a power of appointment over the trust, even a power of appointment that could be exercised in favor of entities, such as charities, is not fatal under the RMD Rules. That answers a longstanding question. The proposed regulations address the effect of exercising and not exercising powers of appointment, as well as restricting such powers, both in cases before and after the September 30 determination date. In addition, the proposed regulations specifically recognize modifications, reformations, and decantings pursuant to state law provisions after the participant's death as effective ways to remove or add a beneficiary (and fix problems with the trust), as long as the particular post-death action is legally effective by the determination date.

Separate Accounts

Depending on the structure of the beneficiary designation, it is possible for multiple beneficiaries of a single retirement plan to obtain separate account treatment, which means that each beneficiary will have his, her or its own applicable distribution period after the participant's death. To obtain separate account treatment for separately named beneficiaries, a separate account must be established and maintained for each individual beneficiary by December 31 of the year following the year of the participant's death, bearing its own pro rata share of gains and losses and otherwise separately accounted for to comply with the regulations. In general, separate account treatment is not available to the beneficiaries of a single trust (but **see** earlier discussion regarding the exception for the Type I AMBT). Thus, to insure separate account treatment in the case of multiple trusts that will be the beneficiaries of the participant's retirement plan, it is best to name the separate trusts or sub-trusts directly in the beneficiary designation, rather than naming a single trust (such as a revocable trust) that by its terms divides into separate sub-trusts for separate beneficiaries on the participant's death.

Rollovers from Qualified Plans and IRAs

To understand why rollovers from qualified plans and pre-tax IRAs are so valuable, consider the fact that, as a general rule, distributions from qualified plans and pre-tax IRAs are taxable as ordinary income in the year of receipt. A properly executed rollover is not treated as a taxable distribution from the qualified plan or IRA (each referred to as a "retirement plan" unless a distinction is necessary). In very general terms, there are two types of rollovers: (i) a 60-day rollover and (ii) a trustee to trustee transfer. A 60-day rollover (which can be referred to as an *indirect rollover*) occurs when a distribution is made from the retirement plan to the participant or the participant's spouse and the recipient deposits that distribution into another retirement plan within 60 days. In the case of a 60-day rollover, 20% of the distribution amount will be withheld for federal income tax purposes. IRC 3405(c)(1). To avoid income tax on the 20% amount withheld (because it is a distribution), the participant or participant's spouse (as applicable) can deposit other assets equal to the amount of the tax withheld into the recipient retirement plan. A trustee to trustee transfer (which can be referred to as a *direct rollover*) involves the transfer from one retirement plan directly to another retirement plan without the funds ever being distributed to a taxable account. The trustee or custodian of both the transferring retirement plan and the receiving retirement plan are the only persons directly involved in the transfer (the transferred amount does not go through the hands of the participant, spouse or beneficiary).

Over the years, many participants and spouses missed the 60-day deadline in the case of the 60-day rollover. Frequently, this failure to meet the deadline was the result of errors by the financial institution, death or serious illness of a family member, or other disasters, such as damage to the taxpayer's principal residence. The IRS issued numerous favorable private letter rulings in these cases, waiving the 60-day deadline. Finally, the IRS published Rev. Proc. 2016-47, 2016-37 IRB 346, which created a new procedure for obtaining a waiver of the 60-day deadline. If that procedure is followed, the taxpayer will "self-certify" that one or more of the particular "hardships" outlined in the procedure applied in the taxpayer's case.

In the case of the participant and the participant's surviving spouse, all or part of any eligible rollover distribution may be rolled over to an IRA or to another qualified plan. An eligible rollover distribution is any otherwise taxable distribution from a qualified plan or pre-tax IRA excluding (among certain other items) (i) a required minimum distribution (RMD), (ii) a distribution that is one of a series of substantially equal periodic payments, and (iii) a hardship distribution.

A designated beneficiary other than the participant's surviving spouse who is entitled to an interest in the participant's retirement plan on the participant's death may make a direct rollover (i.e., trustee to trustee transfer) from the participant's retirement plan to an inherited IRA or inherited Roth IRA, but not to another qualified plan.

Distributions after the participant's death to the beneficiaries of the participant's retirement plan will be made depending on the classification of the beneficiary (**see** Minimum Distribution Rules, *supra*).

Certain Other SECURE 2.0 Provisions

Some of the provisions of SECURE 2.0 that are directly related to the RMD rules have already been discussed above. Below are a few more noteworthy provisions in SECURE 2.0 (the "Act").

Section 126 of the Act allows unused funds held in a 529 plan, up to an aggregate lifetime limit of $35,000, to be transferred in a direct trustee to trustee transfer to a Roth IRA for the benefit of the 529 plan beneficiary if certain conditions are met. The 529 plan has to have been in effect for at least 15 years before the rollover and the amount that can be rolled over is limited to the aggregate contributions (plus earnings) made at least 5 years before the date of the rollover. The 529 plan to Roth IRA can be made without regard to the otherwise applicable income limits, although the annual Roth contribution limits do apply ($6,500 for 2023). This provision applies with respect to distributions made after December 31, 2023.

Section 307 of the Act allows the participant to make a special type of QCD (qualified charitable distribution) from his/her pre-tax IRA to a "split interest entity," i.e., either to a charitable remainder trust (CRT) or a charitable gift annuity (CGA). The CRT or CGA must be for the benefit of the participant or the participant's spouse. The CRT may be either a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT). This is a one-time election and the total amount that can be distributed from the participant's IRA for this purpose is $50,000, all of which must be distributed directly to the split interest entity within one taxable year. No individual other than either the participant or the participant's spouse can hold the income interest in the CRT or CGA and that income interest cannot be a deferred interest. If this type of QCD is made, it will count toward the participant's QCD limit for that year. While charities have been working toward something like this for many years, it is unlikely that this provision will be used to fund a CRT (because of the low limit), although it might be used to fund a CGA. The $50,000 limit will be adjusted for inflation. This provision is effective starting in 2023.

Owners of Roth IRAs are not required to take RMDs during their lifetimes (which is why they are always deemed to have died prior to their RBD). However, prior to SECURE 2.0, participants in designated Roth accounts, such as Roth 401(k) plans and Roth 403(b) plans, were required to take RMDs during their lives. Section 325 of the Act repeals the prior RMD rule for designated Roth accounts, effective for taxable years after December 31, 2023.

Table III
(Uniform Lifetime Table: Treas. Reg. § 1.401(a)(9)-9(c))
Table Showing Distribution Period Used to Determine Required Minimum Distributions (RMDs) For a Living Participant*

Age of the Participant	Distribution Period	Age of the Participant	Distribution Period
72	27.4	97	7.8
73	26.5	98	7.3
74	25.5	99	6.8
75	24.6	100	6.4
76	23.7	101	6.0
77	22.9	102	5.6
78	22.0	103	5.2
79	21.1	104	4.9
80	20.2	105	4.6
81	19.4	106	4.3
82	18.5	107	4.1
83	17.7	108	3.9
84	16.8	109	3.7
85	16.0	110	3.5
86	15.2	111	3.4
87	14.4	112	3.3
88	13.7	113	3.1
89	12.9	114	3.0
90	12.2	115	2.9
91	11.5	116	2.8
92	10.8	117	2.7
93	10.1	118	2.5
94	9.5	119	2.3
95	8.9	120 & over	2.0
96	8.4		

*Use Joint Life and Last Survivor Expectancy Table (Table II) instead of Uniform Lifetime Table (i) if the sole beneficiary of participant's plan or IRA is participant's spouse and (ii) if participant's spouse is more than 10 years younger than participant. Treas. Reg. § 1.401(a)(9)-9(d). Marital status is determined on January 1 each year. The 10-year age difference is based on years and not actual birthdates. Spouse is sole beneficiary of participant if spouse is outright beneficiary or if trust for spouse named as participant's beneficiary is a conduit trust.

Table I
(Single Life Expectancy Table: Treas. Reg. § 1.401(a)(9)-9(b))
For Use by Beneficiaries of Deceased Participants*

Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
0	84.6	30	55.3	60	27.1	90	5.7
1	83.7	31	54.4	61	26.2	91	5.3
2	82.8	32	53.4	62	25.4	92	4.9
3	81.8	33	52.5	63	24.5	93	4.6
4	80.8	34	51.5	64	23.7	94	4.3
5	79.8	35	50.5	65	22.9	95	4.0
6	78.8	36	49.6	66	22.0	96	3.7
7	77.9	37	48.6	67	21.2	97	3.4
8	76.9	38	47.7	68	20.4	98	3.2
9	75.9	39	46.7	69	19.6	99	3.0
10	74.9	40	45.7	70	18.8	100	2.8
11	73.9	41	44.8	71	18.0	101	2.6
12	72.9	42	43.8	72	17.2	102	2.5
13	71.9	43	42.9	73	16.4	103	2.3
14	70.9	44	41.9	74	15.6	104	2.2
15	69.9	45	41.0	75	14.8	105	2.1
16	69.0	46	40.0	76	14.1	106	2.1
17	68.0	47	39.0	77	13.3	107	2.1
18	67.0	48	38.1	78	12.6	108	2.0
19	66.0	49	37.1	79	11.9	109	2.0
20	65.0	50	36.2	80	11.2	110	2.0
21	64.1	51	35.3	81	10.5	111	2.0
22	63.1	52	34.3	82	9.9	112	2.0
23	62.1	53	33.4	83	9.3	113	1.9
24	61.1	54	32.5	84	8.7	114	1.9
25	60.2	55	31.6	85	8.1	115	1.8
26	59.2	56	30.6	86	7.6	116	1.8
27	58.2	57	29.8	87	7.1	117	1.6
28	57.3	58	28.9	88	6.6	118	1.4
29	56.3	59	28.0	89	6.1	119	1.1
						120+	1.0

*Examples. If the participant's beneficiary is any eligible designated beneficiary (EDB) other than the participant’s spouse and the EDB's life expectancy is being used to calculate RMDs, use this table to obtain the applicable denominator for the EDB's age as of the EDB’s birthday in the year following the year of the participant's death (first distribution year), and reduce that denominator by one each year thereafter to calculate the RMD for that year (non-spouse EDBs cannot recalculate life expectancy). If the participant’s beneficiary is a DB and the participant dies *after*

RBD, so that the DB must take RMDs in years 1 through 9 of the period of the 10 year rule (per the proposed regulations), assuming the DB is younger than the participant was at death, the DB calculates his/her RMDs by obtaining the denominator for the DB's age as of the DB's birthday in the year following the year of the participant's death (first distribution year), and reduces that denominator by one each year thereafter until the 10th year is reached, which is the year the DB is required to withdraw the entire remaining amount from the inherited IRA. If the participant dies after RBD without having a DB, the participant's "ghost life expectancy" is used to calculate RMDs. In that case, for the first distribution year (i.e., the year after the participant's death), the applicable denominator is the Life Expectancy for the participant's age as of his/her birthday in the year of death minus 1. In each subsequent year, the number 1 is subtracted from the prior year's denominator to calculate the RMD to the non-DB.

INTEREST RATES

Applicable Federal Rate Rules

Applicable Federal Rates ("AFRs") are published monthly (on about the 20th of the month) by the Internal Revenue Service; they provide a guideline interest rate (often with adjustments) for a variety of tax purposes. IRC 1274.

Term of Debt Instrument	AFR to Be Used by Taxpayers
Not over 3 Years	The Short-Term AFR
Over 3 Years, not over 9 Years	The Mid-Term AFR
Over 9 Years	The Long-Term AFR

Choice of Interest Rates

Donors making a split-interest charitable gift have the choice to value such gift using 120% of the Mid-Term AFR for the current month, or for either of the two calendar months preceding the calendar month of the gift, whichever is most favorable. By acting late in a calendar month, when the next month's factor is known (but not yet applicable), a choice of factors from four months can be available.

Use Highest Possible Rate	Use Lowest Possible Rate
• Charitable remainder trust • Charitable gift annuity (for larger deduction)	• Charitable lead trust • Charitable gift annuity (for larger tax-exempt portion) • Gift of remainder interest in farm or personal residence.

Federal interest rates for current and prior periods are available on the IRS website:

apps.irs.gov/app/picklist/list/federalRates.html

IRC Section 7520 Rates*

7520 Rates Since May 1, 1989

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2023	4.6	4.6	4.4	5.0	4.4							
2022	1.6	1.6	2.0	2.2	3.0	3.6	3.6	3.8	3.6	4.0	4.8	5.2
2021	0.6	0.6	0.8	1.0	1.2	1.2	1.2	1.2	1.0	1.0	1.4	1.6
2020	2.0	2.2	1.8	1.2	0.8	0.6	0.6	0.4	0.4	0.4	0.4	0.6
2019	3.4	3.2	3.2	3.0	2.8	2.8	2.6	2.2	2.2	1.8	2.0	2.0
2018	2.6	2.8	3.0	3.2	3.2	3.4	3.4	3.4	3.4	3.4	3.6	3.6
2017	2.4	2.6	2.4	2.6	2.4	2.4	2.2	2.4	2.4	2.2	2.4	2.6
2016	2.2	2.2	1.8	1.8	1.8	1.8	1.8	1.4	1.4	1.6	1.6	1.8
2015	2.2	2.0	1.8	2.0	1.8	2.0	2.2	2.2	2.2	2.0	2.0	2.0
2014	2.2	2.4	2.2	2.2	2.4	2.2	2.2	2.2	2.2	2.2	2.2	2.0
2013	1.0	1.2	1.4	1.4	1.2	1.2	1.4	2.0	2.0	2.4	2.0	2.0
2012	1.4	1.4	1.4	1.4	1.6	1.2	1.2	1.0	1.0	1.2	1.0	1.2
2011	2.4	2.8	3.0	3.0	3.0	2.8	2.4	2.2	2.0	1.4	1.4	1.6
2010	3.0	3.4	3.2	3.2	3.4	3.2	2.8	2.6	2.4	2.0	2.0	1.8
2009	2.4	2.0	2.4	2.6	2.4	2.8	3.4	3.4	3.4	3.2	3.2	3.2
2008	4.4	4.2	3.6	3.4	3.2	3.8	4.2	4.2	4.2	3.8	3.6	3.4
2007	5.6	5.6	5.8	5.6	5.6	5.6	6.0	6.2	5.8	5.2	5.2	5.0
2006	5.4	5.2	5.4	5.6	5.8	6.0	6.0	6.2	6.0	5.8	5.6	5.8
2005	4.6	4.6	4.6	5.0	5.2	4.8	4.6	4.8	5.0	5.0	5.0	5.4
2004	4.2	4.2	4.0	3.8	3.8	4.6	5.0	4.8	4.6	4.4	4.2	4.2
2003	4.2	4.0	3.8	3.6	3.8	3.6	3.0	3.2	4.2	4.4	4.0	4.2
2002	5.4	5.6	5.4	5.6	6.0	5.8	5.6	5.2	4.6	4.2	3.6	4.0
2001	6.8	6.2	6.2	6.0	5.8	6.0	6.2	6.0	5.8	5.6	5.0	4.8
2000	7.4	8.0	8.2	8.0	7.8	8.0	8.0	7.6	7.6	7.4	7.2	7.0
1999	5.6	5.6	5.8	6.4	6.2	6.4	7.0	7.2	7.2	7.2	7.4	7.4
1998	7.2	6.8	6.8	6.8	6.8	7.0	6.8	6.8	6.6	6.2	5.4	5.4
1997	7.4	7.6	7.8	7.8	8.2	8.2	8.0	7.6	7.6	7.6	7.4	7.2
1996	6.8	6.8	6.6	7.0	7.6	8.0	8.2	8.2	8.0	8.0	8.0	7.6
1995	9.6	9.6	9.4	8.8	8.6	8.2	7.6	7.2	7.6	7.6	7.4	7.2
1994	6.4	6.4	6.4	7.0	7.8	8.4	8.2	8.4	8.4	8.6	9.0	9.4
1993	7.6	7.6	7.0	6.6	6.6	6.4	6.6	6.4	6.4	6.4	6.0	6.2
1992	8.2	7.6	8.0	8.4	8.6	8.4	8.2	7.8	7.2	7.0	6.8	7.4
1991	9.8	9.6	9.4	9.6	9.6	9.6	9.6	9.8	9.6	9.0	8.6	8.4
1990	9.6	9.8	10.2	10.6	10.6	11.0	10.6	10.4	10.2	10.6	10.6	10.2
1989	10*	10*	10*	10*	11.6	11.2	10.6	10.0	9.6	10.2	10.0	9.8

* The discount rate used to value any annuity, interest for life or a term of years or any remainder or reversionary interest is equal to 120% of the annual federal mid-term rate under IRC 1274(d)(1), rounded to the nearest 0.2%. However, for split-interest charitable gifts, the rate for the current month or either of the two months preceding the month in which the valuation date falls may be used [IRC 7520]. Section 7520 became effective May 1, 1989. For transactions occurring in the first four months of 1989, regulations required use of a 10% interest assumption.

For updates to the AFR/7520 Rates and access to additional professional fiduciary resources please visit actec.org/professionals/wealth-advisors-resources.

CHARITABLE DEDUCTIONS

Percentage Limitations Under IRC § 170

Transfer To	AGI Limitation	Deduction Based On
Public charity	60% for cash* 30% for long-term capital gain property**	Fair market value; limited to lower of basis or fair market value if not long term capital gain property; contribution deduction for gifts of tangible personal property limited to lower of basis or fair market value unless charity will use property in a way related to its tax exempt purpose
Private foundation	30% for cash 20% for long-term capital gain property**	Fair market value for cash and publicly traded long-term appreciated securities; lower of basis or fair market value for property other than publicly traded securities held long term

*For years beginning after 12/31/2017 and before 1/1/2026. This change to the prior 50% limitation was made by the Tax Cuts and Jobs Act (passed on 12/20/2017). The CARES Act (enacted 3/27/2020) allowed individuals who itemize to deduct up to 100% of their AGI for qualified cash contributions made during 2020 and 2021. The CARES Act also allowed non-itemizers to deduct $300 for cash contributions to public charities and private operating foundations. In 2020, the $300 deduction applied to the "tax unit" (a married couple filing jointly is one tax unit), while in 2021, the $300 deduction applied to each spouse in the case of a married couple filing jointly (total deduction of $600).

**Cryptocurrency (such as Bitcoin) is in this category and not in the cash category.

American Council on Gift Annuities
Maximum Suggested Rates Single Life
As of January 1, 2023

Age	Rate	Age	Rate	Age	Rate
5-18	3.5	63	5.2	80	7.6
19-27	3.6	64	5.3	81	7.8
28-33	3.7	65	5.4	82	8.1
34-38	3.8	66	5.5	83	8.3
39-42	3.9	67	5.6	84	8.5
43-45	4.0	68	5.7	85	8.7
46-47	4.1	69	5.8	86	8.9
48-50	4.2	70	5.9	87	9.1
51-52	4.3	71	6.0	88	9.3
53	4.4	72	6.2	89	9.5
54-55	4.5	73	6.3	90+	9.7
56	4.6	74	6.4		
57-58	4.7	75	6.6		
59	4.8	76	6.8		
60	4.9	77	7.0		
61	5.0	78	7.2		
62	5.1	79	7.4		

American Council on Gift Annuities
Maximum Suggested Rates Two Lives—Joint and Survivor
As of January 1, 2023

Younger Age	Older Age	Rate
5	5-95+	3.3
6	6-95+	3.3
7	7-95+	3.3
8	8-95+	3.3
9	9-95+	3.3
10	10-95+	3.3
11	11-95+	3.3
12	12-95+	3.3
13	13-95+	3.3
14	14-95+	3.3
15	15-95+	3.3
16	16-95+	3.3
17	17-95+	3.3
18	18-95+	3.3
19	19-95+	3.4
20	20-95+	3.4
21	21-95+	3.4
22	22-95+	3.4
23	23-95+	3.4
24	24-95+	3.4
25	25-95+	3.4
26	26-95+	3.4
27	27-95+	3.4
28	28-95+	3.5
29	29-95+	3.5
30	30-95+	3.5
31	31-95+	3.5
32	32-95+	3.5
33	33-95+	3.5
34	34-95+	3.6
35	35-95+	3.6
36	36-95+	3.6
37	37-95+	3.6
38	38-95+	3.6
39	39-95+	3.7
40	40-95+	3.7
41	41-95+	3.7
42	42-95+	3.7
43	43-95+	3.8
44	44-95+	3.8
45	45-95+	3.8
46	46	3.8
46	47-95+	3.9
47	47-95+	3.9
48	48-52	3.9
48	53-95+	4.0
49	49-50	3.9
49	51-95+	4.0
50	50-95+	4.0
51	51-54	4.0
51	55-95+	4.1
52	52-53	4.0
52	54-95+	4.1
53	53-58	4.1
53	59-95+	4.2
54	54-56	4.1
54	57-62	4.2
54	63-95+	4.3
55	55	4.1
55	56-60	4.2
55	61-95+	4.3
56	56-59	4.2
56	60-64	4.3
56	65-95+	4.4
57	57	4.2
57	58-62	4.3
57	63-67	4.4
57	68-95+	4.5
58	58-60	4.3
58	61-65	4.4
58	66-95+	4.5
59	59	4.3
59	60-63	4.4
59	64-68	4.5

59	69-95+	4.6
60	60-62	4.4
60	63-65	4.5
60	66-70	4.6
60	71-95+	4.7
61	61-64	4.5
61	65-68	4.6
61	69-72	4.7
61	73-95+	4.8
62	62-63	4.5
62	64-66	4.6
62	67-69	4.7
62	70-74	4.8
62	75-95+	4.9
63	63-64	4.6
63	65-67	4.7
63	68-71	4.8
63	72-75	4.9
63	76-95+	5.0
64	64-66	4.7
64	67-69	4.8
64	70-72	4.9
64	73-76	5.0
64	77-95+	5.1
65	65	4.7
65	66-67	4.8
65	68-70	4.9
65	71-73	5.0
65	74-77	5.1
65	78-95+	5.2
66	66	4.8
66	67-69	4.9
66	70-71	5.0
66	72-74	5.1
66	75-77	5.2
66	78-95+	5.3
67	67	4.9
67	68-70	5.0
67	71-72	5.1
67	73-75	5.2
67	76-78	5.3

67	79-95+	5.4
68	68	5.0
68	69-70	5.1
68	71-73	5.2
68	74-75	5.3
68	76-78	5.4
68	79-95+	5.5
69	69	5.1
69	70-71	5.2
69	72-73	5.3
69	74-75	5.4
69	76-78	5.5
69	79-95+	5.6
70	70	5.2
70	71-72	5.3
70	73	5.4
70	74-75	5.5
70	76-78	5.6
70	79-95+	5.7
71	71-72	5.4
71	73-74	5.5
71	75-76	5.6
71	77-79	5.7
71	80-95+	5.8
72	72	5.5
72	73-74	5.6
72	75-77	5.7
72	78-80	5.8
72	81-83	5.9
72	84-95+	6.0
73	73	5.6
73	74-75	5.7
73	76-78	5.8
73	79-80	5.9
73	81-83	6.0
73	84-95+	6.1
74	74	5.7
74	75-76	5.8
74	77-78	5.9
74	79-80	6.0
74	81-83	6.1

74	84-95+	6.2
75	75	5.8
75	76-77	5.9
75	78-79	6.0
75	80-81	6.1
75	82-83	6.2
75	84-86	6.3
75	87-95+	6.4
76	76	5.9
76	77	6.0
76	78-79	6.1
76	80-81	6.2
76	82-83	6.3
76	84-85	6.4
76	86-88	6.5
76	89-95+	6.6
77	77-78	6.1
77	79	6.2
77	80-81	6.3
77	82-83	6.4
77	84-85	6.5
77	86-87	6.6
77	88-90	6.7
77	91-95+	6.8
78	78	6.2
78	79	6.3
78	80-81	6.4
78	82	6.5
78	83-84	6.6
78	85-86	6.7
78	87-88	6.8
78	89-91	6.9
78	92-95+	7.0
79	79	6.4
79	80-81	6.5
79	82	6.6
79	83-84	6.7
79	85	6.8
79	86-87	6.9
79	88-89	7.0
79	90-92	7.1

79	93-95+	7.2
80	80	6.5
80	81	6.6
80	82	6.7
80	83	6.8
80	84	6.9
80	85-86	7.0
80	87	7.1
80	88-89	7.2
80	90-92	7.3
80	93-95+	7.4
81	81	6.7
81	82	6.8
81	83	6.9
81	84	7.0
81	85	7.1
81	86	7.2
81	87-88	7.3
81	89	7.4
81	90-91	7.5
81	92-95+	7.6
82	82	6.9
82	83	7.0
82	84	7.1
82	85	7.2
82	86	7.3
82	87	7.4
82	88	7.5
82	89	7.6
82	90-91	7.7
82	92-93	7.8
82	94-95+	7.9
83	83	7.2
83	84	7.3
83	85	7.4
83	86	7.5
83	87	7.6
83	88	7.7
83	89	7.8
83	90-91	7.9
83	92	8.0

83	93-95+	8.1
84	84	7.4
84	85	7.5
84	86	7.6
84	87	7.8
84	88	7.9
84	89	8.0
84	90	8.1
84	91	8.2
84	92-95+	8.3
85	85	7.7
85	86	7.8
85	87	7.9
85	88	8.1
85	89	8.2
85	90	8.3
85	91	8.4
85	92-95+	8.5
86	86	8.0
86	87	8.1
86	88	8.2
86	89	8.4
86	90	8.5
86	91	8.6
86	92-95+	8.7
87	87	8.3
87	88	8.4
87	89	8.6
87	90	8.7
87	91-95+	8.9
88	88	8.6
88	89	8.8
88	90	9.0
88	91-95+	9.1
89	89	9.0
89	90	9.2
89	91-95+	9.3
90	90	9.4
90	91-95+	9.5
91	91-95+	9.5
92	92-95+	9.5
93	93-95+	9.5
94	94-95+	9.5
95+	95+	9.5

Procedure for Calculating Suggested Deferred Gift Annuity Rates

(For New York and New Jersey, see below)

1. Determine the annuity starting date, which is:
   - One year before the first payment, if payments are made annually;
   - Six months before the first payment, if payments are made semi-annually;
   - Three months before the first payment, if payments are made quarterly;
   - One month before the first payment, if payments are made monthly.
2. Determine the number of whole and fractional years from the date of the contribution to the annuity starting date (the deferral period).
3. Express the fractional year as a decimal of four numbers.
4. For a deferral period of any length, use the following formula to determine the compound interest factor:

   F = 1.0325 d, where F is the compound interest factor and d is the deferral period

Example: If the period between the contribution date and the annuity starting date is 10.25 years, the compound interest factor would be $1.0325^{10.25} = 1.387948$.

5. Multiply the compound interest factor (F) by the immediate gift annuity rate for the nearest age or ages of a person or persons at the annuity starting date.

Example: If the sole annuitant will be nearest age 65 on the annuity starting date and the compound interest factor is 1.387948, the deferred gift annuity rate would be 1.387948 times 4.7%, or 6.5% (rounded to the nearest tenth of a percent).

Note to Charities Issuing Deferred Gift Annuities in New York and New Jersey

New York and New Jersey are the two states known at this time that may require different interest factors for deferred gift annuities with longer deferral periods.

1. **New York**: Under section 103.5 of 11 NYCRR 103 (Insurance Regulation 213), interest rates for New York single premium deferred annuities are issued quarterly. The rates are found on the New York Department of Financial Services' website under the “Present Value of Immediate Annuities” link. The applicable rate depends on the age and gender of the annuitant and is calculated by dividing the corresponding "Maximum Income" for the age and gender of the annuitant by 10. (Ex. The 2022 QI Maximum Income factor for a 35 year old male is 29.37/10=2.93%).

   It should be noted that there is a bill in the New York State Assembly that would change how practitioners would calculate the current rate. The proposed bill would amend subsection (a) of Section 1110 of the New York State Insurance Law. The amendment would calculate (i) the rate as of July 1 of the current year by adding 2% to the applicable 10-year treasury bond yield as of April 13 of the current year, rounded to the nearest 0.025%, and (ii) the rate as of January 1 of the next year, by

adding 2% to the applicable 10-year treasury bond yield as of October 31 of the current year, rounded to the nearest 0.25%.

2. **New Jersey**: Under New Jersey Administrative Code § 11:4-8.5(d), "[t]he Commissioner shall waive the requirement for a demonstration from the special permit holder that the rates meet the requirements of § 11:4-8.5(a) if the special permit holder uses the rates of the American Council on Gift Annuities and these rates meet the requirements of § 11:4-8.5(a)."

   § 11:4-8.5(a) states "[t]he original consideration for periodic payments payable to the holder of a charitable annuity may not be less than the single premium, computed according to interest and mortality assumptions permitted by N.J.S.A. § 17B:19-1 et seq. for guaranteed periodic payments, plus a life insurance net single premium, computed according to the same assumptions for an amount of death benefit equal to one-half of such original consideration. For this purpose, the original consideration shall include the gross amount paid by the annuitant to the special permit holder in order to provide the annuity payments and residue."

2023

JANUARY

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

FEBRUARY

Su	Mo	Tu	We	Th	Fr	Sa
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	1	2	3	4
5	6	7	8	9	10	11

MARCH

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1
2	3	4	5	6	7	8

APRIL

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

MAY

Su	Mo	Tu	We	Th	Fr	Sa
30	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

JUNE

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	1
2	3	4	5	6	7	8

JULY

Su	Mo	Tu	We	Th	Fr	Sa
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	5

AUGUST

Su	Mo	Tu	We	Th	Fr	Sa
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2
3	4	5	6	7	8	9

SEPTEMBER

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

OCTOBER

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

NOVEMBER

Su	Mo	Tu	We	Th	Fr	Sa
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	1	2
3	4	5	6	7	8	9

DECEMBER

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

2024

JANUARY

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

FEBRUARY

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	1	2
3	4	5	6	7	8	9

MARCH

Su	Mo	Tu	We	Th	Fr	Sa
25	26	27	28	29	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

APRIL

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1	2	3	4
5	6	7	8	9	10	11

MAY

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1
2	3	4	5	6	7	8

JUNE

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

JULY

Su	Mo	Tu	We	Th	Fr	Sa
30	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

AUGUST

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7

SEPTEMBER

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	1	2	3	4	5
6	7	8	9	10	11	12

OCTOBER

Su	Mo	Tu	We	Th	Fr	Sa
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2
3	4	5	6	7	8	9

NOVEMBER

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

DECEMBER

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

Bases of State Income Taxation of Nongrantor Trusts

2022

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Note: For comprehensive coverage of this subject, see Richard W. Nenno and Vincent C. Thomas, State Income Taxation of Trusts: 2022 (Young Conaway Stargatt & Taylor, LLP 2022). A free copy of the book may be ordered at https://lnkd.in/e2i-siAf.

YOUNG CONAWAY

State	Tax Dep't Website	Citations	Top 2022 Rate	Trust Created by Will of Domiciliary/ Resident	Inter Vivos Trust Created by Domiciliary/ Resident	Trust Administered in State	Trust with Domiciliary/ Resident Trustee/ Fiduciary	Trust With Domiciliary/ Resident Beneficiary
Alabama	revenue.alabama.gov	Ala. Code §§ 40-18-1(33), 40-18-5(l)(c); Ala. Admin. Code r. 810-3-29-.07(2)(b)–(c); Instructions to 2022 Ala. Form 41 at 2.	5.00% on taxable income over $3,000	✓[1]	✓[1]			
Alaska	dor.alaska.gov	No income tax imposed.						
Arizona	azdor.gov	Ariz. Rev. Stat. Ann. §§ 43-1011(A), (B), 43-1301(5), 43-1311(B)(2), (C); Instructions to 2022 Ariz. Form 141AZ at 1,14; Tax Year 2022, Tax Table-Estates and Trusts.	2.98% on taxable income over $28,652				✓	
Arkansas	dfa.arkansas.gov	Ark. Code Ann. § 26-51-201(b), 26-51-203(a); 2022 Ark. Indexed Tax Brackets.	4.90% on net income over $91,800	✓[2]	✓[2]			
California	ftb.ca.gov	Cal. Rev. & Tax. Code §§ 17041(a)(1), 17043(a), 17742(a); Cal. Const. art. XIII, § 36(f)(2); Instructions to 2022 Cal. Form 541 at 9, 12.	13.30% on taxable income over $1 million				✓	✓[3]

[1] Provided that trust has domiciliary or resident fiduciary or current beneficiary for more than seven months during taxable year.
[2] Provided that trust has resident fiduciary.
[3] Other than beneficiary whose interest is contingent.

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State	Tax Dep't Website	Citations	Top 2022 Rate	Trust Created by Will of Domiciliary/ Resident	Inter Vivos Trust Created by Domiciliary/ Resident	Trust Administered in State	Trust with Domiciliary/ Resident Trustee/ Fiduciary	Trust With Domiciliary/ Resident Beneficiary
Colorado	tax.colorado.gov	Colo. Rev. Stat. §§ 39-22-103(10), 39-22-104(1.7)(c); Instructions to 2022 Colo. Form 105 at 3, 4; 2022 Colo. Form 105 at 1.	4.40% on taxable income			✓		
Connecticut	portal.ct.gov/drs	Conn. Gen. Stat. §§ 12-700(a)(9)(E), 12-701(a)(4)(C)–(D); Conn. Agencies Regs. § 12-701(a)(4)-1(a)(3)–(4); Instructions to 2022 Form CT-1041; 2022 Form CT-1041 at 1.	6.99% on taxable income	✓	✓[4]			
Delaware	revenue.delaware.gov	Del. Code Ann. tit. 30, §§ 1102(a)(14), 1601(8); Instructions to 2022 Del. Form 400 at 1–2; 2022 Del. Form 400 at 2.	6.60% on taxable income over $60,000	✓[5]	✓[5]		✓[5]	
District of Columbia	otr.cfo.dc.gov	D.C. Code §§ 47-1806.03(a)(11), 47-1809.01, 47-1809.02; Instructions to 2022 D.C. Form D-41 at 7.	10.75% on taxable income over $1,000,000	✓	✓			
Florida	floridarevenue.com	No income tax imposed.						

[4] Provided that trust has resident noncontingent beneficiary.
[5] Provided that trust has resident beneficiary.

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State	Tax Dep't Website	Citations	Top 2022 Rate	Trust Created by Will of Domiciliary/ Resident	Inter Vivos Trust Created by Domiciliary/ Resident	Trust Administered in State	Trust with Domiciliary/ Resident Trustee/ Fiduciary	Trust With Domiciliary/ Resident Beneficiary
Georgia	dor.georgia.gov	Ga. Code Ann. §§ 48-7-20(b)(1), (d), 48-7-22; Instructions to 2022 Ga. Form 501 at 9.	5.75% on taxable net income over $7,000					✓[2]
Hawaii	tax.hawaii.gov	Haw. Rev. Stat. §§ 235-1, 235-51(d); Haw. Code R. § 18-235-1.17; Instructions to 2022 Haw. Form N-40 at 1, 10.	8.25% on taxable income over $40,000			✓[5]	✓[5]	
Idaho	tax.idaho.gov	Idaho Code §§ 63-3015(2), 63-3024(a); Idaho Admin. Code Regs. 35.01.01.035(01), 35.01.01.075; Instructions to 2022 Idaho Form 66 at 8.	6.5% on taxable income over $7,939	✓[6]	✓[6]	✓[6]	✓[6]	
Illinois	revenue.illinois.gov	35 Ill. Comp. Stat. 5/201(a), (b)(5.4), (c), (d), 5/1501(a)(20)(C)–(D); Ill. Admin. Code tit. 86, § 100.3020(a)(3)–(4); Instructions to 2022 Form IL-1041 at 5, 12; 2022 Form IL-1041 at 2.	6.45% on net income	✓	✓			
Indiana	in.gov/dor	Ind. Code §§ 6-3-1-12(d), 6-3-2-1(b)(3); 45 Ind. Admin. Code 3.1-1-21(d); Instructions to 2022 Ind. Form IT-41 at 1, 3; 2022 Ind. Form IT-41 at 1.	3.23% on taxable income			✓		

[2] Provided that trust has resident fiduciary.
[5] Provided that trust has resident beneficiary.
[6] Provided that other requirements are met.

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State	Tax Dep't Website	Citations	Top 2022 Rate	Trust Created by Will of Domiciliary/ Resident	Inter Vivos Trust Created by Domiciliary/ Resident	Trust Administered in State	Trust with Domiciliary/ Resident Trustee/ Fiduciary	Trust With Domiciliary/ Resident Beneficiary
Iowa	tax.iowa.gov	Iowa Code §§ 422.5(1), 422.5A(9); Iowa Admin. Code r. 701-700.3; Instructions to 2022 Iowa Form IA 1041 at 3.	8.53% on taxable income over $78,435			✓[6]	✓[6]	
Kansas	ksrevenue.org	Kan. Stat. Ann. §§ 79-32,109(d), 79-32,110(a)(2)(F), (d); Instructions to 2022 Kan. Form K-41 at 2; 2022 Kan. Form K-41 at 4.	5.70% on taxable income over $30,000			✓		
Kentucky	revenue.ky.gov	Ky. Rev. Stat. Ann. §§ 141.020(2)(d), 141.030(1); 103 Ky. Admin. Regs. 19:010; Instructions to 2022 Ky. Form 741 at 2; 2022 Ky. Form 741 at 2.	5.00% on taxable income				✓[5]	
Louisiana	revenue.louisiana.gov	La. Stat. Ann. §§ 47:300.1(3), 47:300.10(3); Instructions to 2022 La. Form IT-541 at 1, 2, 4, 5.	4.25% on taxable income over $50,000	✓		✓[7, 8]		
Maine	maine.gov/revenue	Me. Rev. Stat. Ann. tit. 36, §§ 5102(4)(B)–(C), 5111(1-F), 5403(1)(A); Instructions to 2022 Form 1041ME at 1, 3.	7.15% on taxable income over $54,450	✓	✓			

[5] Provided that trust has resident beneficiary.
[6] Provided that other requirements are met.
[7] Unless trust designates governing law other than Louisiana.
[8] Testamentary trust created by non resident; inter vivos trust created by resident or nonresident.

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Maryland	marylandtaxes.gov	Md. Code Ann., Tax–Gen. §§ 10-101(g), (n), 10-102, 10-105(a)(1)(viii), 10-106; Instructions to 2022 Md. Form 504 at i, 1, 5, 6.	5.75% (plus county tax between 2.25% and 3.20%) on taxable net income over $250,000	✓[5]	✓[5]	✓[5]		
Massachusetts	mass.gov/orgs/ massachusetts-department-of-revenue	Mass. Gen. Laws ch. 62, §§ 4, 10(a), (c); Mass Regs. Code tit. 830, § 62.10.1(1)(a); Instructions to 2022 Mass. Form 2 at 2, 5, 10; 2022 Mass. Form 2 at 2.	5.00% on taxable income (12.00% for short-term gains and gains on sales of collectibles)	✓[5]	✓[2, 5]			
Michigan	michigan.gov/taxes	Mich. Comp. Laws §§ 206.16, 206.18(1)(c), 206.51(1)(b); Instructions to 2022 MI-1041 at 3; 2022 MI-1041 at 1.	4.25% on taxable income	✓	✓[9]			
Minnesota	revenue.state.mn.us	Minn. Stat. §§ 290.01 Subd. 7b, 290.06 Subd. 2c, Subd. 2d; Instructions to 2022 Minn. Form M2 at 1–2, 19.	9.85% on taxable net income over $142,405	✓[10]	✓[10]	✓[11]		

[2] Provided that trust has resident fiduciary.
[5] Provided that trust has resident beneficiary.
[9] Unless trustee, assets, administration, and beneficiaries are outside Michigan.
[10] Post-1995 trust only.
[11] Pre-1996 trust only.

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Mississippi	dor.ms.gov	Miss. Code Ann. § 27-7-5(1)(a)(iii); Instructions to 2022 Miss. Form 81-110 at 3, 11.	5.00% on taxable income over $10,000			✓		
Missouri	dor.mo.gov	Mo. Rev. Stat. §§ 143.011, 143.061, 143.331(2)–(3); Instructions to 2022 Form MO-1041 at 4, 11.	5.30% on taxable income over $8,968)	✓[12]	✓[12]			
Montana	mtrevenue.gov	Mont. Code Ann. § 15-30-2103(1)(g), (2); Mont. Admin. R. 42.30.101(16); Instructions to 2022 Mont. Form FID-3 at 3, 17–18; 2022 Mont. Form FID-3 at 2.	6.75% on taxable income over $19,800	✓[6]	✓[6]	✓[6]	✓[6]	✓[6]
Nebraska	revenue.nebraska.gov	Neb. Rev. Stat. §§ 77-2714.01(6)(b)–(c), 77-2715.03(2)–(3), 77-2717(1)(a)(ii); Instructions to 2022 Neb. Form 1041N at 7, 8.	6.84% on taxable income over $17,330	✓	✓			
Nevada	tax.nv.gov	No income tax imposed.						
New Hampshire	revenue.nh.gov	No income tax imposed on nongrantor trusts.						

[6] Provided that other requirements are met.
[12] Provided that trust has resident income beneficiary on last day of taxable year.

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New Jersey	state.nj.us/treasury/taxation	N.J. Stat. Ann. §§ 54A:1-2(o)(2)–(3), 54A:2-1(b)(7); Instructions to 2022 Form NJ-1041 at 2, 28.	10.75% on taxable income over $1,000,000	✓[13]	✓[13]			
New Mexico	tax.newmexico.gov	N.M. Stat. Ann. § 7-2-7(C); Instructions to 2022 N.M. Form F1D-1 at 3, 9.	5.90% on taxable income over $210,000			✓	✓	
New York State	tax.ny.gov	N.Y. Tax Law §§ 601(c)(1)(B)(iv)–(ix), 605(b)(3)(B)–(C); 20 N.Y. Comp. Codes R. & Regs. tit. 20, § 105.23(a)-(b); Instructions to 2022 N.Y. Form IT-205 at 2, 9.	10.90% on taxable income over $25,000,000	✓[13]	✓[13]			
New York City	tax.ny.gov	N.Y. Tax Law §§ 1304(a)(3)(A), 1304-B(a)(1)(ii), 1305(c); N.Y.C. Admin. Code §§ 11-1701(b)(3), 11-1704.1, 11-1705)(b)(3); Instructions to 2022 N.Y. Form IT-205 at 2, 18.	3.876% on taxable income over $50,000	✓[13]	✓[13]			
North Carolina	ncdor.gov	N.C. Gen. Stat. §§ 105-153.7(a), 105-160.2; Instructions to 2022 N.C. Form D-407A at 1, 2; 2022 N.C. Form D-407 at 1.	4.99% on taxable income					✓[14]

[13] Unless trust has no trustee, asset, or source income in state and trustee files informational return.

[14] Unless trust does not have resident trustee and resident beneficiaries have not received income, have no right to demand it, and are uncertain ever to receive it (Kaestner, 139 S. Ct. 2213 (2019)). Tax might be eliminated in other situations.

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North Dakota	nd.gov/tax	N.D. Cent. Code § 57-38-30.3(1)(e), (g); N.D. Admin. Code § 81-03-02.1-04(2); Instructions to 2022 N.D. Form 38 at 2; 2022 N.D. Form 38 at 2.	2.90% on taxable income over $13,700			✓[6]	✓[6]	✓[6]
Ohio	tax.ohio.gov	Ohio Rev. Code Ann. §§ 5747.01(I)(3), 5747.02(A)(3), (E); Instructions to 2022 Ohio Form IT 1041 at 8, 9.	3.990% on taxable income over $115,300	✓	✓[5]			
Oklahoma	ok.gov/tax	Okla. Stat. tit. 68, §§ 2353(6), 2355(G),(C)(1)(f), 2355.1A; Okla. Admin. Code § 710:50-23-1(c); Instructions to 2022 Okla. Form 513 at 4, 17.	4.75% on taxable income over $7,200	✓	✓			
Oregon	oregon.gov/dor	Or. Rev. Stat. §§ 316.037, 316.282(1)(d); Or. Admin. R. 150-316.0400(3)–(5); Instructions to 2022 Or. Form 41 at 3; 2022 Or. Form 41 at 3.	9.90% on taxable income over $125,000			✓	✓	
Pennsylvania	revenue.pa.gov	72 P.S. §§ 7301(s), 7302; 61 Pa. Code § 101.1; Instructions to 2022 Form PA-41 at 5; 2022 Form PA-41 at 1.	3.07% on taxable income	✓[15]	✓[15]			

[5] Provided that trust has resident beneficiary.
[6] Provided that other requirements are met.
[15] Unless settlor is no longer resident or is deceased and trust lacks sufficient contact with Pennsylvania to establish nexus.

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Rhode Island	tax.ri.gov	R.I. Gen. Laws §§ 44-30-2.6(c)(3)(A)(II), (E), 44-30-5(c)(2)–(5); 280-RICR-20-55-7.7; Instructions to 2022 Form RI-1041 at 1-1; 2022 RI-1041 Tax Rate Schedules at 1.	5.99% on taxable income over $8,700	✓[5]	✓[5]			
South Carolina	dor.sc.gov	S.C. Code Ann. §§ 12-6-30(5), 12-6-510(B), 12-6-520; Instructions to 2022 Form SC1041 at 1, 3.	6.5% on taxable income over $16,040			✓		
South Dakota	dor.sd.gov	No income tax imposed.						
Tennessee	tn.gov/revenue	Tenn. Code Ann. §§ 67-2-102(5), 67-2-110.	0.00% on income (interest and dividends only)					✓
Texas	comptroller.texas.gov/taxes	No income tax imposed.						
Utah	tax.utah.gov	Utah Code Ann. §§ 59-10-104(2)(b), 59-10-202(2)(b), 75-7-103(1)(i)(ii)–(iii); Instructions to 2022 UT Form TC-41 at 3, 12; 2022 UT Form TC-41 at 1.	4.85% on taxable income	✓[16]		✓[8, 16]		

[5] Provided that trust has resident beneficiary.
[8] Testamentary trust created by nonresident; inter vivos trust created by resident or nonresident.
[16] Post-2003 trust having Utah corporate trustee may deduct all nonsource income but must file Utah return if must file federal return.

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Vermont	tax.vt.gov	Vt. Stat. Ann. tit 32, §§ 5811(11)(B), 5822(a)(5), (6), (b)(2); Instructions to 2022 Vt. Form FIT-161 at 2; 2022 Vt. Form FIT-161 at 2.	8.75% on taxable income over $10,150	✓	✓			
Virginia	tax.virginia.gov	Va. Code Ann. §§ 58.1-302, 58.1-320, 58.1-360; 23 Va. Admin. Code § 10-115-10; Instructions to 2022 Va. Form 770 at 1, 10.	5.75% on taxable income over $17,000	✓	✓	✓[17]		
Washington	dor.wa.gov	No income tax imposed.						
West Virginia	tax.wv.gov	W. Va. Code §§ 11-21-4e(a), 11-21-7(c)(2)–(3); W. Va. Code R. §§ 110-21-4(4.1), 110-21-7(7.3); Instructions to 2022 W. Va. Form IT-141 at 2, 8.	6.5% on taxable income over $60,000	✓	✓			
Wisconsin	revenue.wi.gov	Wis. Stat. §§ 71.06(1q), (2e)(b), 71.125(1), 71.14(2), (3), (3m); Instructions to 2022 Wis. Form 2 at 1, 22.	7.65% on taxable income over $280,950	✓	✓[18]	✓[19]		
Wyoming	revenue.wyo.gov	No income tax imposed.						

[17] Until July 1, 2019
[18] Trust created or first administered in Wisconsin after October 28, 1999, only.
[19] Irrevocable inter vivos trust administered in Wisconsin before October 29, 1999, only.

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Wednesday
October 18, 2023

2023 Tax Update

Tax Law Update

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I. Introduction

This presentation highlights updates to tax laws and guidance issued from October 2022 to September 2023. A special thank you to LeeAnne Shocklin, Esq. for your contributions to these materials.

II. Gift and Estate Tax Exemption Changes in 2023

Established by the American Taxpayer Relief Act (ATRA) of 2012, the $5 million estate and gift tax exemption limit has been expanded and adjusted for inflation in the years since its inception. For the last five years, taxpayers have benefited from the historically high gift and estate tax exemptions introduced under the Tax Cuts and Jobs Act of 2017, which doubled the exemption for 2018 from approximately $5.5 million to $11.18 million per person adjusted for inflation.[1] It is likely that the increase for 2024 will be announced prior to the presentation and the necessary update will be made at that time.

a. 2023 Exemption Increase

i. Federal

Effective January 1, 2023, the federal gift/estate tax exemption and generation-skipping transfer (GST) tax exemption increased from $12.06 million to $12.92 million per person (an $860,000 increase).[2]

The federal annual exclusion from gift tax amount also increased in 2023 from $16,000 to $17,000 per recipient.[3]

ii. State

Twelve states (WA, OR, MN, IL, VT, NY, ME, MA, RI, CT, HI, MD) and DC impose estate taxes and six states (NE, IA, KY, PA, NJ, MD) impose inheritance taxes.[4] Maryland is the only state to impose both an estate and inheritance tax.[5]

Effective January 1, 2023, the estate tax exemption amount in Connecticut increased to $12.92 million,[6] the estate tax exemption amount in New York

[1] https://cbh.com/guide/articles/estate-and-gift-tax-exemption-sunset-2025-how-to-prepare/#:~:text=Elevated%20Gift%20Tax%20Exclusions%20Will,indexed%20for%20inflation%20after%202018.
[2] https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax.
[3] https://www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax
[4] https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/estate-and-inheritance-taxes
[5] https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/estate-and-inheritance-taxes
[6] https://portal.ct.gov/DRS/Individuals/Individual-Income-Tax-Portal/Estate-and-Gift-Taxes/Tax-Information#:~:text=For%20estates%20of%20decedents%20dying,is%20more%20than%20%2412.92%20million.

increased to $6.58 million,[7] and the estate tax exemption amount in the District of Columbia increased to $4,528,000.[8]

b. Looming 2026 Reduction

The federal gift/estate tax exemption and GST tax exemption will continue to increase each year for inflation through December 31, 2025. However, under current law, on January 1, 2026, the exemption amounts are scheduled to return to the $5 million limit established under ATRA, indexed for inflation.[9]

III. SECURE 2.0 Act of 2022

a. Overview

On December 29, 2022, President Biden signed into law the Consolidated Appropriations Act of 2023.[10] This Act is a $1.7 trillion omnibus spending bill funding the U.S. federal government for the 2023 fiscal year.[11]

The SECURE 2.0 Act is meant to expand on the Setting Every Community Up for Retirement (SECURE) Act of 2019, which modified retirement plans, individual retirement accounts, and other tax-favored savings accounts.[12]

b. SECURE 2.0 Act Highlights

The SECURE 2.0 Act has 92 provisions aimed at increasing savings, boosting business incentives, and incentivizing those saving for retirement. While some provisions became effective upon the Act's enactment, others will go into effect over the next five years. Some of the provisions of the Act are highlighted below.

i. Required Minimum Distributions

1. Section 107, Increase in age for required beginning date for mandatory distributions.[13]

   Under current law, participants are generally required to begin taking distributions from their retirement plans at age 72. The policy behind this rule is to ensure that individuals spend their retirement savings during their lifetime and not use their retirement plans for estate planning purposes to transfer wealth to beneficiaries. The

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[7] https://www.tax.ny.gov/pit/estate/etidx.htm#bea
[8] https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/2023_D-76%20-%20Final.pdf
[9] https://www.irs.gov/newsroom/estate-and-gift-tax-faqs
[10] https://www.congress.gov/bill/117th-congress/house-bill/2617/text.
[11] https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY23%20Summary%20of%20Appropriations%20Provisions.pdf
[12] https://www.congress.gov/bill/116th-congress/house-bill/1994
[13] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

SECURE Act of 2019 increased the required minimum distribution age to 72. Section 107 further increases the required minimum distribution age to 73 for those who turn 72 after December 31, 2022 and who turn 73 before January 1, 2033, and increases the applicable age from 73 to 75 for those who turn 73 on or after January 1, 2033.

2. Section 201, Remove required minimum distribution barriers of life annuities.[14]

   Section 201 eliminates certain barriers to the availability of life annuities in qualified plans and IRAs that arise under current law due to an actuarial test in the required minimum distribution regulations. The test is intended to limit tax deferral by precluding commercial annuities from providing payments that start out small and increase excessively over time. In operation, however, the test commonly prohibits many important guarantees that provide only modest benefit increases under life annuities. Without these types of guarantees, the IRS believes many individuals are unwilling to elect a life annuity under a defined contribution plan or IRA. Section 201 is effective for calendar years ending after the date of enactment of this Act.

3. Section 302, Reduction in excise tax on certain accumulations in qualified retirement plans.[15]

   Section 302 reduces the penalty for failure to take required minimum distributions from 50 to 25 percent. Further, if a failure to take a required minimum distribution from an IRA is corrected in a timely manner, the excise tax on the failure is further reduced from 25 percent to 10 percent. Section 302 is effective for taxable years beginning after the date of enactment of this Act.

4. Section 313, Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations.[16]

   Under current law, the statute of limitations for excise taxes imposed on excess contributions, or required minimum distribution failures start running as of the date that a specific excise tax return (Form 5329) is filed for the violation. Individuals often are not aware of the requirement to file Form 5329, and this can lead to an indefinite

[14] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[15] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[16] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

period of limitations that can cause hardship for taxpayers due to the accumulation of interest and penalties (see Paschall v. C.I.R., 137 T.C. 8 (2011)). In order to provide finality for taxpayers in the administration of these excise taxes, Section 313 provides that a 3-year period of limitations begins when the taxpayer files an individual tax return (Form 1040) for the year of the violation, except in the case of excess contributions, in which case the period of limitations runs 6 years from the date Form 1040 is filed. There is a further exception from this 6 year rule for taxes that arise out of a bargain sale to the IRA. Section 313 is effective on the date of enactment of this Act.

5. Section 325, Roth plan distribution rules.[17]

   Under current law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan). Section 325 eliminates the pre-death distribution requirement for Roth accounts in employer plans, effective for taxable years beginning after December 31, 2023. Section 325 does not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

6. Section 337, Modification of required minimum distribution rules for special needs trust.[18]

   The SECURE Act placed limits on the ability of beneficiaries of defined contribution retirement plans and IRAs to receive lifetime distributions after the account owner's death. Special rules apply in the case of certain beneficiaries, such as those with a disability. Section 337 clarifies that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary. Section 337 is effective for calendar years beginning after the date of enactment of this Act.

ii. Catch-Up Contribution Limits

[17] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[18] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

1. Section 109, Higher catch-up limit to apply at age 60, 61, 62, and 63.[19]

   Under current law, employees who have attained age 50 are permitted to make catch-up contributions under a retirement plan in excess of the otherwise applicable limits. Section 109 increases these limits to the greater of $10,000 or 50 percent more than the regular catch-up amount in 2025 for individuals who have attained ages 60, 61, 62 and 63. The increased amounts are indexed for inflation after 2025. Section 109 is effective for taxable years beginning after December 31, 2024.

2. Section 333, Elimination of additional tax on corrective distributions of excess contributions.[20]

   Current law requires a distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution. Section 333 exempts the excess contribution and earnings allocable to the excess contribution from the 10 percent additional tax on early distributions, and is effective for any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after the date of enactment of this Act, without regard to whether the act (or failure to act) upon which the determination is based occurred before such date of enactment.

3. Section 603, Elective deferrals generally limited to regular contribution limit.[21]

   Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor). Section 603 provides all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, effective for taxable years beginning after December 31, 2023. An exception is provided for employees with compensation of $145,000 or less (indexed).

iii. Miscellaneous Provisions

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[19] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[20] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[21] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

1. Section 307, One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation.[22]

   Section 307 expands the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, effective for distributions made in taxable years beginning after the date of enactment of this Act. Section 307 also indexes for inflation the annual IRA charitable distribution limit of $100,000, effective for distributions made in taxable years ending after the date of enactment of this Act.

2. Section 327, Surviving spouse election to be treated as employee.[23]

   Section 327 allows a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules. Section 327 is effective for calendar years beginning after December 31, 2023.

3. Section 334, Long-term care contracts purchased with retirement plan distributions.[24]

   Section 334 permits retirement plans to distribute up to $2,500 per year for the payment of premiums for certain specified long term care insurance contracts. Distributions from plans to pay such premiums are exempt from the additional 10 percent tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10 percent tax. Section 334 is effective 3 years after date of enactment of this Act.

4. Section 604, Optional treatment of employer matching or nonelective contributions as Roth contributions.[25]

   Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pre-tax basis only. Section 604 allows defined contribution plans to provide participants with the option of

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[22] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

[23] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

[24] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

[25] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

receiving matching contributions on a Roth basis, effective on the date of enactment of this Act.

iv. *Exemption from Early Withdraw Penalties*

1. Section 314, Penalty-free withdrawal from retirement plans for individual case of domestic abuse. [26]

   A domestic abuse survivor may need to access his or her money in their retirement account for various reasons, such as escaping an unsafe situation. Section 314 allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of $10,000, indexed for inflation, or 50 percent of the participant's account). A distribution made under Section 314 is not subject to the 10 percent tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes on money that is repaid. Section 318 is effective for distributions made after December 31, 2023.

2. Section 126, Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs.[27]

   Section 126 amends the Internal Revenue Code to allow for tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 college savings accounts would be permitted to rollover up to $35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA. These rollovers are also subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years. Families and students have concerns about leftover funds being trapped in 529 accounts unless they take a non-qualified withdrawal and assume a penalty. This has led to hesitating, delaying, or declining to fund 529s to levels needed to pay for the rising costs of education. Section 126 eliminates this concern by providing families and students with the option to avoid the penalty, resulting in families putting more into their 529 account. Families who sacrifice and save in 529 accounts should not be punished with tax and penalty years later if the beneficiary has found an alternative way to

[26] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

[27] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

pay for their education. They should be able to retain their savings and begin their retirement account on a positive note. Section 126 is effective with respect to distributions after December 31, 2023.

3. Section 326, Exception to penalty on early distributions from qualified plans for individuals with a terminal illness.[28]

   Under current law, an additional 10 percent tax applies to early distributions from tax-preferred retirement accounts. Section 326 provides an exception to the tax in the case of a distribution to a terminally ill individual and would be effective for distributions made after the date of enactment of this Act.

4. Section 329, Modification of eligible age for exemption from early withdrawal penalty.[29]

   The 10 percent additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. Section 329 extends the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan and is effective for distributions made after the date of enactment of this Act.

5. Section 330, Exemption from early withdrawal penalty for certain State and local government corrections employees.[30]

   Section 330 extends the public safety officer exception to the 10 percent early distribution tax to corrections officers who are employees of state and local governments, effective for distributions made after the date of enactment of this Act.

6. Section 602, Hardship withdrawal rules for 403(b) plans.[31]

   Under current law, the distribution rules for 401(k) and 403(b) are different in certain ways that are historical anomalies for varied reasons. For example, for 401(k) plans, all amounts are available for a hardship distribution. For 403(b) plans, in some cases, only employee contributions (without earnings) are available for hardship distributions. Section 602 conforms the 403(b) rules to the

[28] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[29] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[30] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf
[31] https://www.finance.senate.gov/imo/media/doc/Secure%202.0_Section%20by%20Section%20Summary%2012-19-22%20FINAL.pdf

401(k) rules, effective for plan years beginning after December 31, 2023.

IV. 2023 Revenue Rulings, Revenue Procedures, and Notices

A "revenue ruling" is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and/or regulations. It is the IRS' conclusion about how the law is applied to a specific set of facts.[32]

A "revenue procedure" is an official statement of a procedure under the Internal Revenue Code, related statutes, tax treaties and/or regulations that affects the rights or duties of taxpayers and should be a matter of public knowledge.[33]

A "notice" is a public announcement that may contain guidance involving substantive interpretations of the Internal Revenue Code.[34]

The following is a summary of important revenue rulings, revenue procedures, and notices issued by the IRS in 2023. Not all revenue rulings, revenue procedures, and notices issued in 2023 are addressed in these materials.[35]

a. Revenue Ruling 2023-2

Rev. Rul. 2023-2 provides guidance on application of the basis adjustment under Section 1014 to assets of an irrevocable grantor trust not included in a deceased grantor's gross estate.

i. 26 U.S.C. § 1014

Section 1014(a) generally provides that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent, if not sold, exchanged, or otherwise disposed of before the decedent's death by that person, is the fair market value of the property at the date of the decedent's death.[36]

Section 1014(b) lists seven types of property that are considered to have been acquired from or to have passed from the decedent for the purposes of Section 1014(a): (1) property acquired by bequest, devise or inheritance, or by the decedent's estate from the decedent; (2) property where a decedent had, while alive, the power to (a) revoke or (b) amend the trust or hold a power to appoint the assets; (3) property transferred under a testamentary

[32] https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer
[33] https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer
[34] https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer
[35] For a summary of all IRS guidance issued in 2023, please visit: https://www.sjsu.edu/people/annette.nellen/website/2023_IRS_IRB_Rulings.pdf.
[36] 26 U.S.C. § 1014(a)(1).

general power of appointment; (4) community property; (5) property that is included in a decedent's gross estate under the provisions of Chapter 11; and (6) property included in a surviving spouse's estate due to a marital deduction allowed in the first-to-die spouse's estate.

ii. The Loophole

Section 1014 typically permits taxpayers receiving certain property from a decedent to increase the basis of such property to fair market value at the time of death. Importantly, what would not be included in the language of section 1014(b) are assets outside of the estate, such as those held in an irrevocable trust.

However, the termination of an irrevocable trust at the death of the grantor is often treated as a "bequest" or "devise" under Section 1014. As such, this inheritance would be eligible for the stepped-up basis treatment thus reducing the amount of capital gains taxes owed and shielding the inheritance from taxes.

iii. Impact

Until recently, the IRS was silent as to whether the phrase "bequest, devise, or inheritance" in Section 1014(b)(1) applies to the termination of grantor trust status upon the grantor's death or to the transfer of an irrevocable grantor trust's property upon a grantor's death. However, on March 29, 2023, the IRS issued Revenue Rule 2023-2 which addresses this unsettled issue.

The IRS concluded that the basis adjustment under Section 1014 generally does not apply to the assets of an irrevocable grantor trust not included in the deceased grantor's gross estate for federal tax purposes.[37] Trust assets are not "bequeathed," "devised," or "inherited" within the meaning of Section 1014(b)(1) to justify a step-up pursuant to Section 1014(a).[38] As such, the assets in the trust at the grantor's death would maintain the same basis as that immediately prior to the grantor's death.

b. Revenue Ruling 2023-8

Rev. Rul. 2023-8 revoked a prior revenue ruling and terminated a taxpayer's ability to correct missed deductions for research and experimental expenses effective July 31, 2023.[39]

[37] https://www.irs.gov/pub/irs-drop/rr-23-02.pdf
[38] https://www.irs.gov/pub/irs-drop/rr-23-02.pdf
[39] https://www.irs.gov/pub/irs-drop/rr-23-08.pdf

i. Revocation of Rev. Rul. 58-74

Prior to amendment by Pub. L. No. 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), Section 174(a) permitted a taxpayer to currently deduct research or experimental expenditures that were paid or incurred during the taxable year in connection with its trade or business (the "expense method"). If the expense method was adopted, it had to be used for all qualifying expenditures in the tax year adopted and for all subsequent years, unless the IRS Commissioner consented to a different method for all or part of the expenditures under former Section 174(a)(3).

Rev. Rul. 58-74 provides that if a taxpayer adopted the expense method but failed to deduct expenses relating to the cost of obtaining a patent or other items of research and experimental expenditures for prior taxable years to which the expense method is applicable, the taxpayer should file a claim for refund or amended return to deduct additional research and experimental expenditures in the year or years when the expenditures were paid or accrued. Rev. Rul. 58-74 further provides that the additional research and experimental expenditures cannot be treated as deferred and amortized under former Section 174(b) or chargeable to capital account and subsequently amortized or written off upon abandonment of the project or projects because the Commissioner's consent to change a method of accounting was not obtained. Accordingly, the deduction for the additional research and experimental expenditures could be lost if the period of limitations on claims for credit or refund has expired and amended returns could not be timely filed.

The TCJA amended Section 174 to provide that research and experimental expenditures for costs incurred in tax years beginning after December 31, 2021, must be charged to a capital account and amortized ratably over 5 years if the research is performed in the United States (or over 15 years for expenditures attributable to foreign research).

ii. Impact

The Treasury Department and the IRS are obsoleting Rev. Rul. 58-74 not because of the change in law under Section 174, but because there are insufficient facts in the ruling to properly analyze whether the taxpayer's failure to deduct certain research and experimental expenditures constituted a method of accounting or an error.

Rev. Rul. 58-74 is obsoleted effective July 31, 2023. As such, taxpayers may file a claim for refund, amended return, or Administrative Adjustment Request (AAR), as applicable, in reliance on Rev. Rul. 58-74 if the taxpayer is (1) claiming a deduction for additional research or experimental expenditures to which the expense method under former Section 174(a) is

applicable for the taxable year or years in which they were improperly deferred or capitalized, (2) otherwise using the expense method for such taxable year or years, and (3) timely filing the claim for refund, amended return, or AAR not later than July 31, 2023.[40]

c. Revenue Ruling 2023-14

Rev. Rul. 2023-14 addresses cryptocurrency and when cryptocurrency rewards are included in income.[41]

i. Ruling

A taxpayer using the cash-method of accounting must include in gross income the fair market value of rewards received through cryptocurrency staking in the year the taxpayer gains dominion and control over the rewards.[42]

1. What is cryptocurrency staking?

Crypto staking is a way of earning rewards for holding certain cryptocurrencies, specifically those that utilize a proof-of-stake model (for example, Ethereum).[43] By holding and staking the cryptocurrency for a period, a holder assists in verifying and securing the blockchain.[44]

Holders earn passive income by helping to secure the network and validate transactions. If a validator is chosen by the protocol for the blockchain, and validation is successful, the validator will receive a reward, such as additional units of the cryptocurrency.[45]

2. Dominion and Control

"Dominion and control" over the rewards occurs once the taxpayer is able to sell, exchange, or otherwise dispose of any interest in the reward from serving as a successful validator.[46]

3. Internal Revenue Code Section 83

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[40] https://www.irs.gov/pub/irs-drop/rr-23-08.pdf
[41] https://www.irs.gov/pub/irs-drop/rr-23-14.pdf
[42] https://www.irs.gov/pub/irs-drop/rr-23-14.pdf
[43] The main alternative to the proof-of-stake model is the proof-of work model. Bitcoin utilizes the proof-of-work model, which relies on Bitcoin mining rather than staking.
[44] https://www.reuters.com/business/finance/what-is-staking-cryptocurrency-practice-regulators-crosshairs-2023-02-10/
[45] https://www.irs.gov/pub/irs-drop/rr-23-14.pdf
[46] https://www.irs.gov/pub/irs-drop/rr-23-14.pdf

Rev. Rul. 2023-14 specifically states that its does not address any issues that may arise under any rules not specifically cited, such as section 83.[47]

Under section 83(a), if property is transferred to another person in connection with the performance of services, that property is generally valued and included in income by the service provider "at the first time the rights of the person having beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier."[48]

Rev. Rul. 2023-14 does not explain why the "dominion and control" test rather than the test utilized under section 83 is used.

ii. *Impact*

The IRS ruling seems to reject the position advanced by some that a newly minted cryptocurrency token is self-created property that is not taxable until the taxpayer disposes of the property in a taxable transaction. [49]

In *Jarrett, et al. v. United States*[50], plaintiff taxpayer sued the IRS for a refund of his 2019 taxes. He argued that because he only owed taxes on the cryptocurrency tokens he created through staking when he sold or transferred the tokens, he had not realized the income on the tokens, and, therefore, had overpaid his taxes and was entitled to a refund. The IRS argued the contrary (a position later repeated in Rev. Rul. 2023-14), that the rewards produced through staking increase the taxpayer's gross income at the time of receipt and, therefore, a taxpayer owes tax on the income for the year in which the rewards are received. Interestingly, however, prior to trial in the district court, the Attorney General issued Plaintiff his full refund request and directed the IRS to schedule an overpayment. As a result, the district court dismissed the case as moot. The Court of Appeals for the Sixth Circuit affirmed.

Why the IRS decided to sidestep the courts and instead issue a guideline is unclear. However, Rev. Rul. 2023-14 establishes precedent that rewards earned through staking must be reported as income for the year in which the taxpayer has dominion and control over the reward.

d. **Revenue Procedure 2023-3**

[47] https://www.irs.gov/pub/irs-drop/rr-23-14.pdf
[48] https://www.govinfo.gov/content/pkg/USCODE-2021-title26/pdf/USCODE-2021-title26-subtitleA-chap1-subchapB-partII-sec83.pdf
[49] See 26 U.S.C. § 61(a)
[50] Jarrett, et al. v. United States, No. 22-6023 (6th Cir. 2023).

i. Purpose

When appropriate, the IRS will answer taxpayer inquiries regarding their status for tax purposes and the tax effects of their transactions, prior to the filing of returns or reports required by revenue laws.

Rev. Proc. 2023-3[51] provides a revised list of those areas of the Internal Revenue Code relating to issues on which the IRS will not issue, will not ordinarily issue, or will temporarily not be issuing letter rulings or determination letters.

ii. Highlights

Section 5.02 states that the IRS will temporarily not issue rulings on any issue involving the application of the Inflation Reduction Act of 2022 as such area is under study.

e. **Revenue Procedure 2023-5**

i. Purpose

Rev. Pro. 2023-5[52] explains the procedures for issuing determination letters on tax-exempt status, private foundation status, and other determinations related to tax-exempt organizations. These procedures also apply to revocation or modification of determination letters. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428. Finally, this revenue procedure provides guidance on applicable user fees for requesting determination letters.

ii. Highlights

Revisions reflect mandatory e-filing of Form 1024 (Application for Recognition of Exemption Under section 501(a) or section 521 of the Internal Revenue Code)

A clarification in section 9.02 that an organization may protest/appeal a proposed adverse determination letter on the classification or reclassification of a section 4947(a)(1) non-exempt charitable trust as described in section 509(a)(3).

Rev. Proc. 2023-5, section 13.02 has been updated to note that favorable determination letters issued in 2014 and later are available on Tax Exempt Organization Search.

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[51] https://www.irs.gov/pub/irs-irbs/irb23-01.pdf
[52] https://www.irs.gov/pub/irs-irbs/irb23-01.pdf

f. Notice 2023-54

Notice 2023-54[53] provides transition relief for plan administrators, payors, plan participants, IRA owners, and beneficiaries in connection with the change in the required beginning date for required minimum distributions (RMDs) under § 401(a)(9) of the Internal Revenue Code pursuant to § 107 of the SECURE 2.0 Act of 2022.

i. SECURE 2.0 Act Impact

Following enactment of the SECURE 2.0 Act, plan administrators and other payors indicated that automated payment systems would need to be updated to reflect the change in the required beginning date under § 401(a)(9)(C) pursuant to § 107 of the SECURE 2.0 Act. They expressed concern that these revisions could take some time to implement and, as a result, plan participants and IRA owners who would have been required to begin receiving RMDs for calendar year 2023 but for § 107 of the SECURE 2.0 Act (i.e., those who will attain age 72 in 2023) and who receive distributions in 2023 could have had those distributions mischaracterized as RMDs (and therefore ineligible for rollover).

See section III above for additional information regarding the SECURE 2.0 Act.

ii. Guidance Regarding Change in Beginning Date Under SECURE 2.0 Act

A payor or plan administrator will not be considered to have failed to satisfy the requirements of §§ 401(a)(31), 402(f), and 3405(c) merely because of a failure to treat certain distributions as eligible rollover distributions. This relief applies with respect to any distribution made from a plan between January 1, 2023, and July 31, 2023, to a participant born in 1951 (or that participant's surviving spouse) that would have been an RMD but for the change in the required beginning date under § 107 of the SECURE 2.0 Act.

The Treasury Department and the IRS are extending the 60-day rollover period for any impacted distribution (as described in section *i* above) so that the deadline for rolling over such a distribution will be September 30, 2023. The Treasury Department and the IRS also are extending the 60-day rollover period for certain IRA distributions made to an IRA owner (or the IRA owner's surviving spouse), so that the deadline for rolling over that portion of the distribution will be September 30, 2023. The distributions that are subject to this extension are distributions made from an IRA between January 1, 2023, and July 31, 2023, to an IRA owner born in 1951 (or that

[53] https://www.irs.gov/pub/irs-drop/n-23-54.pdf

individual's surviving spouse) that would have been RMDs but for the change in the required beginning date under § 107 of the SECURE 2.0 Act.

iii. Guidance for Specified RMDs

1. Definition of Specified RMD

For purposes of Notice 2023-54, a "Specified RMD" is any distribution that, under the interpretation included in the proposed regulations, would be required to be made pursuant to § 401(a)(9) in 2023 under a defined contribution plan or IRA that is subject to the rules of § 401(a)(9)(H) for the year in which the employee (or designated beneficiary) died if that payment would be required to be made to:

- A designated beneficiary of an employee under the plan (or IRA owner) if: (1) the employee (or IRA owner) died in 2020, 2021, or 2022, and on or after the employee's (or IRA owner's) required beginning date, and (2) the designated beneficiary is not using the lifetime or life expectancy payments exception under § 401(a)(9)(B)(iii); or
- A beneficiary of an eligible designated beneficiary (including a designated beneficiary who is treated as an eligible designated beneficiary pursuant to § 401(b)(5) of the SECURE Act) if: (1) the eligible designated beneficiary died in 2020, 2021, or 2022, and (2) that eligible designated beneficiary was using the lifetime or life expectancy payments exception under § 401(a)(9)(B)(iii) of the Code.

2. Failure to Make or Specified RMD

A defined contribution plan that failed to make a Specified RMD will not be treated as having failed to satisfy § 401(a)(9) merely because it did not make that distribution.

To the extent a taxpayer did not take a Specified RMD, the IRS will not assert that an excise tax is due under § 4974.

V. Important Caselaw Developments

a. Estate of Cecil v. Commissioner (T.C. Memo. 2023-24)

i. Summary: In 2010, Mr. William A.V. Cecil, Sr. (grandson of George Vanderbilt and whose mother inherited the faced Vanderbilt Biltmore House

in Ashville, North Carolina) and his Wife gave stock in an S Corporation that owned the Biltmore House and some surrounding land and tourist facilities ("TBC") to their children and grandchildren. The donors attached an appraisal to the gift tax return; however, the IRS calculated the value of the gifts to be substantially more and asserted a gift tax deficiency of $13.1 million by each donor. Mr. and Mrs. Cecil challenged the IRS's deficiency action. A trial, the parties called experts to testify in support of each party's proposed stock value. While the court did not come to a value of the gifted shares, it accepted the valuation reached by Petitioners' expert with some adjustments. Despite past rejection of using tax-affecting to determine an S corporation's fair market value, the court applied tax affecting "given the unique setting at hand" and declined to find that tax-affecting is "always, or even more than not, a proper consideration for valuing an S corporation." With the discounts and use of tax-affecting, the resulting valuation will result in a significant refund to the taxpayers from the amounts reported on their gift tax returns.

ii. *Takeaway*: Tax-affecting refers to the step in the valuation of closely-held businesses that seeks to adjust for certain differences between passthrough entities and C corporations. the IRS has generally taken the position that an entity-level tax should not be applied in determining the projected earnings and value of an S corporation While the court applied tax-affecting in this case, it emphasized that it was appropriate "given the unique setting at hand." The lack of clarity creates uncertainty for taxpayers.

b. Connelly v. United States, No. 21-3683 (8th Cir. June 2, 2023)

i. *Summary*: Two brothers were the sole shareholders of a corporation. The corporation's buy-sell agreement required that the corporation purchase the shares of a decedent shareholder. The pricing provision of the agreement required the brothers to mutually agree as to the value each year. If they could not agree on the annual value, then the price would be determined by securing two more appraisals. The brothers never complied with the terms of the pricing provision. The company funded the agreement with a $3.5 million life insurance policy on each of the brothers' lives, so that if one of the shareholders died, the corporation could use the proceeds to redeem that shareholder's shares.

One of the shareholders subsequently died, and the IRS assessed taxes on his estate, which included his stock interest in the corporation. While the estate reported the shares at approximately $3.1 million, the IRS took the position that the fair market value of the corporation included the life insurance proceeds intended for the stock redemption. As a result, the IRS

sent a notice of deficiency to the estate for $1 million in additional tax liability. The estate paid the deficiency and sued for a refund.

The district court determined that the buy-sell agreement did not fix the value of the shares and granted summary judgment to the IRS. The taxpayer appealed to the 8th Circuit Court of Appeals. The 8th Circuit affirmed the lower court's decision, concluding (1) that the stock-purchase agreement requiring the redemption of a deceased shareholder's shares did not affect the value of the shares for estate tax purposes under section 2703(b) because the agreement did not provide for a "fixed and determined price" in light of the fact that the parties "ignored the agreement's pricing mechanisms", and (2) that a proper valuation of the corporation in accordance with sections 2042 and 2031 must include the life insurance proceeds without treating the obligation to redeem shares as an offsetting liability. In doing so, the Circuit court declined to follow setting up a potential split in the Circuits.

ii. *Takeaway*: The 8th Circuit declined to follow *Estate of Blount v. Commissioner,* 428 F.3d 1338 (11th Cir. 2005). In *Estate of Blout*, the court viewed the life insurance proceeds as an asset directly offset by the liability to redeem the shares; thus, there is no effect on the company's value. As such, a split in circuits is developing.

1

SECURE Act 2.0

- Delay RBD to age 72 with plan for staged increase to age 75 for those who turn 73 on or after January 1, 2033
- Eliminated the Pre-Death distribution requirement of retirement plans
- Clarifies that a Charity may be named as the remainder beneficiary of a special needs trust
- Increased catch-up contribution limit for people aged 60-64
- Retirement Plans may distribute up to $2,500 annually to pay premiums for LTC Insurance
- Roth IRA Employer Matching Permitted

2

SECURE Act 2.0 (cont.)

- Penalty-free withdrawals for domestic abuse survivors who need access for reasons such as escaping an unsafe situation
  - $10,000 or up to 50% of account (lesser of)
- Up to $35,000 rollover from 529 accounts open for more than 15 years to Roth IRAs permitted
- Penalty-free withdrawals for terminally ill
- Penalty-free withdrawals for public safety officer who is age 50 with at least 25 years of service
  - Extended to employees of state and local governments
- Hardship rules for 403(b) plans now mirror 401(k) plans

3

4

Rev. Rul. 2023-2 (cont.)

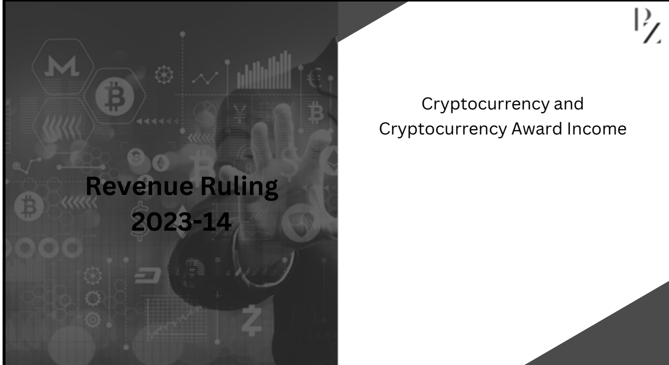
- 26 U.S.C. § 1014 - basis in hands of person acquiring from decedent is the FMV of the property at the death of the decedent
  - (1) property acquired by bequest, devise or inheritance, or by the decedent's estate from the decedent
  - (2) property where a decedent had, while alive, the power to (a) revoke or (b) amend the trust or hold a power to appoint the assets
  - (3) property transferred under a testamentary general power of appointment
  - (4) community property
  - (5) property that is included in a decedent's gross estate under the provisions of Chapter 11
  - (6) property included in a surviving spouse's estate due to a marital deduction allowed in the first-to-die spouse's estate.

5

Rev. Rul. 2023-2 (cont.)

- Termination of an irrevocable trust is often considered a "bequest" or "devise"
- Must be included in the Grantor's gross estate for federal tax purposes for FMV basis adjustment

6



Cryptocurrency and Cryptocurrency Award Income

7

Rev. Rul. 2023-14 (cont.)

- Cryptostaking - earn rewards for holding certain cryptocurrencies
  - By holding and staking, hold assisting in verifying and securing the blockchain
  - Holders earn passive income
  - Successful validation results in a reward, such as more units
- Dominion and Control Test- when taxpayer can sell, exchange, or dispose of interest in the reward
- IRC 83 - property transferred to another person in connection with the performance of services, property is valued and included in income when transferrable or not subject to a substantial risk of forfeiture, whichever occurs earlier
  - Does not explain why this was not used

8

Rev. Rul. 2023-14 (cont.)

- Newly minted cryptocurreny is NOT self-created property that is taxable when disposed
- *Jarrett, et. al v. United States*
  - sued the IRS for a refund of his 2019 taxes
  - Argued that because he only owed taxes on the cryptocurrency tokens he created through staking when he sold or transferred the tokens, he had not realized the income on the tokens, and, therefore, had overpaid his taxes and was entitled to a refund.
  - IRS argued that the rewards produced through staking increase the taxpayer's gross income at the time of receipt and, therefore, a taxpayer owes tax on the income for the year in which the rewards are received.
  - Note: AG sent refund and directed IRS to schedule overpayment
  - Case was dismissed - Moot
  - The Court of Appeals for the Sixth Circuit affirmed.

9

Rev. Proc. 2023-3

- The IRS will answer taxpayer inquiries regarding their status for tax purposes and the tax effects of their transactions, prior to the filing of returns or reports required by revenue laws.
- IRS will temporarily not issue rulings on any issue involving the application of the Inflation Reduction Act of 2022 as such area is under study.

10

Rev. Proc. 2023-3 (cont.)

- Bulletin No. 2023-1
- Revised list of those areas of the Internal Revenue Code relating to issues on which the IRS will not issue, will not ordinarily issue, or will temporarily not be issuing letter rulings or determination letters.

11

Rev. Proc. 2023-3 (cont.)

- In income and gift tax matters, issues a letter ruling on a proposed transaction or on a completed transaction if the letter ruling request is submitted before a return containing a tax position on the completed transaction is filed.
- An Associate office ***will not*** ordinarily issue a letter ruling on a completed transaction if the letter ruling request is submitted after a return containing a tax position on the completed transaction is filed.
  - Unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling submitted after the return is filed for the year in which the transaction is completed.

12

Rev. Proc. 2023-3 (cont.)

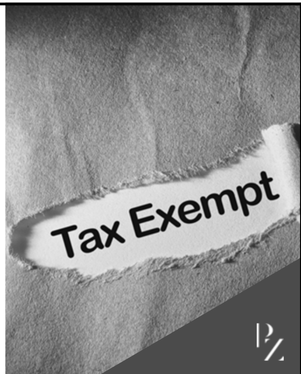
- Issues letter rulings on transactions affecting the estate tax on the prospective estate of a living person.
- Will not issue letter rulings for prospective estates on computations of tax, actuarial factors, or factual matters.
- Generally issued before the decedent's estate tax return is filed.
  - If ruling not to be expected prior to filing, request extension and notify the branch considering the letter ruling request that an extension has been obtained.
  - If return is filed before the ruling taxpayer must disclose on the return that a letter ruling has been requested

The Associate office will make every effort to issue the letter ruling within 3 months of the date the return was filed.

13

Rev. Proc. 2023-5

- Procedures for issuing determination letters on tax-exempt status, private foundation status, and other determinations related to tax-exempt organizations.
- Also applies to revocation or modification of determination letters.



14

Rev. Proc. 2023-5 (cont.)

- Revisions reflect mandatory e-filing of Form 1024 (Application for Recognition of Exemption Under section 501(a) or section 521 of the Internal Revenue Code)
- A clarification in section 9.02 that an organization may protest/appeal a proposed adverse determination letter on the classification or reclassification of a section 4947(a)(1) non-exempt charitable trust as described in section 509(a)(3).
- Rev. Proc. 2023-5, section 13.02 has been updated to note that favorable determination letters issued in 2014 and later are available on Tax Exempt Organization Search.

15

Notice 2023-54

- Provides transition relief for plan administrators, payors, plan participants, IRA owners, and beneficiaries in connection with the change in the required beginning date for required minimum distributions

16

Rev. Notice 2023-54 (cont.)

- A payor or plan administrator will not be considered to have failed to satisfy the requirements of §§ 401(a)(31), 402(f), and 3405(c) merely because of a failure to treat certain distributions as eligible rollover distributions.
  - Any distribution made from a plan between January 1, 2023 and July 31, 2023, to a participant born in 1951 (or that participant's surviving spouse) that would have been an RMD but for the change in the required beginning date under § 107 of the SECURE 2.0 Act.
- The Treasury Department and the IRS are extending the 60-day rollover period for any impacted distribution above (in addition to certain IRA distributions) so that the deadline for rolling over such a distribution will be September 30, 2023.

17

Estate of Cecil v. Commissioner (T.C. Memo 2023-24)

- In 2010, Mr. William A.V. Cecil, Sr. (grandson of George Vanderbilt and whose mother inherited the faced Vanderbilt Biltmore House in Ashville, North Carolina) and his Wife gave stock in an S Corporation that owned the Biltmore House and some surrounding land and tourist facilities ("TBC") to their children and grandchildren.
- The donors attached an appraisal to the gift tax return; however, the IRS calculated the value of the gifts to be substantially more and asserted a gift tax deficiency of $13.1 million by each donor.
- While the court did not come to a value of the gifted shares, it accepted the valuation reached by Petitioners' expert with some adjustments.
  - Despite past rejection of using tax-affecting to determine an S corporation's fair market value, the court applied tax affecting "given the unique setting at hand" and declined to find that tax-affecting is "always, or even more than not, a proper consideration for valuing an S corporation."
  - With the discounts and use of tax-affecting, the resulting valuation will result in a significant refund to the taxpayers from the amounts reported on their gift tax returns.

NOTE: 'Tax affecting' is a valuation approach that applies a hypothetical entity-level tax to a pass-through entity's taxable income, which reduces the value of the business.

18

Connelly v. United States No. 21-3683 (8th Cir. June 2, 2023)

- Two brothers were the only shareholders of a corporation governed by a buy-sell agreement that required that the corporation purchase the shares of a decedent shareholder.
- The pricing provision of the agreement required the brothers to mutually agree as to the value each year. If they could not agree on the annual value, then the price would be determined by securing two more appraisals. The brothers never complied with the terms of the pricing provision.
- The company funded the agreement with a $3.5 million life insurance policy on each of the brothers' lives, so that if one of the shareholders died, the corporation could use the proceeds to redeem that shareholder's shares.
- One of the shareholders died, and the IRS assessed taxes on the his stock interest in the corporation.
- Estate reported the shares at approximately $3.1 million but the IRS took the position that the fair market value of the corporation included the life insurance proceeds intended for the stock redemption.
  - IRS sent a notice of deficiency to the estate for $1 million in additional tax liability.
  - The estate paid the deficiency and sued for a refund.

19

Connelly v. United States No. 21-3683 (8th Cir. June 2, 2023) cont.

- Ruling:
  - Trial Court: the buy-sell agreement did not fix the value of the shares and granted summary judgment to the IRS.
  - 8th Circuit Court of Appeals: Affirmed, concluding (1) that the stock-purchase agreement requiring the redemption of a deceased shareholder's shares did not affect the value of the shares for estate tax purposes under section 2703(b) because the agreement did not provide for a "fixed and determined price" in light of the fact that the parties "ignored the agreement's pricing mechanisms", and (2) that a proper valuation of the corporation in accordance with sections 2042 and 2031 must include the life insurance proceeds without treating the obligation to redeem shares as an offsetting liability.
- Impact - Circuit Splits

20

Estate of Blount v. Commissioner 428 F.3d 1338 (11th Cir. 2005)

- The issue presented is how one should value a decedent's shares in a corporation where those shares are subject to a buy-sell agreement that is either: (1) disregarded for estate tax purposes, or (2) omits the price of the shares it covers.
  - The specific issue is how one should account for insurance proceeds a corporation receives on account of a decedent's death when those proceeds are offset by a corresponding obligation to redeem the decedent's shares.
- insurance proceeds are to be ignored when offset by a corresponding redemption obligation.
  - Joined the Ninth Circuit, which reached a similar conclusion in *Estate of Cartwright v. Commissioner*

21

Estate of Blount v. Commissioner 428 F.3d 1338 (11th Cir. 2005)

(cont.)

- Must be a business agreement and not testamentary device
  - Factors included: (1) reasonableness of the purchase price in the agreement, (2) the intent of the parties, and (3) the facts leading to the conclusion that the agreement is a substitute for a testamentary device.
    - Testamentary substitute factors: (1) grantor's health at the time the agreement was executed (2) any significant changes in the business as of the date of the agreement (3) selective enforcement of restrictive provisions and (4) the nature and extent of negotiations

22

23

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2023 TAX TABLES

Including Certain Provisions in SECURE 2.0 Relating to Plan Distributions

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SELECTED FEDERAL[1] TAX RETURN DUE DATES

April 18, 2023	First estimated installment, calendar year 1041s, and 709s
April 18, 2023[2]	1040s, and taxes on 1040s for 2022
May 15, 2023	Form 990
June 15, 2023	Second estimated installment
September 15, 2023	Third estimated installment
October 2, 2023	2022 1041s with 5½ month extension
October 16, 2023	2022 1040s with 6-month extension
January 16, 2024	Fourth estimated installment

[1] State tax deadline extensions may vary.
[2] Table does not include extensions for certain disaster areas.

TAX TABLES

Revised through April 18, 2023

Although care was taken to make these Tax Tables an accurate, handy reference, they should not be relied upon as the final basis for action. Neither the College nor the individual editors and advisors (who have volunteered their time and experience in the preparation of the tables) assume any responsibility for the accuracy of the information contained in the tables.

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INCOME TAX

Married Filing a Joint Return
[or surviving spouse as defined in IRC 2(a)]
Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $22,000	-0-	10%
$22,000	$2,200	12%
$89,450	$10,294	22%
$190,750	$32,580	24%
$364,200	$74,208	32%
$462,500	$105,664	35%
$693,750	$186,601.50	37%

"Taxable income" means:

1. Adjusted gross income (AGI) as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $27,700** increased by $1,500 for each taxpayer who is blind or who is over age 65 (or, if both, by $3,000), and
3. Any deduction for qualified business income (QBI).

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $10,000.

**If either taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of (a) $1,250 or (b) $400, plus earned income [IRC 63(c)(5)].

For federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex.

Head of Household
[as defined in IRC 2(b) and, if married living apart with dependent child, see IRC 7703(b)]
Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $15,700	-0-	10%
$15,700	$1,570	12%
$59,850	$6,868	22%
$95,350	$14,678	24%
$182,100	$35,498	32%
$231,250	$51,226	35%
$578,100	$172,623.50	37%

"Taxable income" means:

1. Adjusted gross income ("AGI") as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $20,800** increased by $1,850 if taxpayer is blind or over age 65 (or, if both, by $3,700 [IRC 63(f)]), and
3. Any deduction for qualified business income (QBI).

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $10,000.

**If either taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of (a) $1,250 or (b) $400, plus earned income [IRC 63(c)(5)].

Single Individual

Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $11,000	-0-	10%
$11,000	$1,100	12%
$44,725	$5,147	22%
$95,375	$16,290	24%
$182,100	$37,104	32%
$231,250	$52,832	35%
$578,125	$174,238.50	37%

"Taxable income" means:

1. Adjusted gross income (AGI) as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $13,850 ** increased by $1,850 if taxpayer is blind or over age 65 (or, if both, by $3,700), and
3. Any deduction for qualified business income (QBI).

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $10,000.

**If taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of (a) $1,250 or (b) $400, plus earned income [IRC 63(c)(5)].

KIDDIE TAX—Unearned income of a child under age 18, and in some cases age 18 to 23, is taxed for 2023 at the parent's marginal rate [IRC 1(g)]. For 2023, the first $1,250 of a child's unearned income qualifies for the standard deduction, the next $1,250 is taxed at the child's income tax rate, and unearned income above $2,500 is taxed at the parent's marginal income tax rate.

Married Filing a Separate Return

Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $11,000	-0-	10%
$11,000	$1,100	12%
$44,725	$5,147	22%
$95,375	$16,290	24%
$182,100	$37,104	32%
$231,250	$52,832	35%
$346,875	$93,300.75	37%

"Taxable income" means:

1. Adjusted gross income (AGI) as defined in IRC 62,
2. Less (a) itemized deductions* or (b) if greater, the standard deduction of $13,850** increased by $1,500 if taxpayer is blind or over age 65 (or, if both, by $3,000), but if either spouse itemizes deductions, the other has a zero standard deduction [IRC 63(c)(6)], and
3. Any deduction for qualified business income (QBI).

A portion of Social Security benefits ("SSB") may be included in gross income [IRC 86]. The amount included is the lesser of:

a. 85% of SSB or
b. 85% of MAGI-PLUS.***

---

*Itemized deductions are no longer reduced by a percentage of AGI in excess of a certain amount. "Miscellaneous deductions" are not allowed. The deduction for state and local taxes is limited to $5,000.

**If the taxpayer is allowable as a dependent of another, the standard deduction must not exceed the greater of $1,250 or the sum of earned income plus $400 [IRC 63(c)(5)].

***MAGI-PLUS is AGI (without any SSB) plus IRC 135 excludable tuition bond income; IRC 137 excludable employee adoption assistance benefit; IRC 221 interest deduction on education loans; IRC 222 qualified tuition; IRC 911, 931, and 933 excludable foreign earned income; tax exempt interest; and 50% of SSB.

NOTE: For any taxable year in which one spouse dies, the surviving spouse must file either a joint return or a married filing separately return [IRC 6013(d)(1)(B)].

Trusts and Estates

No attempt is made here to describe the tax rules applicable to special kinds of irrevocable trusts (such as **charitable trusts, QSFs, ESBTs, QSSTs, bankruptcy estates, legal life estates, qualified plan trusts**, and so on).

To the extent that any portion of an irrevocable trust is treated as a grantor trust under IRC 671, the grantor reports the income, deductions, and credits attributable to that portion as though the grantor owned that portion.

Tax Years Beginning in 2023

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $2,900	-0-	10%
$2,900	$290	24%
$10,550	$2,126	35%
$14,450	$3,491	37%

Tax Years Beginning in 2022

Taxable Income Bracket Amount	Tax on Bracket Amount	Tax Rate on Excess Over Bracket Amount
Less than $2,750	-0-	10%
$2,750	$275	24%
$9,850	$1,979	35%
$13,450	$3,239	37%

"Taxable income" means:

1. Gross income as defined in IRC 61,
2. Less itemized deductions (other than miscellaneous itemized deductions),
3. Less other deductions "which would not have been incurred if the property were not held in such trust or estate,"
4. Less distribution deduction under IRC 651 or 661, and
5. Less a personal exemption under IRC 642(b) of:

   $600 for an estate,

   $300 for a trust that is required to distribute all of its income currently, or

   $100 for all other trusts.

A. Quarterly estimated tax payments are required for all trust taxable years, and for all estate taxable years ending after the second anniversary of death. For this purpose, a trust:
   1. All of which was treated as owned by a decedent and
   2. To which the residue of the decedent's estate will pass by (or, if there is no will, which is the trust primarily responsible for paying debts, taxes, and expenses) is treated like an estate [IRC 6654(l)].

B. Trust tax years, except for wholly charitable trusts, must close on December 31 [IRC 645].

C. The "65 day" and "separate share" rules under IRC 663 (b) and (c) apply to both "complex" trusts under IRC 661 and 662 and estates.

D. Losses on transactions between an estate and its beneficiaries or trusts and their beneficiaries are disallowed, but losses that result from an estate's satisfaction of a pecuniary bequest are not disallowed [IRC 267(b)(13)].
E. Certain revocable trusts are treated as part of an estate for income tax purposes,
   1. If a trustee of a decedent's revocable trust and the decedent's executor, if any, irrevocably elect such treatment on a statement attached to the estate's timely filed (including extensions) first year income tax return, and
   2. If the decedent's revocable trust was a "qualified revocable trust"—that is, it was treated as owned by the decedent under IRC 676 by reason of the decedent's power to revoke such trust [without regard to IRC 672(e)], then such trust will be taxed as part of the estate (subject to estate, rather than trust, income tax rules) for tax years of the estate ending before the "applicable date"—which is:
      a. The second anniversary of the decedent's death or
      b. If an estate tax return is required to be filed, the date which is the 6-month anniversary of the final determination of estate tax. A qualified revocable trust can be a portion of a revocable trust (for example, one spouse's portion of a married couple's joint revocable trust).

Capital Gains Rates and Rules
For Individuals

A. Maximum capital gains rates.

Capital assets held for more than one year are taxed at long term capital gains rates. Short-term gains (on assets held one year or less) are included in ordinary income. Prior to 2018, noncorporate taxpayers paid tax on net capital gains at a tax rate of (a) 20% if the gain would be taxed at the 39.6% rate if it were ordinary income; (b) 15% if the gain would be taxed at the 25%, 28%, 33%, or 35% rate if it were ordinary income; and (c) 0% if the gain would be taxed at a 10% or 15% rate if it were ordinary income. However, for 202, long-term capital gains are taxed at their own brackets as follows:

	Single	Joint or Surviving Spouse	Head of Household	Married Filing Separately
0% tax bracket	$0–44,625[2]	$0–89,250	$0–59,750	$0–44,625
15% tax bracket	$44,625–492,300[3]	$89,250–553,850	$59,750–523,050	$44,625–276,900
20% tax bracket	over $492,300	over $553,850	over $523,050	over $276,900

Special rates apply to capital gain on unrecaptured section 1250 gain (a maximum rate of 25%) and capital gain on collectibles (a maximum rate of 28%). The benefit of these maximum rate provisions does not apply to the extent net capital gain is elected to be included in investment income for purposes of computing deductible investment interest expense under IRC 163(d).

In addition, the 3.8% net investment income tax includes net gain included in gross income from the disposition of property other than certain property held in a trade or business. In the case of an individual, the 3.8% tax is imposed on the lesser of net investment income or the excess of modified adjusted gross income over the threshold amount. The threshold amount is $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case.

B. Net capital losses.

Net capital losses are deductible against ordinary income up to $3,000 ($1,500 for married filing separately) per year [IRC 1211(b)]. For carryover purposes, under IRC 1212(b)(2), such capital loss ("CL") deduction "uses up" net short-term capital losses ("STCL") first, and is the lesser of:

1. Such CL deduction [that is, such $3,000 (or $1,500) amount or the lesser amount of net CL] or
2. Taxable income after adding back (a) said CL deduction and (b) personal exemptions (with any allowable deduction over gross income for such year taken into account as negative taxable income).

The remaining current year net STCL (the excess of STCL over LTCG) and net LTCL (the excess of LTCL over STCG) are carried over to future years (but not beyond death—see Rev. Rul. 74-175).

C. Dividend income.

Dividends are taxed at the same rates as ordinary income, except for qualified dividends which are taxed at capital gains rates. [IRC 1(h)(11)].

---

[2] $2,800 for an estate or trust.

[3] $13,700 for an estate or trust.

Alternative Minimum Tax [IRC 55]

Exemption Amounts

2023

Single	$81,300
Married filing jointly	$126,500
Married filing separately	$63,250
Trusts and estates	$28,400

Excess Taxable Income Above Which 28% Tax Rate Applies

Married filing separately	$110,350
Joint returns, unmarried, trusts and estates	$220,700

Amounts Used to Determine Phaseout of Exemption

Single	$578,150
Married filing jointly	$1,156,300
Married filing separately	$578,150
Trusts and estates	$94,600

The AMT exemption amounts and the dollar amounts at which the phase-out of the basic AMT exemption amount begins are indexed for inflation. Certain nonrefundable personal credits may offset AMT liability.

Long-Term Care Insurance Premiums Allowed As "Medical Care" [IRC 213(d)(10)]

Attained Age before Close of the Tax Year	2023 Maximum Premium Deduction	2022 Maximum Premium Deduction
40 or less	$480	$450
More than 40, but no more than 50	$890	$850
More than 50, but no more than 60	$1,790	$1,690
More than 60, but no more than 70	$4,770	$4,510
More than 70	$5,960	$5,640

Health Savings Accounts (HSA)

Limit on Deductible Contributions [IRC 223]

Self-Only Coverage: For taxable years beginning in 2023, the term "high deductible health plan" as defined in IRC 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,650 and not more than $3,950, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $5,300.

Family Coverage: For taxable years beginning in 2023, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $5,300 and not more than $7,900, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $9,650.

Mileage Rates for Deduction Purposes

	2023	2022
Business	$.655	$.585
Charitable	$.14	$.14
Medical/Moving	$.22	$.18

Section 199A

Tax law changes which became effective on January 1, 2018, permit individuals a 20% deduction from qualified business income from a partnership, S corporation, or sole proprietorship. The deduction is limited to the greater of (1) 50% of the W-2 wages with respect to the trade or business, or (2) the sum of 25% of the W-2 wages, plus 2.5% of the unadjusted basis immediately after acquisition of all qualified property (generally, tangible property subject to depreciation under IRC 167). Taxpayers with taxable years beginning in 2023 and taxable income for the year of less than $182,100 ($364,200 for married filing jointly) are not subject to the W-2 wage limitations, and the limitation is phased in for taxpayers with taxable income above those thresholds. Income from specified service businesses is not excluded from qualified business income for taxpayers with taxable income under the same threshold amounts. A full discussion of this complex new section is beyond the scope of this publication.

Corporate Income Tax

1. Corporations are taxed at a flat 21% rate.
2. Corporate net capital gains (whether short-term or long-term) are taxable income taxed at the same rates as corporate ordinary income.
3. Excess corporate capital losses are subject to a 3-year carryback and 5-year carry forward (as short-term capital loss) but may be used only to reduce corporate capital gains [IRC 1212(a)].
4. The NOL deduction for a tax year is equal to the lesser of (1) the aggregate of the NOL carryovers to such year, plus the NOL carry-backs to such year or (2) 80% of taxable income (determined without regard to the deduction) [IRC 172(a)]. Generally, NOLs can no longer be carried back but are allowed to be carried forward indefinitely [IRC 172(b)(1)(A)].

Personal holding company penalty tax—if a corporation is a “personal holding company,” it must pay a penalty tax of 20% on its “undistributed personal holding company income” less any “deficiency dividend” under IRC 547 [IRC 541].

Corporate alternative minimum tax (AMT) has been repealed for years beginning after 2017.

SOCIAL SECURITY

General Rules

2023 Social Security and Medicare Taxes

a. An employer pays a 7.65% FICA tax, consisting of:
   1) 6.20% Social Security tax on the first $160,200 of an employee's wages (maximum tax is $9,932.40 [6.20% of $160,200]), plus
   2) 1.45% Medicare tax on the employee's total wages (no ceiling).
b. An employee pays:
   1) 6.20% Social Security tax on the first $160,200 of wages (maximum tax is $9,932.40 [6.20% of $160,200]), plus
   2) 1.45% Medicare tax on the first $200,000 of wages ($250,000 for joint returns; $125,000 for married taxpayers filing a separate return), plus
   3) 2.35% Medicare tax (regular 1.45% Medicare tax plus 0.9% additional Medicare tax) on all wages in excess of $200,000 ($250,000 for joint returns; $125,000 for married taxpayers filing a separate return).

Maximum Allowable Retirement "Earnings"

a. If under full retirement age, $1 is deducted from benefits for every $2 earned over earnings limit—$21,240 in 2023.
b. Full retirement age depends on year of birth. For persons born after 1959, full retirement age is 67 years.
c. In the year in which full retirement age is reached, $1 in benefits is deducted for every $3 earned above $56,520, but only earnings before the month in which full retirement age is reached are counted.
d. Beginning with the month of the birthday in which full retirement age is attained, all earnings are ignored.

Social Security Full Retirement Age

Year of Birth	Full Retirement Age	Age 62 Reduction (in Months)	Maximum Reduction
1937 and earlier	65	36	20.00%
1938	65 and 2 months	38	20.83%
1939	65 and 4 months	40	21.67%
1940	65 and 6 months	42	22.50%
1941	65 and 8 months	44	23.33%
1942	65 and 10 months	46	24.17%
1943-1954	66	48	25.00%
1955	66 and 2 months	50	25.83%
1956	66 and 4 months	52	26.67%
1957	66 and 6 months	54	27.50%
1958	66 and 8 months	56	28.33%
1959	66 and 10 months	58	29.17%
1960 and later	67	60	30.00%

Social Security Delayed Retirement Credits

Social Security benefits are increased if retirement is delayed beyond full retirement age. Delayed retirement credits max out at age 70. If retirement is delayed, Medicare is still available at age 65.

Year of Birth	Yearly Rate of Increase	Monthly Rate of Increase
1933–1934	5.5%	11/24 of 1%
1935–1936	6.0%	1/2 of 1%
1937–1938	6.5%	13/24 of 1%
1939–1940	7.0%	7/12 of 1%
1941–1942	7.5%	5/8 of 1%
1943 or later	8.0%	2/3 of 1%

Federal Income Taxation of Social Security Benefits

Determining if Subject to Taxation: Social Security payments, including disability and survivor benefits, are partially subject to taxation if modified adjusted gross income (MAGI), plus one-half of such benefits, exceed the "Base Amount" of $32,000 (if married filing jointly), $25,000 (for most other individuals), and zero (for married individuals filing separately but not living apart for the entire year). MAGI is AGI for regular tax purposes, with a number of possible adjustments, plus exempt interest [IRC 86].

If Taxable, Amount of Benefits Subject to Taxation: If subject to taxation, the amount of such benefits which are taxable will generally be the lesser of: (A) 50% of such Social Security payments or (B) one-half of the amount by which MAGI exceeds the Base Amount. However, if MAGI and one-half of such benefits exceed the Adjusted Base Amount of $44,000 (if married filing jointly), $34,000 (for most other individuals) or zero (for married individuals filing separately but not living apart for the entire year), then a complex formula can subject up to 85% of such Social Security payments to taxation [IRC 86].

ESTATE AND GIFT TAX

Tax Exclusion, Credits, and Exemption Amounts

1998–2023 Transfers

Year	Estate Tax Applicable Exclusion Amounts*	Applicable Estate Tax** Credit Amounts***	Gift Tax Lifetime Exemption	Starting Tax Rate on Estate (or Gift) above Exclusion Amount
1998	$625,000	$202,050	$625,000	37%
1999	$650,000	$211,300	$650,000	37%
2000	$675,000	$220,550	$675,000	37%
2001	$675,000	$220,550	$675,000	37%
2002	$1,000,000	$345,800	$1,000,000	41%
2003	$1,000,000	$345,800	$1,000,000	41%
2004	$1,500,000	$555,800	$1,000,000	45%
2005	$1,500,000	$555,800	$1,000,000	45%
2006	$2,000,000	$780,800	$1,000,000	46%
2007	$2,000,000	$780,800	$1,000,000	45%
2008	$2,000,000	$780,800	$1,000,000	45%
2009	$3,500,000	$1,455,800	$1,000,000	45%
2010	$5,000,000	$1,730,800	$1,000,000	35%
2011	$5,000,000	$1,730,800	$5,000,000	35%
2012	$5,120,000	$1,772,800	$5,120,000	35%
2013	$5,250,000	$2,045,800	$5,250,000	40%
2014	$5,340,000	$2,081,800	$5,340,000	40%
2015	$5,430,000	$2,117,800	$5,430,000	40%
2016	$5,450,000	$2,125,800	$5,450,000	40%
2017	$5,490,000	$2,141,800	$5,490,000	40%
2018	$11,180,000	$4,417,800	$11,180,000	40%
2019	$11,400,000	$4,505,800	$11,400,000	40%
2020	$11,580,000	$4,577,800	$11,580,000	40%
2021	$11,700,000	$4,625,800	$11,700,000	40%
2022	$12,060,000	$4,769,800	$12,060,000	40%
2023	$12,920,000	$5,113,800	$12,920,000	40%

*The “applicable exclusion amount” is the taxable amount that would produce each year’s credit amount shown above if that taxable amount were subject to tax computed on the unified transfer tax rate table [**see** IRC 2010(c)]. The applicable exclusion amount is indexed for inflation for years after 2011. The applicable exclusion amount for the surviving spouse of a deceased spouse dying after 12/31/2010 includes the “deceased spousal unused exclusion amount” (“DSUE Amount”).

**The estate and gift tax exemption amounts were not the same for years 2004-2010, and credit shown only applies to the estate tax.

*******The applicable credit is reduced by 20% of the prior law’s lifetime $30,000 specific gift tax exemption used in the calculation of taxable gifts made after September 8, 1976, and before 1977 [IRC 2010(b)].

Special Estate Reduction Limits

Special Use Valuation—Maximum reduction is $1,310,000 in 2023, up from $1,230,000 in 2022. Amount is adjusted for inflation annually [IRC 2032A].

Qualified Conservation Easement—Maximum exclusion is $500,000 [IRC 2031(c)].

Annual Gift Tax Exclusion IRC 2503(b)

Calendar Years	Amount
1932 through 1938	$5,000
1939 through 1942	$4,000
1943 through 1981	$3,000
1982 through 2001	$10,000
2002 through 2005	$11,000
2006 through 2008	$12,000
2009 through 2012	$13,000
2013 through 2017	$14,000
2018 through 2021	$15,000
2022	$16,000
2023	$17,000

Former Maximum Credit for State Death Taxes

Taxable Estate	Adjusted Taxable Estate*	Credit on Left Column Bracket Amount	Credit Rate on Excess over Bracket Amount
$100,000	$40,000	-0-	0.8%
$150,000	$90,000	$400	1.6%
$200,000	$140,000	$1,200	2.4%
$300,000	$240,000	$3,600	3.2%
$500,000	$440,000	$10,000	4.0%
$700,000	$640,000	$18,000	4.8%
$900,000	$840,000	$27,600	5.6%
$1,100,000	$1,040,000	$38,800	6.4%
$1,600,000	$1,540,000	$70,800	7.2%
$2,100,000	$2,040,000	$106,800	8.0%
$2,600,000	$2,540,000	$146,800	8.8%
$3,100,000	$3,040,000	$190,800	9.6%
$3,600,000	$3,540,000	$238,800	10.4%
$4,100,000	$4,040,000	$290,800	11.2%
$5,100,000	$5,040,000	$402,800	12.0%
$6,100,000	$6,040,000	$522,800	12.8%
$7,100,000	$7,040,000	$650,800	13.6%
$8,100,000	$8,040,000	$786,800	14.4%
$9,100,000	$9,040,000	$930,800	15.2%
$10,100,000	$10,040,000	$1,082,800	16.0%

*"Adjusted taxable estate" means the taxable estate reduced by $60,000 [IRC 2011(b)]. **NOTE:** Although not applicable for federal estate tax purposes for decedents dying after 12/31/04, several states still base their state death tax on the credit for state death taxes.

GENERATION-SKIPPING TRANSFER TAX

GST Tax Exemption

1998–2023 Transfers

Year	GST Exemption*	Flat Tax Rate
1998	$1,000,000	55%
1999	$1,010,000	55%
2000	$1,030,000	55%
2001	$1,060,000	55%
2002	$1,100,000	50%
2003	$1,120,000	49%
2004	$1,500,000	48%
2005	$1,500,000	47%
2006	$2,000,000	46%
2007	$2,000,000	45%
2008	$2,000,000	45%
2009	$3,500,000	45%
2010	$5,000,000	0%
2011	$5,000,000	35%
2012	$5,120,000	35%
2013	$5,250,000	40%
2014	$5,340,000	40%
2015	$5,430,000	40%
2016	$5,450,000	40%
2017	$5,490,000	40%
2018	$11,180,000	40%
2019	$11,400,000	40%
2020	$11,580,000	40%
2021	$11,700,000	40%
2022	$12,060,000	40%
2023	$12,920,000	40%

*Indexed for inflation for years after 2011.

Generation-Skipping Transfer Tax Rules

The term "**generation-skipping transfer**" (GST) means a taxable distribution, taxable termination, or direct skip, all as defined in IRC 2612.

Effective Dates

The GST tax applies to **any GST made after 10/22/86**, the date of enactment [TRA '86 §1433(b) *et seq*.]. **However—**

1. **Pre-enactment period**—transfers made **after 09/25/85** and before 10/23/86 are to be **treated as though made on 10/23/86.**
2. **Grandfathered trusts**—any trust which was **"irrevocable" on 09/25/85** (other than a general power of appointment or "estate" type marital trust) is "grandfathered"—that is, the GST tax applies to it only to the extent that a taxable distribution or taxable termination involves property added (or deemed added) to the trust after 09/25/85.

3. **Incompetent persons**—any transfer of assets included in the gross estate of a decedent who was mentally incompetent on **10/22/86** and did not regain competence before death is exempt (except assets transferred to the incompetent person after 08/03/90 or from a post-10/21/88 QTIP trust).

Rates, Exemptions, and Definitions

A. **The GST tax rate** is the maximum federal estate tax rate, for example, 40% after 2012. To reflect the extent to which the transferor's GST exemption is allocated to the trust (or transfer), the 40% rate is multiplied by the trust's (or transfer's) **"inclusion ratio"** (described below) to produce the **"applicable rate"** [IRC 2641]. This rate is then applied to the taxable amount of the generation-skipping transfer to determine the GST tax on that transfer [IRC 2602]. If the transfer is a taxable distribution or termination, the taxable amount includes the GST tax itself - like the estate tax, the GST tax is tax inclusive [IRC 2621(b) and 2622]. On the other hand, direct skips, like the gift tax, are tax exclusive [IRC 2623].

B. **The GST exemption** is equal to the estate tax exemption beginning in 2004. The trust's (or transfer's) **inclusion ratio is one minus the "applicable fraction."** The numerator of the applicable fraction is the amount of GST exemption allocated to the trust (or transfer), and the denominator is the value of the property transferred, net of transfer taxes thereon [IRC 2641],
    1. **Allocations of a transferor's GST exemption** are normally made on the transferor's timely filed gift or estate tax return reporting the transfer. However, **unless that return directs otherwise (or an election out is made on a prior return),** unused (that is, not previously allocated) GST exemption is **automatically allocated** (i) to lifetime direct skips; (ii) to "indirect skips" to GST trusts; (iii) after death, to direct skips occurring at decedent's death and then to trusts of which the decedent is the transferor and from which taxable distributions or terminations might occur [IRC 2632(b) and (c)]. GST exemption may be **retroactively allocated** to certain trusts in the case of an unusual order of deaths [IRC 2632(d)].
    2. **"ETIP period"**—with two exceptions [**see** Treas. Reg. §§26.2632-1(c)(2)(ii)(A) and (B)], GST exemption is not allocable to any transfer as long as the transferred property would be includable (except under IRC 2035) in the transferor's or transferor's spouse's estate if either were to die. The end of such estate tax inclusion period becomes the transfer and valuation date for exemption allocation purposes [IRC 2642(f)].

C. **Annual exclusion gifts** to an individual skip person have a zero inclusion ratio for GST tax purposes. This rule applies to annual exclusion gifts to a skip person trust only if its assets are exclusively for, and will be includable in the gross estate of, the trust beneficiary [IRC 2642(c)].

D. **"Reverse QTIP election"**—the creator of a QTIP trust (or the creator's executor) may elect under IRC 2652(a)(3) to continue to be treated as the transferor of that trust after the creator's spouse's death.

E. In the case of a GST nonexempt trust, subjecting its assets to the gift and/or estate tax of a person (such as the child of the grantor who is that trust's primary beneficiary) will, on distribution (or the child's death), **change the "transferor"** of such assets to that child. This will have the effect of eliminating from GST tax what would otherwise have been a taxable termination on the child's death to the child's children. This is so because the determination as to whether an event is a GST is made by reference to the most recent transfer subject to the estate or gift tax—which establishes the identity of the transferor and thus the identity of the skip and non-skip persons [Treas. Reg. § 26.2611-1].

F. **Tuition and medical expense** direct payments [under IRC 2503(e)] are exempt from the GST tax [IRC 2642(c)(3)]. In addition, transfers from a trust which transfers would be exempt from gift tax under IRC 2503(e) if made by an individual are exempt from GST tax [IRC 2611(b)].

G. Under the **predeceased child exemption**, if an individual who is a descendant of a parent of transferor (or of a transferor's spouse or former spouse) dies before his or her parent, his or her issue will all move up one generation; provided, in the case of an individual who is not a lineal descendant of the transferor, that the transferor has no lineal descendants at the time of the transfer [IRC 2651(e)].

H. **Descendants who survive 90 days or less** will be treated as having predeceased the transferor if either the governing instrument or local law so provides [Treas. Reg. § 26.2651-1(a)(2)(iii)].

OTHER INFLATION-ADJUSTED NUMBERS

Description	2023	2022
Annual Exclusion Gifts [IRC 2503(b)(2)]	$17,000	$16,000
Non-Citizen Spouse Annual Exclusion [IRC]	$175,000	$164,000
Reportable Gifts Received from Foreign Persons [IRC 6039F]	$18,567	$17,339
Decrease in Value of Qualified Real Property in Decedent's Gross Estate [IRC 2032A(a)]	$1,310,000	$1,230,000
Estate Tax Installment Payment Interest 2% Portion [IRC 6166 & 6601(j)]	$1,750,000	$1,640,000

NOTE: The first two items go up in $1,000 increments and the last two in $10,000 increments. The third item goes up in actual dollar-amount increments.

TREASURY UNISEX ACTUARIAL TABLE EXAMPLES

The current IRS actuarial tables incorporate the IRS updated mortality assumptions that became effective on May 1, 2009. In May 2022, proposed new actuarial tables were issued, based on mortality experience around 2010. For the period from January 1, 2021, to the effective date of regulations implementing the new tables, either the current or proposed tables may be used. IRC 7520 generally requires use of an interest rate equal to 120% of the applicable federal mid-term rate (rounded to the nearest 2/10ths of 1%). However, if a charitable contribution is allowable for any part of the assets transferred, the taxpayer may elect to use the 7520 rate for the month in which the valuation date occurs or for either of the 2 months preceding that month.

These Example Tables Use the 7520 Rate for February 2023 of 4.6% and the Proposed New Mortality Tables.

Single Life

Present value of an **annuity for life** and also of **life income** and **remainder** interests

Age	Annuity*	Life Estate	Remainder
0	38.3436	.76687	.23313
10	36.2021	.72404	.27596
25	31.768	.63536	.36464
40	26.0634	.52127	.47873
50	21.5904	.43181	.56819
55	16.0626	.38365	.61635
60	16.733	.33466	.66534
65	14.2943	.28589	.71411
70	11.8701	.2374	.7626
75	9.5385	.19077	.80923
80	7.4324	.14865	.85135
85	5.6216	.11243	.88757
90	4.1434	.08287	.91713

Table S—Based on Life Table 2010CM (PROPOSED)

Interest at 4.6%

Age	Annuity*	Life Estate	Remainder
0	20.74550	0.95429	0.04571
10	20.42350	0.93948	0.06052
25	19.34550	0.88989	0.11011
40	17.48800	0.80445	0.19555
50	15.60970	0.71805	0.28195
55	14.48150	0.66615	0.33385
60	13.20540	0.60745	0.39255
65	11.76910	0.54138	0.45862
70	10.19870	0.46914	0.53086
75	8.53060	0.39242	0.60758
80	6.83370	0.31435	0.68565
85	5.20580	0.23947	0.76053
90	3.81290	0.17539	0.82461
95	2.75310	0.12664	0.87336
100	2.01680	0.09277	0.90723

IRS Mortality Table 2000CM

IRS mortality assumptions under IRC 7520 were previously based on Mortality Table 2000CM, which shows on a unisex basis how many lives are living (lx) at each age between birth (age 0) and age 109. In May 2022, proposed new actuarial tables were issued based on mortality experience around 2010. For the period from January 1, 2021 to the effective date of regulations implementing the new tables, either the correct or proposed tables may be used. To calculate the probability of survival from one age to another age, divide the lx value for the older age by the lx value for the younger age.

Age x	l_x	Age x	l_x	Age x	l_x
0	100000	37	96921	74	66882
1	99305	38	96767	75	64561
2	99255	39	96600	76	62091
3	99222	40	96419	77	59476
4	99197	41	96223	78	56721
5	99176	42	96010	79	53833
6	99158	43	95782	80	50819
7	99140	44	95535	81	47694
8	99124	45	95268	82	44475
9	99110	46	94981	83	41181
10	99097	47	94670	84	37837
11	99085	48	94335	85	34471
12	99073	49	93975	86	31114
13	99057	50	93591	87	27799
14	99033	51	93180	88	24564
15	98998	52	92741	89	21443
16	98950	53	92270	90	18472
17	98891	54	91762	91	15685
18	98822	55	91211	92	13111
19	98745	56	90607	93	10773
20	98664	57	89947	94	8690
21	98577	58	89225	95	6871
22	98485	59	88441	96	5315
23	98390	60	87595	97	4016
24	98295	61	86681	98	2959
25	98202	62	85691	99	2122
26	98111	63	84620	100	1477
27	98022	64	83465	101	997
28	97934	65	82224	102	650
29	97844	66	80916	103	410
30	97750	67	79530	104	248
31	97652	68	78054	105	144
32	97549	69	76478	106	81
33	97441	70	74794	107	43
34	97324	71	73001	108	22
35	97199	72	71092	109	11
36	97065	73	69056	110	0

Table 2010CM (PROPOSED)

Age x	l_x	Age x	l_x	Age x	l_x
0	100,000.00	37	97,193.66	74	71,177.55
1	99,382.28	38	97,058.84	75	69,174.83
2	99,341.16	39	96,915.25	76	67,044.59
3	99,313.80	40	96,761.20	77	64,773.93
4	99,292.72	41	96,595.51	78	62,366.05
5	99,276.45	42	96,416.30	79	59,795.50
6	99,261.55	43	96,220.61	80	57,080.84
7	99,248.33	44	96,005.41	81	54,213.71
8	99,236.50	45	95,768.60	82	51,205.27
9	99,226.09	46	95,509.98	83	48,059.88
10	99,217.03	47	95,229.06	84	44,808.51
11	99,208.80	48	94,923.45	85	41,399.79
12	99,199.98	49	94,589.88	86	37,895.25
13	99,188.21	50	94,225.50	87	34,313.98
14	99,170.64	51	93,828.33	88	30,700.82
15	99,145.34	52	93,398.01	89	27,106.68
16	99,111.91	53	92,934.52	90	23,586.75
17	99,070.69	54	92,438.08	91	20,198.02
18	99,021.50	55	91,907.95	92	16,996.17
19	98,964.16	56	91,342.02	93	14,032.08
20	98,898.61	57	90,737.24	94	11,348.23
21	98,824.20	58	90,090.97	95	8,975.661
22	98,741.32	59	89,401.06	96	6,931.559
23	98,652.16	60	88,665.95	97	5,218.261
24	98,559.87	61	87,883.66	98	3,823.642
25	98,466.80	62	87,051.88	99	2,722.994
26	98,373.71	63	86,167.86	100	1,882.108
27	98,280.09	64	85,226.77	101	1,261.083
28	98,185.51	65	84,221.59	102	818.2641
29	98,089.05	66	83,142.34	103	513.7236
30	97,989.90	67	81,978.28	104	311.8784
31	97,887.47	68	80,728.83	105	183.0200
32	97,781.58	69	79,387.95	106	103.8046
33	97,672.13	70	77,957.53	107	56.91106
34	97,559.20	71	76,429.84	108	30.17214
35	97,442.53	72	74,797.63	109	15.47804
36	97,321.14	73	73,049.33	110	0.00000

LIFE EXPECTANCY TABLES

Examples

Age	Male[1]	Female[1]	Unisex[2]	Age	Male[1]	Female[1]	Unisex[2]
0	76.3	81.2	N/A	60	21.7	24.7	24.2
10	66.9	71.7	71.7	65	18.0	20.6	20.0
20	57.2	61.8	61.9	70	14.5	16.6	16.0
30	47.9	52.1	52.2	75	11.2	13.0	12.5
40	38.7	42.6	42.5	80	8.4	9.8	9.5
50	29.8	33.4	33.1	85	6.0	7.0	6.9
55	25.6	28.9	28.6	90	4.1	4.9	5.0

1. 2015 National Center for Health Statistics (male and female rates) not used for taxes.
2. IRC 72 and Treas. Reg. § 1.72-9, Table V (unisex rates used to determine gross income from annuities).

QUALIFIED PLANS

Retirement Plan Contribution Limits

Traditional IRA [IRC 408]	**2023**	**2022**
Maximum Contribution	$6,500	$6,000
Catch-Up Contribution (Age 50 or more)	$1,000	$1,000
*Phaseout of Deduction Begins at:		
Modified AGI, Married-Joint Returns	$116,000	$109,000
Modified AGI, Single Returns	$73,000	$68,000
*Deduction is Eliminated After:		
Modified AGI, Married-Joint Returns	$136,000	$129,000
Modified AGI, Single Returns	$83,000	$78,000

*IRA contribution cannot exceed earned income. Phaseout of deduction applies only to taxpayers who actively participate in an employer-sponsored retirement plan.

Roth IRA [IRC 408A]	**2023**	**2022**
*Maximum Contribution	$6,500	$6,000
Catch-Up Contribution (Age 50 or more)	$1,000	$1,000
*Phaseout of Allowed Contribution Begins at:		
Modified AGI, Married-Joint Returns	$218,000	$204,000
Modified AGI, Single Returns	$138,000	$129,000
*Contribution is Eliminated After:		
Modified AGI, Married-Joint Returns	$228,000	$214,000
Modified AGI, Single Returns	$153,000	$144,000

*IRA contribution cannot exceed earned income. No contributions are tax deductible.

Simplified Employee Pension IRA (SEP-IRA) [IRC 408(k)]	**2023**	**2022**
Employer's Maximum Contribution	$66,000	$61,000
Simple IRA [IRC 408(p)]		
Employee's Maximum Contribution	$15,500	$14,000
Employee Catch-Up Contribution (Age 50 or more)	$3,500	$3,000
IRC 403(b), 401(k) and Roth 401(k) Plans		
Keogh Profit-Sharing Plan Contribution Limit	$66,000	$61,000
IRC 403(b) and 401(k) Plans		
Elective Deferral Limits	$22,500	$20,500
Catch-Up Contributions (Non-Simple Only)	$7,500	$6,500
IRC 415(c) Limit on All Contributions to a Plan	$66,000	$61,000
Maximum Benefit for Defined Benefit Plan	$265,000	$245,000
IRC 401(a)(17) Annual Compensation Limit	$330,000	$305,000

Various Rules Relating to Distributions from Qualified Retirement Plans and IRAs

SPECIAL ALERT: SECURE 2.0 BECAME LAW ON December 29, 2022.

The SECURE Act—The Setting Every Community Up for Retirement Enhancement Act of 2019—was signed into law on December 20, 2019. The provisions in the SECURE Act affecting qualified plans and IRAs (sometimes jointly referred to as "retirement plans") applied almost immediately, i.e., "to plan years beginning after December 31, 2019." **See** Section 401(b) of the SECURE Act (simply referred to as the "SECURE Act").

The SECURE Act contains two primary effective date rules (as well as other effective date provisions relating to specific situations). In general, the SECURE Act applies in the case of qualified plan participants and IRA owners (sometimes jointly referred to as "participants") who die after December 31, 2019. In addition, the SECURE Act applies to successor beneficiaries in the case of participants who died before January 1, 2020, having named a designed beneficiary ("DB") who is taking distributions using a life expectancy method, where the DB dies after December 31, 2019. Other effective date rules in the Act apply to collectively bargained plans and governmental plans.

The SECURE Act contained some provisions applicable to living participants, such as changing the age component of the participant's Required Beginning Date ("RBD") to 72. The SECURE 2.0 Act of 2022, found at Division T of the Consolidated Appropriations Act, 2023 (simply referred to as "SECURE 2.0"), has made further changes to the age component of RBD (now referred to in IRC Section 401(a)(9)(C)(i)(I) as the "Applicable Age"). (**Note:** SECURE 2.0 begins at page 817 and continues through page 946 of the Consolidated Appropriations Act.) In the case of an individual who attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033, the Applicable Age is 73; and in the case of an individual who attains age 74 after December 31, 2032, the Applicable Age is 75. **See** Section 107(c) of SECURE 2.0.

Three of the most significant changes made by the SECURE Act are (i) the creation of a separate category of "designated beneficiaries," referred to as "eligible designated beneficiaries" ("EDBs"); (ii) the imposition of a new "10-year rule" in the case of beneficiaries of the participant's retirement plan who are DBs but not EDBs; and (iii) the allowance of a new type of trust for disabled and chronically ill beneficiaries (two categories of EDBs) called an "Applicable Multi-Beneficiary Trust."

Based on work done by ACTEC's SECURE Act Guidance Task Force, ACTEC submitted two letters to the Treasury, one dated July 14, 2020, and the other dated July 29, 2020, making comments and recommendations regarding numerous provisions in the SECURE Act and requesting the issuance of regulations to clarify certain provisions in the SECURE Act. In the meantime, beneficiaries and their advisors have been making certain assumptions regarding the interpretation of various provisions in the SECURE Act, including the application of the new 10-year rule. Some of those assumptions have turned out to be "different" from the Treasury Department's interpretation of the SECURE Act.

On February 24, 2022, the Treasury Department published proposed regulations (simply referred to as the "proposed regulations") addressing the required minimum distribution rules (the "RMD Rules"), as a result of the SECURE Act. The proposed regulations and the preamble total 275 pages. ACTEC submitted comments to the proposed regulations on May 24, 2022. There are too many provisions in the proposed regulations to cover in this summary. **Note:** At the time of this writing,

the proposed regulations are still proposed regulations and not final regulations. Therefore, only some of the proposed regulations will be discussed in this summary.

Probably the most surprising provisions in the proposed regulations are the provisions explaining the 10-year rule that applies to DBs, to successor beneficiaries of EDBs, and to the participant's minor child once that child reaches the age of majority. **If the participant dies before RBD** and the participant's beneficiary is a DB, so that the 10-year rule applies, that 10-year rule is applied like the 5-year rule, but with the ultimate distribution date being December 31 of the year that contains the 10th anniversary of the participant's death. In that case, no distributions are required prior to the ultimate distribution date. On the other hand, **if the participant dies on or after RBD** (hereafter simply referred to as "after RBD") and the participant's beneficiary is a DB, so that the 10-year rule applies, that DB must take RMDs after the participant's death during distribution years 1 through 9 of the period of the 10-year rule, and then take full distribution of the balance by December 31 of the year that contains the 10th anniversary of the participant's death. In other words, in the case of the death of the participant after RBD with a beneficiary who is a DB, that version of the 10-year rule retains RMDs as under prior law (i.e., maintains the "at least as rapidly rule"), but with a cessation of RMDs when year 10 is reached, the year requiring distribution of the entire remaining balance by year end.

In addition, if the beneficiary of the participant's retirement plan is the participant's minor child (one type of EDB), RMDs must be distributed to (or for the benefit of) the minor child, starting the year after the participant's death. When the child reaches age 21, which is the age of majority per the proposed regulations, the child becomes a DB and is subject to the 10-year rule. Assuming the child does not die before reaching age 31, the full remaining balance will need to be distributed by the time the child reaches age 31 (i.e., 10 years after reaching the age of majority). Further, if an EDB who is taking RMDs on a life expectancy basis dies before the entire amount has been distributed, the beneficiary of the EDB will continue taking RMDs in the same manner as under prior law, but with a full distribution of the entire remaining amount (if any) by December 31 of the year that contains the 10th anniversary of the EDB's death.

Except in the case where the participant dies before RBD, the interpretation of the 10-year rule in the proposed regulations is not what was expected by most professionals who have been advising clients with respect to distributions from retirement plans once the SECURE Act became effective. What this means is that if these provisions in the proposed regulations become final, certain beneficiaries who should have taken an RMD during calendar year 2021 (because the participant died after RBD in the year 2020), but did not do so because they thought the new 10-year rule would be applied exactly like the existing 5-year rule regardless of whether the participant died before or after RBD, have failed to take their RMD for 2021. Failure to take the full amount of an RMD (or other required distribution) incurred a 50% penalty prior to SECURE 2.0. Because the proposed regulations were not yet final as of the fourth quarter of 2022, these same taxpayers may have been unsure regarding whether an RMD was required for year 2022 as well.

Failure to take the full amount of an RMD (or other required distribution) incurs a penalty (excise tax), unless waived. Prior to SECURE 2.0, that penalty was a 50% penalty on the shortfall. Note the unfairness of imposing the penalty in the particular situation described in the prior paragraph: the SECURE Act became effective January 1, 2020, but the proposed regulations were not published until February 24, 2022 (nearly 26 months later). Note further that this interpretation in the proposed regulations was not consistent with the IRS's Publication 590-B, *Distributions from Individual Retirement Accounts (IRAs)*, which was issued on May 13, 2021. Fortunately, on October 7, 2022, the IRS published Notice 2022-53, providing relief to taxpayers and qualified plan administrators with respect to this particular situation. Per Notice 2022-53, if the participant's beneficiary (taxpayer) in this particular situation failed to take his/her 2021 (and 2022) RMD (the

"specified RMD"), the IRS will not impose the usual under-distribution penalty. In addition, if the taxpayer in this situation already paid the under-distribution penalty, the taxpayer can obtain a refund. Further, if the administrator of a qualified plan failed to pay the specified RMD to applicable plan participants during this time period, that failure will not disqualify the plan. The Notice does not say that no RMDs were required in years 2021 and 2022 in this particular situation, only that the penalty will not be imposed on taxpayers (and qualified plans) that failed to satisfy the applicable RMD requirement during these years.

SECURE 2.0 changed the amount of the penalty for failure to take the full amount of an RMD (or other required distribution) from 50% of the under-distributed amount to 25% of the under-distributed amount, with an even lower penalty amount (10%) if the taxpayer is able to correct the under-distribution during the "correction window." **See** Section 302 of SECURE 2.0. Of course, in some cases, the taxpayer may be able to obtain a complete waiver of the under-distribution penalty by filing Form 5329, Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts, if the taxpayer is able to show "reasonable error" and that the taxpayer took "reasonable steps" to correct the error.

Federal Spousal Rights in Qualified Retirement Plans

If the participant participates in a defined benefit plan, the participant's surviving spouse is entitled to a qualified pre-retirement survivor annuity ("QPSA") or qualified joint and survivor annuity ("QJSA"), depending on whether the participant dies before or after the "annuity starting date" (that is, the first day of the first period for which an amount is payable as an annuity [regardless of when or whether payment is actually made] or, in the case of benefits not payable in the form of an annuity, the date on which all events have occurred that entitle the participant to the benefit). Each benefit must be at least 50% of the participant's benefit.

The QPSA or QJSA form of benefit may be waived by the participant if his/her spouse consents (one is not a "spouse" until after the marriage, so a pre-marital consent is ineffective). A spousal consent to a QPSA or QJSA waiver may be specific (requiring a new spousal consent if the participant changes the named beneficiary and/or, in the case of a QJSA, the form of benefit) or general (in which case the participant may change beneficiaries or benefit form without further spousal consent). A spousal consent may be revocable or irrevocable.

A QPSA waiver may only be made on or after the participant's attainment of age 35. A QJSA waiver may only be made within 180 days prior to the annuity starting date. If the participant participates in a defined contribution plan, such as a profit-sharing or stock bonus plan, different rules apply if the plan is exempt from the QPSA and QJSA rules. The plan will be exempt from the QPSA and QJSA rules if (i) benefits are not paid in annuity form; (ii) 100% of the death benefits are payable to the spouse; and (iii) the plan is not a transferee of assets from a plan subject to the QPSA/QJSA rules. In the case of a defined contribution plan, the participant may waive, and the spouse may consent to the waiver of, payment of the plan benefits to the spouse on the participant's death. A spouse has no right to any distributions from an exempt profit-sharing or stock bonus plan that are made during the participant's lifetime.

Minimum Distribution Rules

NOTE: Although the proposed regulations address both defined contribution plans and defined benefit plans, the following sections relate solely to defined contribution plans (and IRAs).

The required minimum distribution rules (RMD Rules) in IRC Section 401(a)(9) are basically income tax rules that apply to defined contribution plans (such as 401(k) plans), Section 403(b) annuities, certain governmental and tax-exempt employee plans, and certain eligible deferred-compensation plans (collectively, "qualified plans"). The RMD rules also apply to IRAs. **See** IRC 401(a)(9), 403(b)(10), 408(a)(6), 457(d)(2)). Although "qualified distributions" from Roth IRAs are not subject to income tax, the SECURE Act also changed the distribution periods applicable to Roth IRAs after the participant's death. **See** Roth IRAs, *infra*. In general, the RMD Rules provide the amount and timing of distributions that must be taken from retirement plans by living participants and by beneficiaries of participants after the death of the participant.

Through the end of 2022, the penalty for failure to take a required distribution (of any type) was 50% of the deficiency. Fortunately, SECURE 2.0 dropped the "regular" penalty for under-distributions to 25% and provided a 10% penalty in cases where the under-distribution is corrected in a timely manner (during the "correction window"). **See** IRC 4974. (The proposed regulations provided an exception to the penalty in the case of the participant's final RMD [which presumably is helpful in cases where the participant dies late in the year]; the penalty is waived as long as the participant's final RMD is distributed to the participant's beneficiary by the beneficiary's tax return filing date, including extensions, for the year during which the participant's final RMD should have been taken.

Life expectancy tables. In certain cases, RMDs are determined using the applicable life expectancy table. The life expectancy tables contain "denominators" (representing years of life expectancy). These denominators used to be called "divisors," but, per the proposed regulations, the term "applicable divisor" must be replaced with the term "applicable denominator," because the 2002 final regulations refer to the applicable divisor as the applicable distribution period, and that will not be a correct reference in view of certain amendments to the RMD Rules made by the SECURE Act.

The life expectancy tables are found in Treas. Reg. § 1.401(a)(9)-9 and consist of (i) the Uniform Lifetime Table (applicable to a living participant and reflecting the joint life expectancy of the participant and an assumed beneficiary who is 10 years younger than the participant); (ii) the Joint and Last Survivor Table (applicable to a living participant whose more than 10 years younger spouse is the participant's sole beneficiary and reflecting the joint life expectancy of the participant and the participant's more than 10 years younger spouse); and (iii) the Single Life Table (applicable after the participant's death in the case of certain beneficiaries who are entitled to a life expectancy distribution and to certain beneficiaries during distribution years 1 through 9 of the applicable 10-year rule). Pursuant to final regulations published on November 12, 2020, new life expectancy tables for purposes of the RMD Rules became effective January 1, 2022. Two of those tables are printed, *infra*.

Distributions During Participant's Lifetime

Required Beginning Date. RMDs to the participant from the participant's retirement plan must begin no later than the participant's RBD. For IRA owners and 5% (or more) owners of the employer sponsoring the qualified plan, RBD is April 1 following the year the participant reaches the "applicable age" (a term added by SECURE 2.0). IRC 401(a)(9)(C)(i). For plan participants who are not 5% owners, if the plan so provides, RBD is April 1 of the calendar year following the later of (i) the year in which the participant reaches the applicable age and (ii) the year in which the participant retires. **See** IRC 401(a)(9)(C)(ii). Per SECURE 2.0, for participants who attain age 72 after December 31, 2022, and attain age 73 before January 1, 2033, the applicable age is 73. For participants who attain age 74 after December 31, 2032, the applicable age is 75. The first

"distribution calendar year" is the calendar year prior to the year in which RBD occurs. A Roth IRA owner does not have an RBD, because no RMDs are required during the Roth IRA owner's lifetime. **See** IRC 408A(c)(4).

Minimum Distribution Amount. The RMD for each distribution calendar year through and including the year of the participant's death, is determined using the Uniform Lifetime Table, unless the participant's spouse is the participant's sole beneficiary and the spouse is more than 10 years younger than the participant, in which case the RMD is determined using the Joint and Last Survivor Table. In each case, the prior year-end balance of the retirement plan is divided by the applicable denominator from the applicable table for the age of the participant (or the joint ages of the participant and the participant's more than 10 years younger sole beneficiary spouse, if applicable) to determine the RMD for that year. Because a new applicable denominator is obtained from the Uniform Lifetime Table (or Joint and Last Survivor Table, as applicable) each year, a living participant's life expectancy is being recalculated. The participant's more than 10 years younger spouse will only be treated as the participant's sole beneficiary for purposes of using the applicable denominators from the Joint and Last Survivor Table if either (i) the spouse is named as the participant's sole, outright beneficiary or (ii) a conduit trust for the benefit of the participant's spouse is named as the participant's sole beneficiary. **See** Trusts as Beneficiaries, *infra.*

Distributions After Participant's Death

Post-Death Distribution Periods. The SECURE Act made significant changes to the RMD Rules applicable to the participant's beneficiaries after the participant's death. The initial question is whether the participant is deemed to have a "designated beneficiary" as of the "determination date." The determination date (not a defined term) is September 30 of the year following the year of the participant's death. If the participant does not have a designated beneficiary (DB) as of the determination date, the applicable distribution rule differs, depending on whether the participant dies before or on or after RBD (as indicated above, "on or after RBD" will simply be referred to as "after RBD"). If the participant has a designated beneficiary, the applicable distribution period after the participant's death depends on the type of designated beneficiary. In some cases involving multiple designated beneficiaries of a single retirement plan, separate account treatment may be possible. **See** Separate Accounts, *infra.*

Designated Beneficiary. Not every beneficiary of the participant's retirement plan is a designated beneficiary. DBs must be individuals. Therefore, an entity, such as a charity, estate, or "non-qualifying trust," cannot be a DB (but **see** Trusts as Beneficiaries, *infra*). DBs are those individuals designated as beneficiaries of the participant's retirement plan as of the participant's date of death who remain beneficiaries of the retirement plan on the determination date. In the case of multiple beneficiaries of a single retirement plan, beneficiaries who are not DBs can often be "removed" by the determination date via qualified disclaimers and cash-outs of their shares. On the other hand, if a named beneficiary survives the participant but then dies prior to the determination date, that beneficiary is still a beneficiary of the participant's retirement plan (unless that beneficiary disclaimed or cashed out his/her interest, or unless that beneficiary is deemed to have predeceased the participant pursuant to a simultaneous death provision under applicable state law). Per the proposed regulations, certain other actions taken after the participant's death can affect the determination of the participant's "countable" beneficiaries (discussed *infra*). Most significantly, per the SECURE Act, there are now two different types of designated beneficiaries: (i) "eligible designated beneficiaries" and (ii) "other designated beneficiaries."

Eligible Designated Beneficiary. Certain DBs will be treated as eligible designated beneficiaries ("EDBs"). The five categories of individuals who qualify as EDBs are: (i) the participant's surviving

spouse, (ii) the participant's minor child, (iii) a disabled individual, (iv) a chronically ill individual, and (v) an individual not in any other category who is not more than 10 years younger than the participant. Some sort of life expectancy distribution (not the same for all EDBs) will be available to an EDB after the participant's death.

Other Designated Beneficiary. DBs who are not EDBs are Other Designated Beneficiaries (ODBs), which is not a defined term. The SECURE Act basically eliminated the traditional life expectancy distribution method as the distribution period for ODBs. ODBs are subject to the new 10-year rule, whether the participant dies before or after RBD. Note, however, that per the proposed regulations, the particular 10-year rule applicable to a particular ODB depends on whether the participant dies before or after RBD.

Distribution Rules if Participant's Beneficiary Is Not a DB. Entities (charities, estates, and non-qualifying trusts) are not DBs. **The SECURE Act did not change the RMD rules applicable to these beneficiaries (non-DBs).** Distributions after the participant's death when there is no DB depend on whether the participant dies before or after RBD.

A. **Participant's Death Before RBD with No DB.** If the participant dies before RBD without having a DB, the 5-year rule applies. Pursuant to the 5-year rule, 100% of the inherited retirement plan must be distributed by December 31 of the year that contains the 5th anniversary of the participant's death. No distributions have to be taken during the first 4 years of the post-death period pursuant to the 5-year rule, but the entire inherited IRA must be fully distributed by the end of the 5th year.

B. **Participant's Death After RBD with No DB.** If the participant dies after RBD without having a DB, the participant's remaining single life expectancy, not recalculated (the participant's "ghost life expectancy"), is the applicable distribution method. RMDs to the beneficiary must commence by December 31 of the year following the year of the participant's death. For the first distribution year, the prior year end balance of the inherited retirement plan is divided by the applicable denominator from the Single Life Table for the age the participant attained (or would have attained) in the year of death. That applicable denominator is reduced by one in each subsequent year to calculate the RMD in each subsequent year.

Participant's Final RMD. If the participant dies after RBD without having taken the full amount of the RMD from the participant's retirement plan prior to death, then that RMD (or the shortfall) must be distributed by December 31 of the year of the participant's death to the participant's beneficiary/beneficiaries. Failure to take the participant's final RMD incurs an under-distribution penalty, unless a waiver is obtained. As noted earlier, the proposed regulations provide for a waiver of the penalty for failure to take the participant's final RMD by December 31 of the year of death as long as the beneficiary takes the participant's final RMD by the due date, including extensions, of the beneficiary's tax return for the year of the participant's death. In addition, as noted above, SECURE 2.0 reduced the under-distribution penalty from 50% to 25% and, in applicable cases, to 10%.

Distribution Rules if Participant's Beneficiary Is a DB. The applicable distribution rules after the participant's death depend on the type of DB (EDB or ODB) and, in the case of EDBs, the particular type of EDB. For ODBs, based on the proposed regulations, the distribution method also varies depending on whether the participant dies before or after RBD. All ODBs are now subject to the 10 year rule (or, more accurately, to one of the 10 year rules).

A. **Other Designated Beneficiary.** If the beneficiary is an ODB, the new 10 year rule applies to distributions from the beneficiary's inherited IRA after the participant's death. The 10 year rule applies to an ODB whether the participant dies before or after RBD, but, per the proposed regulations, the form of the 10 year rule differs based on whether the participant dies before or after RBD.

1. **Participant Dies Before RBD.** If the participant dies before RBD and the beneficiary is an ODB, the 10 year rule applies like the 5 year rule. That is, 100% of the inherited IRA must be distributed by December 31 of the year that contains the 10th anniversary of the participant's death. No distributions are required (although they are permitted) prior to the ultimate distribution date.

2. **Participant Dies After RBD.** The proposed regulations provide that if the participant dies after RBD and the participant's beneficiary is an ODB, the ODB must take required minimum distributions (RMDs) from the ODB's inherited IRA during years 1 through 9 of the period provided by the 10 year rule and must fully withdraw all remaining amounts in the inherited IRA by December 31 of the year that contains the 10th anniversary of the participant's death. As noted in the preamble to the proposed regulations, if the participant dies after RBD, distributions to the ODB after the participant's death "must satisfy section 401(a)(9)(B)(i) [the "at least as rapidly rule"] as well as section 401(a)(9)(B)(ii) [the 10 year rule]."

B. **Eligible Designated Beneficiaries (EDBs).** The distribution rules for EDBs vary depending on the particular type of EDB.

1. **Participant's Spouse.** To qualify for EDB treatment as the participant's surviving spouse, the named beneficiary of the participant's retirement plan must be either the participant's spouse, outright, or a conduit trust for the benefit of the participant's spouse. An accumulation trust for the spouse will *not* qualify for the surviving spouse EDB rule. **See** Prop. Reg. § 1.401(a)(9)-4(f)(6)(ii), Example 2(C). The SECURE Act did not change the IRA rollover option available to the participant's surviving spouse named as the outright beneficiary of the participant's retirement plan. If the participant's surviving spouse rolls over the participant's retirement plan to an IRA in the spouse's name (or assumes the participant's IRA as his/her own), the spouse will thereafter be treated as the participant of that IRA and the RMD Rules applicable to a living participant will apply.

   But what are the options if the participant's spouse (i) cannot make the spousal IRA rollover (because the participant's plan is distributable to a conduit trust for the spouse); or (ii) does not want to make a spousal IRA rollover, either because the participant's spouse is "too young" to take distributions from his/her IRA rollover without a penalty or the participant's spouse is "much older" than the participant was at death. SECURE 2.0 added a benefit but also a "trap" for certain surviving spouses.

   a. <u>Prior to SECURE 2.0</u>, the surviving spouse could "automatically" remain in the position of being the participant's beneficiary and, in that case, (i) if the participant died before RBD, RMDs did not have to commence until December 31 of the year when the participant would have reached age 72 (2022 age component of RBD); and (ii) once RMDs commenced, they

were based on the spouse's life expectancy per the Single Life Table, recalculated each year, with some exceptions. Note that in cases where there is a delay in commencement of RMDs after the participant's death, the spouse is able to take discretionary distributions from the inherited retirement plan at any time prior to the commencement date without a penalty, regardless of the spouse's age.

b. If the participant died before RBD, in some cases, the spouse may have been required to use, or may have had the option to use, the 10-year rule, rather than the spouse's life expectancy, depending on the terms of the retirement plan (or the participant's election). If the participant died after RBD, the spouse was required to commence RMDs by December 31 of the year following the year of the participant's death, and those RMDs were based on the spouse's single life expectancy, recalculated each year, unless the participant's ghost life expectancy exceeded the spouse's life expectancy, in which case, the applicable distribution period would have been the deceased participant's ghost life expectancy (i.e., the longer of the two rules applied).

   If the spouse's life expectancy was the distribution period, to determine the RMD for the applicable distribution year, the prior year-end balance of the inherited retirement plan was divided by the applicable denominator from the Single Life Table for the age the spouse had attained (or would have attained) in that distribution calendar year. Each year, the spouse obtained a new applicable denominator from the Single Life Table for the spouse's attained age (or age the spouse would have attained) in that year to calculate that year's RMD. In that way, the spouse's life expectancy was being recalculated. The participant's spouse is the only type of beneficiary of a deceased participant who is permitted to recalculate life expectancy.

c. Section 327 of SECURE 2.0, which is effective for years beginning after December 31, 2023, allows the participant's spouse to elect to be treated as the participant of the participant's plan or IRA in order to obtain certain benefits. This means the spouse is not doing a rollover to an IRA in the spouse's name or treating the participant's IRA as owned by the spouse (i.e., the spouse is not becoming the participant but is remaining in the position of being the participant's beneficiary). The benefits of making the "Section 327 election" are (i) RMDs do not have to commence until December 31 of the year when the participant would have reached the "applicable age" (age 73 for 2023), which is basically the same as before SECURE 2.0, and (ii) once RMDs commence, they are determined using the Uniform Lifetime Table, rather than the Single Life Table (although Section 327(b), which is difficult to understand in view of Section 327(a), creates an issue regarding whether the Uniform Lifetime Table can be used if the participant dies before RBD). As noted in Distributions During Participant's Lifetime, supra, the applicable denominators in the Uniform Lifetime Table are based on the participant's life expectancy plus 10 years, which provides a longer distribution period than the applicable denominators in the Single Life Table. The "trap" in Section 327 is that the spouse must timely make this election (including providing notice to the Plan Administrator) to obtain these benefits. If the spouse fails to make the election, these particular benefits would not be available. In that case, presumably the "old rule"

would still apply, but that is not entirely clear. NOTE: Prior to SECURE 2.0, the participant's surviving spouse could obtain the delayed commencement date in the situation where the participant died before RBD with the spouse as sole beneficiary without having to make an election. In that case, before SECURE 2.0, once RMDs to the spouse as beneficiary commenced, they were based on the spouse's life expectancy per the Single Life Table, recalculated each year.

Commentators have pointed out that one situation where Section 327 would likely be considered (because the spousal rollover option would not be available) is when the participant's plan or IRA is distributable to a conduit trust for the spouse, which might be the case in a second marriage situation. While the remainder beneficiaries of the conduit trust might desire the election to be made (to reduce the amount of the RMDs payable to the participant's spouse during his/her life), it appears from the plain language of the provision that the election must be made by the spouse (and not by the trustee of the trust). In many second marriage cases, the participant's surviving spouse is not likely to want to reduce the amount of his/her RMDs.

There are additional issues relating to the election per Section 327. Prior to SECURE 2.0, it was common for a spouse named as the participant's outright beneficiary who was well under age 59½ at the time of the participant's death to remain in the position of being the participant's beneficiary until the spouse reached age 59½, at which point the spouse would roll over the participant's plan or IRA to an IRA in the spouse's name. (Participants under age 59½ cannot usually take distributions from their IRA without a penalty.) Thus, another issue relating to the Section 327 election is whether, if the spouse makes the election, which is "irrevocable," can the spouse still roll over the participant's plan or IRA to an IRA in the spouse's name at a later time.

Another issue relating to the Section 327 election is, if the election is made, is it the participant's age or the surviving spouse's age that is used to determine RMDs per the Uniform Lifetime Table once they commence. The statute literally says that if the election is made, the surviving spouse shall be treated as if he/she "is" the employee (participant). An ACTEC Task Force is in the process of submitting numerous comments to Treasury regarding Section 327 of SECURE 2.0.

2. **Participant's Minor Child.** Only the participant's minor child (and not someone else's minor child) can qualify for this category of EDB. If the beneficiary of the participant's retirement plan is (i) the participant's minor child, outright, or via a custodian pursuant to the Uniform Transfers to Minors Act (UTMA), or (ii) a conduit trust for the benefit of the participant's minor child, RMDs to the minor child prior to complete distribution per the 10-year rule (**see** below), will be based on the minor child's life expectancy, not recalculated, per the Single Life Table. The proposed regulations appear to allow an accumulation trust for the minor child to work as well, as long as the trust terminates on the later of (i) one year after the participant's death and (ii) the minor child reaching age 31. **See** age 31 trust, *infra*.

If the participant dies before RBD, the minor child may be required to use or may have the option to use the 10-year rule, rather than the minor child's life expectancy, depending on the terms of the retirement plan (or the participant's election). Distributions to the minor child from the inherited IRA must commence by December 31 of the year following the year of the participant's death. To calculate the RMD for the first distribution year, the prior year-end balance of the inherited IRA is divided by the applicable denominator for the age the child has attained (or would have attained) in the first distribution year. In each subsequent year, the prior year's applicable denominator is reduced by one to calculate that year's RMD. Once the minor child reaches the age of majority, the 10-year rule applies.

The proposed regulations provide that the age of majority is 21. Having a definite age for the age of majority is one provision in the proposed regulations that is an improvement over the SECURE Act as written. Once the participant's child reaches age 21 (which is when the child converts from an EDB to an ODB), the RMDs that were begun the year after the participant's death would continue until the minor child reaches age 31. Assuming the child does not die prior to reaching age 31, the full amount remaining in the child's inherited IRA must be distributed to the child when the child reaches that age.

The members of ACTEC's task force that prepared comments to the proposed regulations believe that RMDs continue to the child for years 1 through 9 of the period covered by the 10-year rule (i.e., during the time the child is between ages 21 and 31), regardless of when the participant died. That is analogous to the rule applicable when an EDB dies and there is a "transition" from an EDB to an ODB. In any event, assuming the child does not die prior to reaching age 31, the full amount remaining in the child's inherited IRA must be distributed to the child when the child reaches age 31.

3. **Disabled and Chronically Ill Beneficiaries.** Disabled beneficiaries and chronically ill beneficiaries are two of the five categories of EDBs. The definitions of these EDBs are in subsections (III) and (IV) of IRC 401(a)(9)(E)(ii). For purposes of the RMD Rules, the term "disabled" means disabled within the meaning of Section 72(m)(7) and the term "chronically ill" means chronically ill within the meaning of Section 7702B(c)(2), with some exceptions. The beneficiary's status as disabled or chronically ill is determined as of the participant's date of death. The proposed regulations provide that, if an individual has been determined to be disabled by the Social Security Administration, that determination is sufficient for purposes of the RMD Rules. However, that is not the only way for an individual to qualify as disabled. Appropriate documentation confirming that the individual is disabled or chronically ill must be provided to the plan administrator (which includes an IRA custodian) by October 31 of the year following the year of the participant's death.

   The SECURE Act recognizes that normally, a participant who wants to provide benefits to a disabled or chronically ill beneficiary from a retirement plan will name a trust for the disabled or chronically ill beneficiary as beneficiary of the retirement plan, rather than naming such individual as the outright beneficiary of the retirement plan (although it is possible to name a disabled or chronically ill beneficiary as an outright beneficiary and obtain EDB treatment for that individual). Prior to the SECURE Act, the trust created for the benefit of a disabled or chronically ill beneficiary was usually structured (in terms of the

RMD Rules) as a qualified see-through trust in the form of an accumulation trust, rather than in the form of a conduit trust. In the case of a trust drafted as an accumulation trust, no amounts withdrawn from an inherited IRA that belong to the trust have to be distributed "forthwith" (upon receipt) to the current beneficiary of the trust. Instead, the Trustee can accumulate all or any portion of those withdrawn amounts in the trust. In contrast, all amounts withdrawn from the inherited IRA that belongs to a conduit trust must always be distributed upon receipt to the current beneficiary of the trust.

Per the SECURE Act, in the case of the participant's spouse and a not more than 10 years younger beneficiary, to obtain EDB treatment when a trust for the benefit of the EDB individual is named as beneficiary (rather than the individual being named outright), the trust must be in the form of a conduit trust. In most cases, a conduit trust will not be the best choice for a disabled or chronically ill beneficiary. Thus, IRC 401(a)(9)(H)(iv) and (v) provide special rules applicable to a new type of trust for the benefit of disabled and chronically ill beneficiaries called an "Applicable Multi-Beneficiary Trust" ("AMBT").

In essence, the AMBT is a specialized form of accumulation trust that can be used for disabled and chronically ill beneficiaries. Per IRC 401(a)(9)(H)(v), as added by the SECURE Act, an Applicable Multi-Beneficiary Trust is a trust that has more than one beneficiary, all of which are DBs (but **see** SECURE 2.0 discussion, *infra*) and at least one of which is a disabled or chronically ill beneficiary. Per the proposed regulations, there are two types of AMBTs: Type I and Type II. IRC 401(a)(9)(H)(iv) provides that if, per the terms of the trust named as beneficiary of the participant's retirement plan, (i) the trust is to be divided immediately upon the participant's death into separate trusts for each beneficiary or (ii) no individual other than a disabled or chronically ill beneficiary has any right to the participant's retirement plan until the death of all such EDBs, clause (ii) of IRC 401(a)(9)(H) (the exception to the 10-year rule for EDBs) shall be applied separately with respect to the portion of the participant's interest in the retirement plan payable to the trust for the benefit of the disabled or chronically ill beneficiary. These provisions override the separate account rule in the case of an Applicable Multi-Beneficiary Trust that is a sub-trust of a trust named as beneficiary of the participant's retirement plan (i.e., a Type I AMBT), as long as the other sub-trusts only have DBs as beneficiaries (and qualify for DB treatment) and the trust named as beneficiary (such as the participant's revocable trust) is divided "immediately" upon the participant's death into separate trusts. The term "immediately" needs to be clarified by final regulations.

Per the proposed regulations, a Type II AMBT must "identify" one or more disabled and/or chronically ill individuals as the sole beneficiaries entitled to the participant's plan benefits distributable to the trust, and must state that no individuals other than the disabled and/or chronically ill beneficiaries have any right to any of the participant's plan benefits until after the death of all disabled and chronically ill individuals who are beneficiaries of the trust. Presumably, the EDBs in this category could be identified in a manner other than by name. RMDs to the AMBT are based on the life expectancy of the oldest disabled or chronically ill beneficiary of the trust. This was not clear per the SECURE Act, but is clear from the proposed regulations.

Using the life expectancy of the disabled/chronically ill beneficiary to determine RMDs is a departure from the pre–SECURE Act rules applicable to accumulation trusts, in which RMDs were determined using the life expectancy of the oldest DB (taking into account all "countable" beneficiaries of the trust, including at least first-tier remainder beneficiaries). Thus, if the AMBT is properly structured, the remainder beneficiaries of the trust are ignored for purposes of calculating the RMDs distributable to the trust during the life or lives of the disabled and chronically ill beneficiary/beneficiaries. Note, however, if the participant dies before RBD, the disabled/chronically ill beneficiary may be required to use or may have the option to use the 10-year rule, rather than the disabled/chronically ill beneficiary's life expectancy, depending on the terms of the retirement plan (or the participant's election). A Supplemental Needs Trust ("SNT") could be drafted to qualify as an AMBT. However, certain provisions that are sometimes included in SNTs (such as permitting the distribution of "incidental benefits" to family members of the special needs beneficiary and "poison pill" provisions) probably need to be eliminated to qualify the SNT as an AMBT.

Fortunately, the proposed regulations allow trusts to be modified by court action after the participant's death. Those modifications will be taken into account if accomplished (i.e., effective) by September 30 of the year following the year of the participant's death (i.e., the determination date). The modified terms of the trust must be provided to the plan administrator by October 31 of the year following the year of the participant's death. In view of these qualification deadlines, very quick action will be needed to modify the trust if the participant dies late in the year.

More guidance is needed in regard to several AMBT issues. **NOTE:** SECURE 2.0 made an important change applicable to a Type II AMBT. A Supplemental Needs Trust (SNT) is now permitted to have a charity as the remainder beneficiary of the trust and still qualify as an AMBT. **See** Section 337 of SECURE 2.0.

4. **Beneficiaries Not More Than Ten Years Younger Than the Participant.** An individual who is not in any other EDB category and who is "not more than ten years younger" than the participant (which includes an individual older than the participant) is a type of EDB who will be referred to as an NMTTYYB. The proposed regulations determine whether this rule applies using the actual birthdates of the participant and the beneficiary (not birth years). To qualify for this EDB category, either the NMTTYYB is named as the outright beneficiary or a conduit trust for the NMTTYYB is named as the beneficiary of the participant's retirement plan. RMDs to this type of EDB will be based on the single life expectancy of the EDB, not recalculated, except as noted in the following.

   If the participant dies after RBD, the NMTTYYB uses the longer of the NMTTYYB's life expectancy or the participant's ghost life expectancy. If the participant dies before RBD, the NMTTYYB may be required to use or may have the option to use the 10 year rule, rather than the NMTTYYB's life expectancy, depending on the terms of the retirement plan (or the participant's election). Assuming a life expectancy distribution based on the NMTTYYB's life expectancy applies, the first RMD must be taken by December 31 of the year following the year of the participant's death. In that case, to determine the RMD in the first distribution year, the prior year-end balance of the inherited IRA is divided by

the applicable denominator from the Single Life Table for the age the NMTTYB has attained (or would have attained) in the first distribution year. That denominator is reduced by one in each subsequent distribution year to determine the RMD in each of those future years. The participant's "ghost life expectancy" was explained in the "No DB" section, *supra*. If the NMTTYYB is using the participant's ghost life expectancy (rather than the NMTTYYB's life expectancy), when the applicable denominator would have been one or less than one had the NMTTYYB's life expectancy been used to calculate RMDs, the "termination point" is reached and the entire remaining balance in the inherited IRA must be distributed to the NMTTYYB.

Roth IRAs. Even though "qualified distributions" from Roth IRAs after the participant's death are not subject to income tax, the distribution rules per the SECURE Act applicable after the death of the participant also apply to Roth IRAs. Note that, because a Roth IRA participant has no RMDs during life, regardless of the Roth IRA participant's age at death, the Roth IRA participant is deemed to have died before RBD. Thus, if a non-DB is the beneficiary of a Roth IRA, the 5-year rule will apply. If an ODB is the beneficiary of a Roth IRA, the 10-year rule will apply (i.e., the 10-year rule that is applicable when the participant dies before RBD). If an EDB is the beneficiary of a Roth IRA, the post-death distribution rule applicable to that particular type of EBD will apply.

Distributions After the Death of an EDB

Per the SECURE Act, after the death of an EDB who was taking RMDs using a life expectancy distribution method, the beneficiary of the EDB is subject to the 10-year rule. That is true even if the EDB's beneficiary would qualify as an EDB. In this case, the EDB's beneficiary must continue taking RMDs after the EDB's death based on the EDB's distribution period until the earlier to occur of (i) exhaustion of the inherited IRA or (ii) December 31 of the year that contains the 10th anniversary of the EDB's death.

Trusts as Beneficiaries

If a trust named as beneficiary of the participant's retirement plan meets the four trust regulatory requirements, then the beneficiaries of the trust are treated as the beneficiaries of the participant's retirement plan. The four trust regulatory requirements are (i) the trust is a valid trust under state law, or would be but for the fact that there is no corpus; (ii) the trust is irrevocable or will, by its terms, become irrevocable upon the participant's death; (iii) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the participant's retirement plan are "identifiable" from the trust instrument; and (iv) the required documentation is provided to the plan administrator by October 31 of the year following the year of the participant's death. Per the proposed regulations, if a trust meets the four trust regulatory requirements, it is a "see-through trust," which means that the beneficiaries of the trust are treated as the beneficiaries of the participant's retirement plan.

Prior to the SECURE Act, the final regulations that were published in April 2002 recognized two types of qualified see-through trusts, which were not named as such in the final regulations, but which were referred to by practitioners as "accumulation trusts" (**see** Treas. Reg. § 1.401(a)(9)-5, Q & A-7(c)(3), Example 1) and "conduit trusts" (**see** Treas. Reg. § 1.401(a)(9)-5, Q & A-7(c)(3), Example 2). The proposed regulations actually use these terms and define them. The proposed regulations also define "current beneficiary" and "secondary beneficiary." A conduit trust must specifically provide that the entire amount distributed from the inherited retirement plan to the

trust (whether the amount distributed is the RMD or a larger amount) must be distributed out of the trust "forthwith" (i.e., upon receipt) to the current beneficiary of the trust. Because the conduit trust is merely a "flow through," remainder beneficiaries of the conduit trust, who are referred to as "secondary beneficiaries," do not have to be taken into account for purposes of identifying all beneficiaries of the conduit trust with an interest in the participant's retirement plan and, therefore, the current beneficiary of the conduit trust is treated as the sole beneficiary of the participant's retirement plan payable to the trust.

On the other hand, an accumulation trust does *not* have to provide that amounts distributed to the trust from the inherited IRA that belongs to the trust will be distributed from the trust to the current beneficiary in the year the distribution is made. Thus, distributions from the inherited IRA that belongs to the trust can be accumulated in the trust. For that reason, both the current beneficiary and at least "first tier" remainder beneficiaries (because they might receive those distributed amounts in the future) must be taken into account for purposes of identifying all beneficiaries of the accumulation trust who have an interest in the participant's retirement plan. Often second tier and other remainder beneficiaries of accumulation trusts must be taken into account as well. The proposed regulations describe two different types of secondary beneficiaries, one of which is taken into account and the other of which is not. If a particular secondary beneficiary of an accumulation trust (such as a second tier remainder beneficiary of the trust) would only receive an interest in the participant's plan (including accumulations) due to the death of *another* secondary beneficiary (i) who survived the participant (such as the first tier remainder beneficiary of the trust) and (ii) who would have received all interests in the plan upon the death of the current beneficiary but who died before the current beneficiary's interest terminated, that particular secondary beneficiary (i.e., the second tier remainder beneficiary) is not taken into account.

The use of retirement plan benefits to pay post death expenses (including taxes) after the September 30 determination date means that the participant's estate (a non DB) has an interest in the participant's retirement plan. As noted earlier, the SECURE Act added a new type of trust for disabled and chronically ill EDBs: the Applicable Multi-Beneficiary Trust (discussed supra). In addition, the proposed regulations add a new type of trust that can be used for any "young beneficiary" that may be referred to as an "age 31 trust." If the trust provides that the entire interest in the plan will be distributed free of trust to the beneficiary by the later of (i) the end of the year after the participant's death and (ii) the end of the 10th year after the beneficiary reaches age 21 (i.e., when the beneficiary reaches age 31), the current beneficiary will be treated as the sole beneficiary of the trust for purposes of the trust rules. Thus, all "secondary beneficiaries" (i.e., remainder beneficiaries) of the age 31 trust would be ignored.

The proposed regulations provide that the mere possession by the current beneficiary of a power of appointment over the trust, even a power of appointment that could be exercised in favor of entities, such as charities, is not fatal under the RMD Rules. That answers a longstanding question. The proposed regulations address the effect of exercising and not exercising powers of appointment, as well as restricting such powers, both in cases before and after the September 30 determination date. In addition, the proposed regulations specifically recognize modifications, reformations, and decantings pursuant to state law provisions after the participant's death as effective ways to remove or add a beneficiary (and fix problems with the trust), as long as the particular post-death action is legally effective by the determination date.

Separate Accounts

Depending on the structure of the beneficiary designation, it is possible for multiple beneficiaries of a single retirement plan to obtain separate account treatment, which means that each beneficiary will have his, her or its own applicable distribution period after the participant's death. To obtain separate account treatment for separately named beneficiaries, a separate account must be established and maintained for each individual beneficiary by December 31 of the year following the year of the participant's death, bearing its own pro rata share of gains and losses and otherwise separately accounted for to comply with the regulations. In general, separate account treatment is not available to the beneficiaries of a single trust (but **see** earlier discussion regarding the exception for the Type I AMBT). Thus, to insure separate account treatment in the case of multiple trusts that will be the beneficiaries of the participant's retirement plan, it is best to name the separate trusts or sub-trusts directly in the beneficiary designation, rather than naming a single trust (such as a revocable trust) that by its terms divides into separate sub-trusts for separate beneficiaries on the participant's death.

Rollovers from Qualified Plans and IRAs

To understand why rollovers from qualified plans and pre-tax IRAs are so valuable, consider the fact that, as a general rule, distributions from qualified plans and pre-tax IRAs are taxable as ordinary income in the year of receipt. A properly executed rollover is not treated as a taxable distribution from the qualified plan or IRA (each referred to as a "retirement plan" unless a distinction is necessary). In very general terms, there are two types of rollovers: (i) a 60-day rollover and (ii) a trustee to trustee transfer. A 60-day rollover (which can be referred to as an *indirect rollover*) occurs when a distribution is made from the retirement plan to the participant or the participant's spouse and the recipient deposits that distribution into another retirement plan within 60 days. In the case of a 60-day rollover, 20% of the distribution amount will be withheld for federal income tax purposes. IRC 3405(c)(1). To avoid income tax on the 20% amount withheld (because it is a distribution), the participant or participant's spouse (as applicable) can deposit other assets equal to the amount of the tax withheld into the recipient retirement plan. A trustee to trustee transfer (which can be referred to as a *direct rollover*) involves the transfer from one retirement plan directly to another retirement plan without the funds ever being distributed to a taxable account. The trustee or custodian of both the transferring retirement plan and the receiving retirement plan are the only persons directly involved in the transfer (the transferred amount does not go through the hands of the participant, spouse or beneficiary).

Over the years, many participants and spouses missed the 60-day deadline in the case of the 60-day rollover. Frequently, this failure to meet the deadline was the result of errors by the financial institution, death or serious illness of a family member, or other disasters, such as damage to the taxpayer's principal residence. The IRS issued numerous favorable private letter rulings in these cases, waiving the 60-day deadline. Finally, the IRS published Rev. Proc. 2016-47, 2016-37 IRB 346, which created a new procedure for obtaining a waiver of the 60-day deadline. If that procedure is followed, the taxpayer will "self-certify" that one or more of the particular "hardships" outlined in the procedure applied in the taxpayer's case.

In the case of the participant and the participant's surviving spouse, all or part of any eligible rollover distribution may be rolled over to an IRA or to another qualified plan. An eligible rollover distribution is any otherwise taxable distribution from a qualified plan or pre-tax IRA excluding (among certain other items) (i) a required minimum distribution (RMD), (ii) a distribution that is one of a series of substantially equal periodic payments, and (iii) a hardship distribution.

A designated beneficiary other than the participant's surviving spouse who is entitled to an interest in the participant's retirement plan on the participant's death may make a direct rollover (i.e., trustee to trustee transfer) from the participant's retirement plan to an inherited IRA or inherited Roth IRA, but not to another qualified plan.

Distributions after the participant's death to the beneficiaries of the participant's retirement plan will be made depending on the classification of the beneficiary (**see** Minimum Distribution Rules, *supra*).

Certain Other SECURE 2.0 Provisions

Some of the provisions of SECURE 2.0 that are directly related to the RMD rules have already been discussed above. Below are a few more noteworthy provisions in SECURE 2.0 (the "Act").

Section 126 of the Act allows unused funds held in a 529 plan, up to an aggregate lifetime limit of $35,000, to be transferred in a direct trustee to trustee transfer to a Roth IRA for the benefit of the 529 plan beneficiary if certain conditions are met. The 529 plan has to have been in effect for at least 15 years before the rollover and the amount that can be rolled over is limited to the aggregate contributions (plus earnings) made at least 5 years before the date of the rollover. The 529 plan to Roth IRA can be made without regard to the otherwise applicable income limits, although the annual Roth contribution limits do apply ($6,500 for 2023). This provision applies with respect to distributions made after December 31, 2023.

Section 307 of the Act allows the participant to make a special type of QCD (qualified charitable distribution) from his/her pre-tax IRA to a "split interest entity," i.e., either to a charitable remainder trust (CRT) or a charitable gift annuity (CGA). The CRT or CGA must be for the benefit of the participant or the participant's spouse. The CRT may be either a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT). This is a one-time election and the total amount that can be distributed from the participant's IRA for this purpose is $50,000, all of which must be distributed directly to the split interest entity within one taxable year. No individual other than either the participant or the participant's spouse can hold the income interest in the CRT or CGA and that income interest cannot be a deferred interest. If this type of QCD is made, it will count toward the participant's QCD limit for that year. While charities have been working toward something like this for many years, it is unlikely that this provision will be used to fund a CRT (because of the low limit), although it might be used to fund a CGA. The $50,000 limit will be adjusted for inflation. This provision is effective starting in 2023.

Owners of Roth IRAs are not required to take RMDs during their lifetimes (which is why they are always deemed to have died prior to their RBD). However, prior to SECURE 2.0, participants in designated Roth accounts, such as Roth 401(k) plans and Roth 403(b) plans, were required to take RMDs during their lives. Section 325 of the Act repeals the prior RMD rule for designated Roth accounts, effective for taxable years after December 31, 2023.

Table III
(Uniform Lifetime Table: Treas. Reg. § 1.401(a)(9)-9(c))
Table Showing Distribution Period Used to Determine Required Minimum Distributions (RMDs) For a Living Participant*

Age of the Participant	Distribution Period	Age of the Participant	Distribution Period
72	27.4	97	7.8
73	26.5	98	7.3
74	25.5	99	6.8
75	24.6	100	6.4
76	23.7	101	6.0
77	22.9	102	5.6
78	22.0	103	5.2
79	21.1	104	4.9
80	20.2	105	4.6
81	19.4	106	4.3
82	18.5	107	4.1
83	17.7	108	3.9
84	16.8	109	3.7
85	16.0	110	3.5
86	15.2	111	3.4
87	14.4	112	3.3
88	13.7	113	3.1
89	12.9	114	3.0
90	12.2	115	2.9
91	11.5	116	2.8
92	10.8	117	2.7
93	10.1	118	2.5
94	9.5	119	2.3
95	8.9	120 & over	2.0
96	8.4		

*Use Joint Life and Last Survivor Expectancy Table (Table II) instead of Uniform Lifetime Table (i) if the sole beneficiary of participant's plan or IRA is participant's spouse and (ii) if participant's spouse is more than 10 years younger than participant. Treas. Reg. § 1.401(a)(9)-9(d). Marital status is determined on January 1 each year. The 10-year age difference is based on years and not actual birthdates. Spouse is sole beneficiary of participant if spouse is outright beneficiary or if trust for spouse named as participant's beneficiary is a conduit trust.

Table I
(Single Life Expectancy Table: Treas. Reg. § 1.401(a)(9)-9(b))
For Use by Beneficiaries of Deceased Participants*

Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
0	84.6	30	55.3	60	27.1	90	5.7
1	83.7	31	54.4	61	26.2	91	5.3
2	82.8	32	53.4	62	25.4	92	4.9
3	81.8	33	52.5	63	24.5	93	4.6
4	80.8	34	51.5	64	23.7	94	4.3
5	79.8	35	50.5	65	22.9	95	4.0
6	78.8	36	49.6	66	22.0	96	3.7
7	77.9	37	48.6	67	21.2	97	3.4
8	76.9	38	47.7	68	20.4	98	3.2
9	75.9	39	46.7	69	19.6	99	3.0
10	74.9	40	45.7	70	18.8	100	2.8
11	73.9	41	44.8	71	18.0	101	2.6
12	72.9	42	43.8	72	17.2	102	2.5
13	71.9	43	42.9	73	16.4	103	2.3
14	70.9	44	41.9	74	15.6	104	2.2
15	69.9	45	41.0	75	14.8	105	2.1
16	69.0	46	40.0	76	14.1	106	2.1
17	68.0	47	39.0	77	13.3	107	2.1
18	67.0	48	38.1	78	12.6	108	2.0
19	66.0	49	37.1	79	11.9	109	2.0
20	65.0	50	36.2	80	11.2	110	2.0
21	64.1	51	35.3	81	10.5	111	2.0
22	63.1	52	34.3	82	9.9	112	2.0
23	62.1	53	33.4	83	9.3	113	1.9
24	61.1	54	32.5	84	8.7	114	1.9
25	60.2	55	31.6	85	8.1	115	1.8
26	59.2	56	30.6	86	7.6	116	1.8
27	58.2	57	29.8	87	7.1	117	1.6
28	57.3	58	28.9	88	6.6	118	1.4
29	56.3	59	28.0	89	6.1	119	1.1
						120+	1.0

*Examples. If the participant's beneficiary is any eligible designated beneficiary (EDB) other than the participant's spouse and the EDB's life expectancy is being used to calculate RMDs, use this table to obtain the applicable denominator for the EDB's age as of the EDB's birthday in the year following the year of the participant's death (first distribution year), and reduce that denominator by one each year thereafter to calculate the RMD for that year (non-spouse EDBs cannot recalculate life expectancy). If the participant's beneficiary is a DB and the participant dies *after*

RBD, so that the DB must take RMDs in years 1 through 9 of the period of the 10 year rule (per the proposed regulations), assuming the DB is younger than the participant was at death, the DB calculates his/her RMDs by obtaining the denominator for the DB's age as of the DB's birthday in the year following the year of the participant's death (first distribution year), and reduces that denominator by one each year thereafter until the 10th year is reached, which is the year the DB is required to withdraw the entire remaining amount from the inherited IRA. If the participant dies after RBD without having a DB, the participant's "ghost life expectancy" is used to calculate RMDs. In that case, for the first distribution year (i.e., the year after the participant's death), the applicable denominator is the Life Expectancy for the participant's age as of his/her birthday in the year of death minus 1. In each subsequent year, the number 1 is subtracted from the prior year's denominator to calculate the RMD to the non-DB.

INTEREST RATES

Applicable Federal Rate Rules

Applicable Federal Rates ("AFRs") are published monthly (on about the 20th of the month) by the Internal Revenue Service; they provide a guideline interest rate (often with adjustments) for a variety of tax purposes. IRC 1274.

Term of Debt Instrument	AFR to Be Used by Taxpayers
Not over 3 Years	The Short-Term AFR
Over 3 Years, not over 9 Years	The Mid-Term AFR
Over 9 Years	The Long-Term AFR

Choice of Interest Rates

Donors making a split-interest charitable gift have the choice to value such gift using 120% of the Mid-Term AFR for the current month, or for either of the two calendar months preceding the calendar month of the gift, whichever is most favorable. By acting late in a calendar month, when the next month's factor is known (but not yet applicable), a choice of factors from four months can be available.

Use Highest Possible Rate	Use Lowest Possible Rate
• Charitable remainder trust • Charitable gift annuity (for larger deduction)	• Charitable lead trust • Charitable gift annuity (for larger tax-exempt portion) • Gift of remainder interest in farm or personal residence.

Federal interest rates for current and prior periods are available on the IRS website:

apps.irs.gov/app/picklist/list/federalRates.html

IRC Section 7520 Rates*

7520 Rates Since May 1, 1989

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2023	4.6	4.6	4.4	5.0	4.4							
2022	1.6	1.6	2.0	2.2	3.0	3.6	3.6	3.8	3.6	4.0	4.8	5.2
2021	0.6	0.6	0.8	1.0	1.2	1.2	1.2	1.2	1.0	1.0	1.4	1.6
2020	2.0	2.2	1.8	1.2	0.8	0.6	0.6	0.4	0.4	0.4	0.4	0.6
2019	3.4	3.2	3.2	3.0	2.8	2.8	2.6	2.2	2.2	1.8	2.0	2.0
2018	2.6	2.8	3.0	3.2	3.2	3.4	3.4	3.4	3.4	3.4	3.6	3.6
2017	2.4	2.6	2.4	2.6	2.4	2.4	2.2	2.4	2.4	2.2	2.4	2.6
2016	2.2	2.2	1.8	1.8	1.8	1.8	1.8	1.4	1.4	1.6	1.6	1.8
2015	2.2	2.0	1.8	2.0	1.8	2.0	2.2	2.2	2.2	2.0	2.0	2.0
2014	2.2	2.4	2.2	2.2	2.4	2.2	2.2	2.2	2.2	2.2	2.2	2.0
2013	1.0	1.2	1.4	1.4	1.2	1.2	1.4	2.0	2.0	2.4	2.0	2.0
2012	1.4	1.4	1.4	1.4	1.6	1.2	1.2	1.0	1.0	1.2	1.0	1.2
2011	2.4	2.8	3.0	3.0	3.0	2.8	2.4	2.2	2.0	1.4	1.4	1.6
2010	3.0	3.4	3.2	3.2	3.4	3.2	2.8	2.6	2.4	2.0	2.0	1.8
2009	2.4	2.0	2.4	2.6	2.4	2.8	3.4	3.4	3.4	3.2	3.2	3.2
2008	4.4	4.2	3.6	3.4	3.2	3.8	4.2	4.2	4.2	3.8	3.6	3.4
2007	5.6	5.6	5.8	5.6	5.6	5.6	6.0	6.2	5.8	5.2	5.2	5.0
2006	5.4	5.2	5.4	5.6	5.8	6.0	6.0	6.2	6.0	5.8	5.6	5.8
2005	4.6	4.6	4.6	5.0	5.2	4.8	4.6	4.8	5.0	5.0	5.0	5.4
2004	4.2	4.2	4.0	3.8	3.8	4.6	5.0	4.8	4.6	4.4	4.2	4.2
2003	4.2	4.0	3.8	3.6	3.8	3.6	3.0	3.2	4.2	4.4	4.0	4.2
2002	5.4	5.6	5.4	5.6	6.0	5.8	5.6	5.2	4.6	4.2	3.6	4.0
2001	6.8	6.2	6.2	6.0	5.8	6.0	6.2	6.0	5.8	5.6	5.0	4.8
2000	7.4	8.0	8.2	8.0	7.8	8.0	8.0	7.6	7.6	7.4	7.2	7.0
1999	5.6	5.6	5.8	6.4	6.2	6.4	7.0	7.2	7.2	7.2	7.4	7.4
1998	7.2	6.8	6.8	6.8	6.8	7.0	6.8	6.8	6.6	6.2	5.4	5.4
1997	7.4	7.6	7.8	7.8	8.2	8.2	8.0	7.6	7.6	7.6	7.4	7.2
1996	6.8	6.8	6.6	7.0	7.6	8.0	8.2	8.2	8.0	8.0	8.0	7.6
1995	9.6	9.6	9.4	8.8	8.6	8.2	7.6	7.2	7.6	7.6	7.4	7.2
1994	6.4	6.4	6.4	7.0	7.8	8.4	8.2	8.4	8.4	8.6	9.0	9.4
1993	7.6	7.6	7.0	6.6	6.6	6.4	6.6	6.4	6.4	6.4	6.0	6.2
1992	8.2	7.6	8.0	8.4	8.6	8.4	8.2	7.8	7.2	7.0	6.8	7.4
1991	9.8	9.6	9.4	9.6	9.6	9.6	9.6	9.8	9.6	9.0	8.6	8.4
1990	9.6	9.8	10.2	10.6	10.6	11.0	10.6	10.4	10.2	10.6	10.6	10.2
1989	10*	10*	10*	10*	11.6	11.2	10.6	10.0	9.6	10.2	10.0	9.8

* The discount rate used to value any annuity, interest for life or a term of years or any remainder or reversionary interest is equal to 120% of the annual federal mid-term rate under IRC 1274(d)(1), rounded to the nearest 0.2%. However, for split-interest charitable gifts, the rate for the current month or either of the two months preceding the month in which the valuation date falls may be used [IRC 7520]. Section 7520 became effective May 1, 1989. For transactions occurring in the first four months of 1989, regulations required use of a 10% interest assumption.

For updates to the AFR/7520 Rates and access to additional professional fiduciary resources please visit actec.org/professionals/wealth-advisors-resources.

CHARITABLE DEDUCTIONS

Percentage Limitations Under IRC § 170

Transfer To	AGI Limitation	Deduction Based On
Public charity	60% for cash* 30% for long-term capital gain property**	Fair market value; limited to lower of basis or fair market value if not long term capital gain property; contribution deduction for gifts of tangible personal property limited to lower of basis or fair market value unless charity will use property in a way related to its tax exempt purpose
Private foundation	30% for cash 20% for long-term capital gain property**	Fair market value for cash and publicly traded long-term appreciated securities; lower of basis or fair market value for property other than publicly traded securities held long term

*For years beginning after 12/31/2017 and before 1/1/2026. This change to the prior 50% limitation was made by the Tax Cuts and Jobs Act (passed on 12/20/2017). The CARES Act (enacted 3/27/2020) allowed individuals who itemize to deduct up to 100% of their AGI for qualified cash contributions made during 2020 and 2021. The CARES Act also allowed non-itemizers to deduct $300 for cash contributions to public charities and private operating foundations. In 2020, the $300 deduction applied to the "tax unit" (a married couple filing jointly is one tax unit), while in 2021, the $300 deduction applied to each spouse in the case of a married couple filing jointly (total deduction of $600).

**Cryptocurrency (such as Bitcoin) is in this category and not in the cash category.

American Council on Gift Annuities
Maximum Suggested Rates Single Life
As of January 1, 2023

Age	Rate	Age	Rate	Age	Rate
5-18	3.5	63	5.2	80	7.6
19-27	3.6	64	5.3	81	7.8
28-33	3.7	65	5.4	82	8.1
34-38	3.8	66	5.5	83	8.3
39-42	3.9	67	5.6	84	8.5
43-45	4.0	68	5.7	85	8.7
46-47	4.1	69	5.8	86	8.9
48-50	4.2	70	5.9	87	9.1
51-52	4.3	71	6.0	88	9.3
53	4.4	72	6.2	89	9.5
54-55	4.5	73	6.3	90+	9.7
56	4.6	74	6.4		
57-58	4.7	75	6.6		
59	4.8	76	6.8		
60	4.9	77	7.0		
61	5.0	78	7.2		
62	5.1	79	7.4		

American Council on Gift Annuities

Maximum Suggested Rates Two Lives—Joint and Survivor

As of January 1, 2023

Younger Age	Older Age	Rate
5	5-95+	3.3
6	6-95+	3.3
7	7-95+	3.3
8	8-95+	3.3
9	9-95+	3.3
10	10-95+	3.3
11	11-95+	3.3
12	12-95+	3.3
13	13-95+	3.3
14	14-95+	3.3
15	15-95+	3.3
16	16-95+	3.3
17	17-95+	3.3
18	18-95+	3.3
19	19-95+	3.4
20	20-95+	3.4
21	21-95+	3.4
22	22-95+	3.4
23	23-95+	3.4
24	24-95+	3.4
25	25-95+	3.4
26	26-95+	3.4
27	27-95+	3.4
28	28-95+	3.5
29	29-95+	3.5
30	30-95+	3.5
31	31-95+	3.5
32	32-95+	3.5
33	33-95+	3.5
34	34-95+	3.6
35	35-95+	3.6
36	36-95+	3.6
37	37-95+	3.6
38	38-95+	3.6
39	39-95+	3.7
40	40-95+	3.7
41	41-95+	3.7
42	42-95+	3.7
43	43-95+	3.8
44	44-95+	3.8
45	45-95+	3.8
46	46	3.8
46	47-95+	3.9
47	47-95+	3.9
48	48-52	3.9
48	53-95+	4.0
49	49-50	3.9
49	51-95+	4.0
50	50-95+	4.0
51	51-54	4.0
51	55-95+	4.1
52	52-53	4.0
52	54-95+	4.1
53	53-58	4.1
53	59-95+	4.2
54	54-56	4.1
54	57-62	4.2
54	63-95+	4.3
55	55	4.1
55	56-60	4.2
55	61-95+	4.3
56	56-59	4.2
56	60-64	4.3
56	65-95+	4.4
57	57	4.2
57	58-62	4.3
57	63-67	4.4
57	68-95+	4.5
58	58-60	4.3
58	61-65	4.4
58	66-95+	4.5
59	59	4.3
59	60-63	4.4
59	64-68	4.5

59	69-95+	4.6
60	60-62	4.4
60	63-65	4.5
60	66-70	4.6
60	71-95+	4.7
61	61-64	4.5
61	65-68	4.6
61	69-72	4.7
61	73-95+	4.8
62	62-63	4.5
62	64-66	4.6
62	67-69	4.7
62	70-74	4.8
62	75-95+	4.9
63	63-64	4.6
63	65-67	4.7
63	68-71	4.8
63	72-75	4.9
63	76-95+	5.0
64	64-66	4.7
64	67-69	4.8
64	70-72	4.9
64	73-76	5.0
64	77-95+	5.1
65	65	4.7
65	66-67	4.8
65	68-70	4.9
65	71-73	5.0
65	74-77	5.1
65	78-95+	5.2
66	66	4.8
66	67-69	4.9
66	70-71	5.0
66	72-74	5.1
66	75-77	5.2
66	78-95+	5.3
67	67	4.9
67	68-70	5.0
67	71-72	5.1
67	73-75	5.2
67	76-78	5.3

67	79-95+	5.4
68	68	5.0
68	69-70	5.1
68	71-73	5.2
68	74-75	5.3
68	76-78	5.4
68	79-95+	5.5
69	69	5.1
69	70-71	5.2
69	72-73	5.3
69	74-75	5.4
69	76-78	5.5
69	79-95+	5.6
70	70	5.2
70	71-72	5.3
70	73	5.4
70	74-75	5.5
70	76-78	5.6
70	79-95+	5.7
71	71-72	5.4
71	73-74	5.5
71	75-76	5.6
71	77-79	5.7
71	80-95+	5.8
72	72	5.5
72	73-74	5.6
72	75-77	5.7
72	78-80	5.8
72	81-83	5.9
72	84-95+	6.0
73	73	5.6
73	74-75	5.7
73	76-78	5.8
73	79-80	5.9
73	81-83	6.0
73	84-95+	6.1
74	74	5.7
74	75-76	5.8
74	77-78	5.9
74	79-80	6.0
74	81-83	6.1

74	84-95+	6.2
75	75	5.8
75	76-77	5.9
75	78-79	6.0
75	80-81	6.1
75	82-83	6.2
75	84-86	6.3
75	87-95+	6.4
76	76	5.9
76	77	6.0
76	78-79	6.1
76	80-81	6.2
76	82-83	6.3
76	84-85	6.4
76	86-88	6.5
76	89-95+	6.6
77	77-78	6.1
77	79	6.2
77	80-81	6.3
77	82-83	6.4
77	84-85	6.5
77	86-87	6.6
77	88-90	6.7
77	91-95+	6.8
78	78	6.2
78	79	6.3
78	80-81	6.4
78	82	6.5
78	83-84	6.6
78	85-86	6.7
78	87-88	6.8
78	89-91	6.9
78	92-95+	7.0
79	79	6.4
79	80-81	6.5
79	82	6.6
79	83-84	6.7
79	85	6.8
79	86-87	6.9
79	88-89	7.0
79	90-92	7.1
79	93-95+	7.2
80	80	6.5
80	81	6.6
80	82	6.7
80	83	6.8
80	84	6.9
80	85-86	7.0
80	87	7.1
80	88-89	7.2
80	90-92	7.3
80	93-95+	7.4
81	81	6.7
81	82	6.8
81	83	6.9
81	84	7.0
81	85	7.1
81	86	7.2
81	87-88	7.3
81	89	7.4
81	90-91	7.5
81	92-95+	7.6
82	82	6.9
82	83	7.0
82	84	7.1
82	85	7.2
82	86	7.3
82	87	7.4
82	88	7.5
82	89	7.6
82	90-91	7.7
82	92-93	7.8
82	94-95+	7.9
83	83	7.2
83	84	7.3
83	85	7.4
83	86	7.5
83	87	7.6
83	88	7.7
83	89	7.8
83	90-91	7.9
83	92	8.0

83	93-95+	8.1
84	84	7.4
84	85	7.5
84	86	7.6
84	87	7.8
84	88	7.9
84	89	8.0
84	90	8.1
84	91	8.2
84	92-95+	8.3
85	85	7.7
85	86	7.8
85	87	7.9
85	88	8.1
85	89	8.2
85	90	8.3
85	91	8.4
85	92-95+	8.5
86	86	8.0
86	87	8.1
86	88	8.2
86	89	8.4
86	90	8.5
86	91	8.6
86	92-95+	8.7
87	87	8.3
87	88	8.4
87	89	8.6
87	90	8.7
87	91-95+	8.9
88	88	8.6
88	89	8.8
88	90	9.0
88	91-95+	9.1
89	89	9.0
89	90	9.2
89	91-95+	9.3
90	90	9.4
90	91-95+	9.5
91	91-95+	9.5
92	92-95+	9.5
93	93-95+	9.5
94	94-95+	9.5
95+	95+	9.5

Procedure for Calculating Suggested Deferred Gift Annuity Rates
(For New York and New Jersey, see below)

1. Determine the annuity starting date, which is:
   - One year before the first payment, if payments are made annually;
   - Six months before the first payment, if payments are made semi-annually;
   - Three months before the first payment, if payments are made quarterly;
   - One month before the first payment, if payments are made monthly.
2. Determine the number of whole and fractional years from the date of the contribution to the annuity starting date (the deferral period).
3. Express the fractional year as a decimal of four numbers.
4. For a deferral period of any length, use the following formula to determine the compound interest factor:

   F = 1.0325 d, where F is the compound interest factor and d is the deferral period

Example: If the period between the contribution date and the annuity starting date is 10.25 years, the compound interest factor would be $1.0325^{10.25} = 1.387948$.

5. Multiply the compound interest factor (F) by the immediate gift annuity rate for the nearest age or ages of a person or persons at the annuity starting date.

Example: If the sole annuitant will be nearest age 65 on the annuity starting date and the compound interest factor is 1.387948, the deferred gift annuity rate would be 1.387948 times 4.7%, or 6.5% (rounded to the nearest tenth of a percent).

Note to Charities Issuing Deferred Gift Annuities in New York and New Jersey

New York and New Jersey are the two states known at this time that may require different interest factors for deferred gift annuities with longer deferral periods.

1. **New York**: Under section 103.5 of 11 NYCRR 103 (Insurance Regulation 213), interest rates for New York single premium deferred annuities are issued quarterly. The rates are found on the New York Department of Financial Services' website under the "Present Value of Immediate Annuities" link. The applicable rate depends on the age and gender of the annuitant and is calculated by dividing the corresponding "Maximum Income" for the age and gender of the annuitant by 10. (Ex. The 2022 QI Maximum Income factor for a 35 year old male is 29.37/10=2.93%).

   It should be noted that there is a bill in the New York State Assembly that would change how practitioners would calculate the current rate. The proposed bill would amend subsection (a) of Section 1110 of the New York State Insurance Law. The amendment would calculate (i) the rate as of July 1 of the current year by adding 2% to the applicable 10-year treasury bond yield as of April 13 of the current year, rounded to the nearest 0.025%, and (ii) the rate as of January 1 of the next year, by

adding 2% to the applicable 10-year treasury bond yield as of October 31 of the current year, rounded to the nearest 0.25%.

2. **New Jersey**: Under New Jersey Administrative Code § 11:4-8.5(d), "[t]he Commissioner shall waive the requirement for a demonstration from the special permit holder that the rates meet the requirements of § 11:4-8.5(a) if the special permit holder uses the rates of the American Council on Gift Annuities and these rates meet the requirements of § 11:4-8.5(a)."

   § 11:4-8.5(a) states "[t]he original consideration for periodic payments payable to the holder of a charitable annuity may not be less than the single premium, computed according to interest and mortality assumptions permitted by N.J.S.A. § 17B:19-1 et seq. for guaranteed periodic payments, plus a life insurance net single premium, computed according to the same assumptions for an amount of death benefit equal to one-half of such original consideration. For this purpose, the original consideration shall include the gross amount paid by the annuitant to the special permit holder in order to provide the annuity payments and residue."

2023

JANUARY

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

FEBRUARY

Su	Mo	Tu	We	Th	Fr	Sa
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	1	2	3	4
5	6	7	8	9	10	11

MARCH

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1
2	3	4	5	6	7	8

APRIL

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

MAY

Su	Mo	Tu	We	Th	Fr	Sa
30	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

JUNE

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	1
2	3	4	5	6	7	8

JULY

Su	Mo	Tu	We	Th	Fr	Sa
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	5

AUGUST

Su	Mo	Tu	We	Th	Fr	Sa
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2
3	4	5	6	7	8	9

SEPTEMBER

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

OCTOBER

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

NOVEMBER

Su	Mo	Tu	We	Th	Fr	Sa
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	1	2
3	4	5	6	7	8	9

DECEMBER

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

2024

JANUARY

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

FEBRUARY

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	1	2
3	4	5	6	7	8	9

MARCH

Su	Mo	Tu	We	Th	Fr	Sa
25	26	27	28	29	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

APRIL

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1	2	3	4
5	6	7	8	9	10	11

MAY

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1
2	3	4	5	6	7	8

JUNE

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

JULY

Su	Mo	Tu	We	Th	Fr	Sa
30	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

AUGUST

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7

SEPTEMBER

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	1	2	3	4	5
6	7	8	9	10	11	12

OCTOBER

Su	Mo	Tu	We	Th	Fr	Sa
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2
3	4	5	6	7	8	9

NOVEMBER

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

DECEMBER

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

Department of the Treasury
Internal Revenue Service

Your Federal Income Tax

For Individuals

Publication 17
Catalog Number 10311G

For use in preparing
2022 Returns

TAX GUIDE
2022
FOR INDIVIDUALS

Get forms and other information faster and easier at:

- *IRS.gov* (English)
- *IRS.gov/Spanish* (Español)
- *IRS.gov/Chinese* (中文)
- *IRS.gov/Korean* (한국어)
- *IRS.gov/Russian* (Русский)
- *IRS.gov/Vietnamese* (Tiếng Việt)

Mar 27, 2023

Department of the Treasury

Internal Revenue Service

Your Federal Income Tax

For Individuals

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All material in this publication may be reprinted freely. A citation to Your Federal Income Tax (2022) *would be appropriate.*

The explanations and examples in this publication reflect the interpretation by the Internal Revenue Service (IRS) of:

- Tax laws enacted by Congress,
- Treasury regulations, and
- Court decisions.

However, the information given does not cover every situation and is not intended to replace the law or change its meaning.

This publication covers some subjects on which a court may have made a decision more favorable to taxpayers than the interpretation by the IRS. Until these differing interpretations are resolved by higher court decisions or in some other way, this publication will continue to present the interpretations by the IRS.

All taxpayers have important rights when working with the IRS. These rights are described in *Your Rights as a Taxpayer* in the back of this publication.

What's New

This section summarizes important tax changes that took effect in 2022. Most of these changes are discussed in more detail throughout this publication.

Future developments. For the latest information about the tax law topics covered in this publication, such as legislation enacted after it was published, go to *IRS.gov/Pub17*.

Due date of return. File Form 1040 or 1040-SR by April 18, 2023. The due date is April 18, instead of April 15, because of the Emancipation Day holiday in the District of Columbia even if you don't live in the District of Columbia. See chapter 1, later.

Filing status name changed to qualifying surviving spouse. The filing status qualifying widow(er) is now called qualifying surviving spouse. The rules for the filing status have not changed. The same rules that applied for qualifying widow(er) apply to qualifying surviving spouse.

Who must file. Generally, the amount of income you can receive before you must file a return has been increased. For more information, see chapter 1, later.

Standard deduction amount increased. For 2022, the standard deduction amount has been increased for all filers. The amounts are:

- Single or Married filing separately—$12,950;
- Married filing jointly or Qualifying surviving spouse—$25,900; and
- Head of household—$19,400.

See chapter 10, later.

New lines 1a through 1z on Form 1040 and 1040-SR. This year, line 1 is expanded and there are new lines 1a through 1z. Some amounts that in prior years were reported on Form 1040, and some amounts reported on Form 1040-SR are now reported on Schedule 1.

- Scholarships and fellowship grants are now reported on Schedule 1, line 8r.
- Pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan are now reported on Schedule 1, line 8t.
- Wages earned while incarcerated are now reported on Schedule 1, line 8u.

New line 6c on Form 1040 and 1040-SR. A checkbox was added on line 6c. Taxpayers who elect to use the lump-sum election method for their benefits will check this box. See Instructions for Form 1040.

Credits for sick and family leave for certain self-employed individuals are not available. The credit for sick and family leave for certain self-employed individuals were not extended and you can no longer claim these credits.

Health coverage tax credit is not available. The health coverage tax credit was not extended. The credit is not available after 2021.

Credit for child and dependent care expenses. The changes to the credit for child and dependent care expenses implemented by the American Rescue Plan Act of 2021 (ARP) were not extended. For 2022, the credit for the child and dependent care expenses is nonrefundable. The dollar limit on qualifying expenses is $3,000 for one qualifying person and $6,000 for two or more qualifying persons. The maximum credit amount allowed is 35% of your employment-related expenses. For more information, see the Instructions for Form 2441 and Pub. 503.

Child tax credit enhancements have expired. Many changes to the CTC for 2021 implemented by the American Rescue Plan Act of 2021 have expired. For tax year 2022:

- The enhanced credit allowed for qualifying children under age 6 and children under age 18 has expired. For 2022, the initial amount of the CTC is $2,000 for each qualifying child. The credit amount begins to phase out where modified adjusted gross income exceeds $200,000 ($400,000 in the case of a joint return). The amount of the CTC that can be claimed as a refundable credit is limited as it was in 2020 except that the maximum ACTC amount for each qualifying child increased to $1,500.
- The increased age allowance for a qualifying child has expired. A child must be under age 17 at the end of 2022 to be a qualifying child.

For more information, see the Instructions for Schedule 8812 (Form 1040).

ACTC and bona fide residents of Puerto Rico. Bona fide residents of Puerto Rico are no longer required to have three or more qualifying children to be eligible to claim the ACTC. Bona fide residents of Puerto Rico may be eligible to claim the ACTC if they have one or more qualifying children.

Advance child tax credit payments. Advance child tax credit payments have not been issued for 2022.

Delayed refund for returns claiming ACTC. The IRS cannot issue refunds before mid-February 2023 for returns that properly claim ACTC. This time frame applies to the entire refund, not just the portion associated with ACTC.

Changes to the earned income credit (EIC). The enhancements for taxpayers without a qualifying child implemented by ARP don't apply for 2022. This means, to claim the EIC without a qualifying child in 2022, you must be at least age 25 but under age 65 at the end of 2022. If you are married filing a joint return, either you or your spouse must be at least age 25 but under age 65 at the end of 2022. It doesn't matter which spouse meets the age requirement, as long as one of the spouses does.

Nontaxable Medicaid waiver payments on Schedule 1. In 2021, the nontaxable amount of Medicaid waiver payments were reported on Schedule 1, line 8z. In 2022, these amounts will be reported on Schedule 1, line 8s.

Nontaxable combat pay election. In 2021, the amount of your nontaxable combat pay was reported on Form 1040 or 1040-SR, line 27b. In 2022, these amounts will be reported on Form 1040 or 1040-SR, line 1i.

Standard mileage rate. The 2022 rate for business use of a vehicle is 58.5 cents a mile from January 1, 2022 to June 30, 2022, and 62.5 cents a mile from July 1, 2022 to December 31, 2022. The 2022 rate for use of your vehicle to do volunteer work for certain charitable organizations is 14 cents a mile from January 1, 2022 to December 31, 2022. The 2022 rate for operating expenses for a car when you use it for medical reasons are 18 cents a mile from January 1, 2022 to June 30, 2022, and 22 cents a mile from July 1, 2022 to December 31, 2022.

Modified AGI limit for traditional IRA contributions. For 2022, if you are covered by a retirement plan at work, your deduction for contributions to a traditional IRA is reduced (phased out) if your modified AGI is:

- More than $109,000 but less than $129,000 for a married couple filing a joint return or a qualifying surviving spouse,
- More than $68,000 but less than $78,000 for a single individual or head of household, or
- Less than $10,000 for a married individual filing a separate return.

If you either live with your spouse or file a joint return, and your spouse is covered by a retirement plan at work but you aren't, your deduction is phased out if your modified AGI is more than $204,000 but less than $214,000. If your modified AGI is $214,000 or more, you can't take a deduction for contributions to a traditional IRA. See *How Much Can You Deduct* in chapter 9, later.

Modified AGI limit for Roth IRA contributions. For 2022, your Roth IRA contribution limit is reduced (phased out) in the following situations.

- Your filing status is married filing jointly or qualifying surviving spouse and your modified AGI is at least $204,000. You can't make a Roth IRA contribution if your modified AGI is $214,000 or more.
- Your filing status is single, head of household, or married filing separately and you didn't live with your spouse at any time in 2022 and your modified AGI is at least $129,000. You can't make a Roth IRA contribution if your modified AGI is $144,000 or more.
- Your filing status is married filing separately, you lived with your spouse at any time during the year, and your modified AGI is more than zero. You can't make a Roth IRA contribution if your modified AGI is $10,000 or more. See *Can You Contribute to a Roth IRA* in chapter 9, later.

2023 modified AGI limits. You can find information about the 2023 contribution and modified AGI limits in Pub. 590-A.

Tax law changes for 2023. When you figure how much income tax you want withheld from your pay and when you figure your

estimated tax, consider tax law changes effective in 2023. For more information, see Pub. 505, Tax Withholding and Estimated Tax.

Alternative minimum tax (AMT) exemption amount increased. The AMT exemption amount is increased to $75,900 ($118,100 if married filing jointly or qualifying surviving spouse; $59,050 if married filing separately). The income levels at which the AMT exemption begins to phase out have increased to $539,900 ($1,079,800 if married filing jointly or qualifying surviving spouse).

Adoption credit. The adoption credit and the exclusion for employer-provided adoption benefits have both increased to $15,950 per eligible child in 2022. The amount begins to phase out if you have modified AGI in excess of $239,230 and is completely phased out if your modified AGI is $279,230 or more.

Reporting requirements for Form 1099-K. Form 1099-K is issued by third party settlement organizations and credit card companies to report payment transactions made to you for goods and services.

You must report all income on your tax return unless excluded by law, whether you received the income electronically or not, and whether you received a Form 1099-K or not. The box 1a and other amounts reported on Form 1099-K are additional pieces of information to help determine the correct amounts to report on your return.

If you received a Form 1099-K that shows payments you didn't receive or is otherwise incorrect, contact the Form 1099-K issuer. Don't contact the IRS; the IRS can't correct an incorrect Form 1099-K. If you can't get it corrected, or you sold a personal item at a loss, see the instructions for Schedule 1, lines 8z and 24z, later, for more reporting information.

All IRS information about Form 1099-K is available by going to *IRS.gov/1099K*.

Reminders

Listed below are important reminders and other items that may help you file your 2022 tax return. Many of these items are explained in more detail later in this publication.

Publication 17 changes. We removed the following 2019 chapters from this publication: 6, 8, 9, 10, 13, 14, 15, 16, 18, 19, 20, 22, 24, 25, 26, 29, 30, 31, 33, 34, 35, and 36. You can find most of the information previously found in those chapters in the primary publication. Please see Publication 17 changes, later.

Special rules for eligible gains invested in Qualified Opportunity Funds. If you have an eligible gain, you can invest that gain into a Qualified Opportunity Fund (QOF) and elect to defer part or all of the gain that is otherwise includible in income. The gain is deferred until the date you sell or exchange the investment or December 31, 2026, whichever is earlier. You may also be able to permanently exclude gain from the sale or exchange of an investment in a QOF if the investment is held for at least 10 years. For information about what types of gains entitle you to elect these special rules, see the Instructions for Schedule D (Form 1040). For information on how to elect to use these special rules, see the Instructions for Form 8949.

Secure your tax records from identity theft. Identity theft occurs when someone uses your personal information, such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund. For more information about identity theft and how to reduce your risk from it, see chapter 1, later.

Taxpayer identification numbers. You must provide the taxpayer identification number for each person for whom you claim certain tax benefits. This applies even if the person was born in 2022. Generally, this number is the person's SSN. See chapter 1, later.

Tuition and fees deduction not available. The tuition and fees deduction is not available after 2020. Instead, the income limitations for the lifetime learning credit have been increased. See Form 8863 and its instructions.

Premium tax credit (PTC). The ARP expanded the PTC by eliminating the limitation that a taxpayer's household income may not exceed 400% of the federal poverty line and generally increases the credit amounts. For more information, see Pub. 974 and Form 8962 and its instructions.

Identity verification. The IRS launched an improved identity verification and sign-in process that enables more people to securely access and use IRS online tools and applications. To provide verification services, the IRS is using ID.me, a trusted technology provider. The new process is one more step the IRS is taking to ensure that taxpayer information is provided only to the person who legally has a right to the data. Taxpayers using the new mobile-friendly verification procedure can gain entry to existing IRS online services such as the *Child Tax Credit Update Portal*, *On-line Account*, *Get Transcript Online*, *Get an Identity Protection PIN (IP PIN)*, and *Online Payment Agreement*. Additional IRS applications will transition to the new method over the next year. Each online service will also provide information that will instruct taxpayers on the steps they need to follow for access to the service. You can also see IR-2021-228 for more information.

Form 1040-X continuous-use form and instructions. Form 1040-X, Amended U.S. Individual Income Tax Return, and its instructions have been converted from an annual revision to continuous use beginning in tax year 2021. Both the form and instructions will be updated as required. For the most recent version, go to *IRS.gov/Form1040X*. Section discussions and charts that were updated annually have been removed, or replaced with references to relevant forms, schedules, instructions, and publications. See the forms, schedules, instructions, and publications for the year of the tax return you are amending for guidance on specific topics.

Business meals. Section 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides for the temporary allowance of a 100% business meal deduction for food or beverages provided by a restaurant and paid or incurred after December 31, 2020, and before January 1, 2023.

Foreign-source income. If you are a U.S. citizen with income from sources outside the United States (foreign income), you must report all such income on your tax return unless it is exempt by law or a tax treaty. This is true whether you live inside or outside the United States and whether or not you receive a Form W-2 or Form 1099 from the foreign payer. This applies to earned income (such as wages and tips) as well as unearned income (such as interest, dividends, capital gains, pensions, rents, and royalties).

If you live outside the United States, you may be able to exclude part or all of your foreign earned income. For details, see Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.

Foreign financial assets. If you had foreign financial assets in 2022, you may have to file Form 8938 with your return. See Form 8938 and its instructions or visit *IRS.gov/Form8938* for details.

Automatic 6-month extension to file tax return. You can get an automatic 6-month extension of time to file your tax return. See chapter 1, later.

Payment of taxes. You can pay your taxes by making electronic payments online; from a mobile device using the IRS2Go app; or in cash, or by check or money order. Paying electronically is quick, easy, and faster than mailing in a check or money order. See chapter 1, later.

Faster ways to file your return. The IRS offers fast, accurate ways to file your tax return information without filing a paper tax return. You can use IRS *e-file* (electronic filing). See chapter 1, later.

Free electronic filing. You may be able to file your 2022 taxes online for free. See chapter 1, later.

Change of address. If you change your address, notify the IRS. See chapter 1, later.

Refund on a late-filed return. If you were due a refund but you did not file a return, you must generally file your return within 3 years from the date the return was due (including extensions) to get that refund. See chapter 1, later.

Frivolous tax returns. The IRS has published a list of positions that are identified as frivolous. The penalty for filing a frivolous tax return is $5,000. See chapter 1, later.

Filing erroneous claim for refund or credit. You may have to pay a penalty if you file an erroneous claim for refund or credit. See chapter 1, later.

Access your online account. You must authenticate your identity. To securely log into your federal tax account, go to *IRS.gov/Account*. View the amount you

owe, review last 5 years of payment history, access online payment options, and create or modify an online payment agreement. You can also access your tax records online.

Health care coverage. If you need health care coverage, go to HealthCare.gov to learn about health insurance options for you and your family, how to buy health insurance, and how you might qualify to get financial assistance to buy health insurance.

Disclosure, Privacy Act, and paperwork reduction information. The IRS Restructuring and Reform Act of 1998, the Privacy Act of 1974, and the Paperwork Reduction Act of 1980 require that when we ask you for information, we must first tell you what our legal right is to ask for the information, why we are asking for it, how it will be used, what could happen if we do not receive it, and whether your response is voluntary, required to obtain a benefit, or mandatory under the law. A complete statement on this subject can be found in your tax form instructions.

Preparer *e-file* mandate. Most paid preparers must *e-file* returns they prepare and file. Your preparer may make you aware of this requirement and the options available to you.

Treasury Inspector General for Tax Administration. If you want to confidentially report misconduct, waste, fraud, or abuse by an IRS employee, you can call 800-366-4484 (call 800-877-8339 if you are deaf, hard of hearing, or have a speech disability, and are using TTY/TDD equipment). You can remain anonymous.

Photographs of missing children. The IRS is a proud partner with the National Center for Missing & Exploited Children® (NCMEC). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (800-843-5678) if you recognize a child.

Publication 17 Changes

Note. This publication does not cover the topics listed in the following table. Please see the primary publication.

Chapter Removed	Title of Chapter	Primary Source
6	Tip Income	Pub. 531, Reporting Tip Income
8	Dividends and Other Distributions	Pub. 550, Investment Income and Expenses
9	Rental Income and Expenses	Pub. 527, Residential Rental Property (Including Rental of Vacation Homes)
10	Retirement Plans, Pensions, and Annuities	Pub. 575, Pension and Annuity Income
13	Basis of Property	Pub. 551, Basis of Assets
14	Sale of Property	Pub. 550
15	Selling Your Home	Pub. 523, Selling Your Home
16	Reporting Gains and Losses	Pub. 550
18	Alimony	Pub. 504, Divorced or Separated Individuals
19	Education-Related Adjustments	Pub. 970, Tax Benefits for Education
20	Other Adjustments to Income	Pub. 463, Travel, Gift, and Car Expenses
22	Medical and Dental Expenses	Pub. 502, Medical and Dental Expenses
24	Interest Expense	Pub. 550 Pub. 936, Home Mortgage Interest Deduction
25	Charitable Contributions	Pub. 561, Determining the Value of Donated Property Pub. 526, Charitable Contributions
26	Nonbusiness Casualty and Theft Losses	Pub. 547, Casualties, Disasters, and Thefts
29	Tax on Unearned Income of Certain Minor Children	Form 8615, Tax for Certain Children Who Have Unearned Income
30	Child and Dependent Care Credit	Pub. 503, Child and Dependent Care Expenses
31	Credit for the Elderly or the Disabled	Pub. 524, Credit for the Elderly or the Disabled
33	Education Credits	Pub. 970, Tax Benefits for Education
34	Earned Income Credit (EIC)	Pub. 596, Earned Income Credit (EIC)
35	Premium Tax Credit	Pub. 974, Premium Tax Credit (PTC)
36	Other Credits	

Introduction

This publication covers the general rules for filing a federal income tax return. It supplements the information contained in your tax form instructions. It explains the tax law to make sure you pay only the tax you owe and no more.

How this publication is arranged. Pub. 17 closely follows Form 1040, U.S. Individual Income Tax Return, and Form 1040-SR, U.S. Tax Return for Seniors, and their three Schedules 1 through 3. Pub. 17 is divided into four parts. Each part is further divided into chapters, most of which generally discuss one line of the form or one line of one of the three schedules. The introduction at the beginning of each part lists the schedule(s) discussed in that part.

The table of contents inside the front cover, the introduction to each part, and the index in the back of the publication are useful tools to help you find the information you need.

What is in this publication. This publication begins with the rules for filing a tax return. It explains:

1. Who must file a return,
2. When the return is due,
3. How to *e-file* your return, and
4. Other general information.

It will help you identify which filing status you qualify for, whether you can claim any dependents, and whether the income you receive is taxable. The publication goes on to explain the standard deduction, the kinds of expenses you may be able to deduct, and the various kinds of credits you may be able to take to reduce your tax.

Throughout this publication are examples showing how the tax law applies in typical situations. Also throughout this publication are flowcharts and tables that present tax information in an easy-to-understand manner.

Many of the subjects discussed in this publication are discussed in greater detail in other IRS publications. References to those other publications are provided for your information.

Icons. Small graphic symbols, or icons, are used to draw your attention to special information. See Table 1 for an explanation of each icon used in this publication.

What is not covered in this publication. Some material that you may find helpful is not included in this publication but can be found in your tax form instructions booklet. This includes lists of:

- Where to report certain items shown on information documents, and
- Tax Topics you can read at *IRS.gov/TaxTopics*.

If you operate your own business or have other self-employment income, such as from babysitting or selling crafts, see the following publications for more information.

- Pub. 334, Tax Guide for Small Business.
- Pub. 535, Business Expenses.
- Pub. 587, Business Use of Your Home.

Help from the IRS. There are many ways you can get help from the IRS. These are explained under *How To Get Tax Help* at the end of this publication.

Comments and suggestions. We welcome your comments about this publication and suggestions for future editions.

You can send us comments through *IRS.gov/FormComments*. Or, you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments and suggestions as we revise our tax forms, instructions, and publications. **Don't** send tax questions, tax returns, or payments to the above address.

Getting answers to your tax questions. If you have a tax question not answered by this publication or the *How To Get Tax Help* section at the end of this publication, go to the IRS Interactive Tax Assistant page at *IRS.gov/Help/ITA* where you can find topics by using the search feature or viewing the categories listed.

Getting tax forms, instructions, and publications. Go to *IRS.gov/Forms* to download current and prior-year forms, instructions, and publications.

Ordering tax forms, instructions, and publications. Go to *IRS.gov/OrderForms* to order current forms, instructions, and publications; call 800-829-3676 to order prior-year forms and instructions. The IRS will process your order for forms and publications as soon as possible. **Don't** resubmit requests you've already sent us. You can get forms and publications faster online.

IRS mission. Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Table 1. **Legend of Icons**

Icon	Explanation
CAUTION	Items that may cause you particular problems, or an alert about pending legislation that may be enacted after this publication goes to print.
	An Internet site or an email address.
	An address you may need.
RECORDS	Items you should keep in your personal records.
	Items you may need to figure or a worksheet you may need to complete and keep for your records.
	An important phone number.
TIP	Helpful information you may need.

■

Part One.

The Income Tax Return

The four chapters in this part provide basic information on the tax system. They take you through the first steps of filling out a tax return. They also provide information about dependents, and discuss recordkeeping requirements, IRS e-file *(electronic filing), certain penalties, and the two methods used to pay tax during the year: withholding and estimated tax.*

The Form 1040 and 1040-SR schedules that are discussed in these chapters are:

- *Schedule 1, Additional Income and Adjustments to Income; and*
- *Schedule 3 (Part II), Other Payments and Refundable Credits.*

1.

Filing Information

What's New

Due date of return. File Form 1040 or 1040-SR by April 18, 2023. The due date is April 18, instead of April 15, because of the Emancipation Day holiday in the District of Columbia—even if you don't live in the District of Columbia.

Filing status name changed to qualifying surviving spouse. The filing status qualifying widow(er) is now called qualifying surviving spouse. The rules for the filing status have not changed. The same rules that applied for qualifying widow(er) apply to qualifying surviving spouse. See chapter 2 for information on filing status.

New lines 1a through 1z on Form 1040 and 1040-SR. This year line 1 is expanded and there are new lines 1a through 1z.

New lines on Schedule 1. This year there are new lines 8r through 8u.

Who must file. Generally, the amount of income you can receive before you must file a return has been increased. See Table 1-1, Table 1-2, and Table 1-3 for the specific amounts.

Reminders

File online. Rather than filing a return on paper, you may be able to file electronically using IRS *e-file*. For more information, see *Why Should I File Electronically*, later.

Access your online account (individual taxpayers only). Go to *IRS.gov/Account* to securely access information about your federal tax account.

- View the amount you owe and a breakdown by tax year.
- See payment plan details or apply for a new payment plan.
- Make a payment, view 5 years of payment history and any pending or scheduled payments.
- Access your tax records, including key data from your most recent tax return, your economic impact payment amounts, and transcripts.
- View digital copies of select notices from the IRS.
- Approve or reject authorization requests from tax professionals.
- Update your address or manage your communication preferences.
- Go to *IRS.gov/SecureAccess* to view the required identity authentication process.

Change of address. If you change your address, you should notify the IRS. You can use Form 8822 to notify the IRS of the change. See *Change of Address*, later, under *What Happens After I File*.

Enter your social security number. You must enter your social security number (SSN) in the spaces provided on your tax return. If you file a joint return, enter the SSNs in the same order as the names.

Direct deposit of refund. Instead of getting a paper check, you may be able to have your refund deposited directly into your account at a bank or other financial institution. See *Direct Deposit* under *Refunds*, later. If you choose direct deposit of your refund, you may be able to split the refund among two or three accounts.

Pay online or by phone. If you owe additional tax, you may be able to pay online or by phone. See *How To Pay*, later.

Installment agreement. If you can't pay the full amount due with your return, you may ask to make monthly installment payments. See *Installment Agreement*, later, under *Amount You Owe*. You may be able to apply online for a payment agreement if you owe federal tax, interest, and penalties.

Automatic 6-month extension. You can get an automatic 6-month extension to file your tax return if, no later than the date your return is due, you file Form 4868. See *Automatic Extension*, later.

Service in combat zone. You are allowed extra time to take care of your tax matters if you are a member of the Armed Forces who served in a combat zone, or if you served in a combat zone in support of the Armed Forces. See *Individuals Serving in Combat Zone*, later, under *When Do I Have To File*.

Adoption taxpayer identification number. If a child has been placed in your home for purposes of legal adoption and you won't be able to get a social security number for the child in time to file your return, you may be able to get an adoption taxpayer identification number (ATIN). For more information, see *Social Security Number (SSN)*, later.

Taxpayer identification number for aliens. If you or your dependent is a nonresident or resident alien who doesn't have and isn't eligible to get a social security number, file Form W-7, Application for IRS Individual Taxpayer Identification Number, with the IRS. For more information, see *Social Security Number (SSN)*, later.

Individual taxpayer identification number (ITIN) renewal. Some ITINs must be renewed. If you haven't used your ITIN on a U.S. tax return at least once for tax years 2019, 2020, or 2021, it expired at the end of 2022 and must be renewed if you need to file a U.S. federal tax return in 2023. You don't need to renew your ITIN if you don't need to file a federal tax return. You can find more information at *IRS.gov/ITIN*.

ITINs assigned before 2013 have expired and must be renewed if you need to file a tax return in 2023. If you previously submitted a renewal application and it was approved, you do not need to renew again unless you haven't used your ITIN on a federal tax return at least once for tax years 2019, 2020, or 2021.

Frivolous tax submissions. The IRS has published a list of positions that are identified as frivolous. The penalty for filing a frivolous tax return is $5,000. Also, the $5,000 penalty will apply to other specified frivolous submissions. For more information, see *Civil Penalties*, later.

Introduction

This chapter discusses the following topics.

- Whether you have to file a return.

- How to file electronically.
- How to file for free.
- When, how, and where to file your return.
- What happens if you pay too little or too much tax.
- What records you should keep and how long you should keep them.
- How you can change a return you have already filed.

Do I Have To File a Return?

You must file a federal income tax return if you are a citizen or resident of the United States or a resident of Puerto Rico and you meet the filing requirements for any of the following categories that apply to you.

1. Individuals in general. (There are special rules for individuals whose spouse has died, executors, administrators, legal representatives, U.S. citizens and residents living outside the United States, residents of Puerto Rico, and individuals with income from U.S. possessions.)
2. Dependents.
3. Certain children under age 19 or full-time students.
4. Self-employed persons.
5. Aliens.

The filing requirements for each category are explained in this chapter.

The filing requirements apply even if you don't owe tax.

Even if you don't have to file a return, it may be to your advantage to do so. See Who Should File, later.

File only one federal income tax return for the year regardless of how many jobs you had, how many Forms W-2 you received, or how many states you lived in during the year. Don't file more than one original return for the same year, even if you haven't received your refund or haven't heard from the IRS since you filed.

Table 1-1. **2022 Filing Requirements for Most Taxpayers**

IF your filing status is...	AND at the end of 2022 you were...*	THEN file a return if your gross income was at least...**
Single	under 65	$12,950
	65 or older	$14,700
Married filing jointly* **	under 65 (both spouses)	$25,900
	65 or older (one spouse)	$27,300
	65 or older (both spouses)	$28,700
Married filing separately	any age	$5
Head of household	under 65	$19,400
	65 or older	$21,150
Qualifying surviving spouse	under 65	$25,900
	65 or older	$27,300

* If you were born on January 1, 1958, you are considered to be age 65 at the end of 2022. (If your spouse died in 2022 or if you are preparing a return for someone who died in 2022, see Pub. 501.)

** Gross income means all income you received in the form of money, goods, property, and services that isn't exempt from tax, including any income from sources outside the United States or from the sale of your main home (even if you can exclude part or all of it). Don't include any social security benefits unless (a) you are married filing a separate return and you lived with your spouse at any time during 2022, or (b) one-half of your social security benefits plus your other gross income and any tax-exempt interest is more than $25,000 ($32,000 if married filing jointly). If (a) or (b) applies, see the Instructions for Form 1040 or Pub. 915 to figure the taxable part of social security benefits you must include in gross income. Gross income includes gains, but not losses, reported on Form 8949 or Schedule D. Gross income from a business means, for example, the amount on Schedule C, line 7, or Schedule F, line 9. But, in figuring gross income, don't reduce your income by any losses, including any loss on Schedule C, line 7, or Schedule F, line 9.

*** If you didn't live with your spouse at the end of 2022 (or on the date your spouse died) and your gross income was at least $5, you must file a return regardless of your age.

Individuals—In General

If you are a U.S. citizen or resident, whether you must file a return depends on three factors.

1. Your gross income.
2. Your filing status.
3. Your age.

To find out whether you must file, see Table 1-1, Table 1-2, and Table 1-3. Even if no table shows that you must file, you may need to file to get money back. See Who Should File, later.

Gross income. This includes all income you receive in the form of money, goods, property, and services that isn't exempt from tax. It also includes income from sources outside the United States or from the sale of your main home (even if you can exclude all or part of it). Include part of your social security benefits if:

1. You were married, filing a separate return, and you lived with your spouse at any time during 2022; or
2. Half of your social security benefits plus your other gross income and any tax-exempt interest is more than $25,000 ($32,000 if married filing jointly).

If either (1) or (2) applies, see the Instructions for Form 1040 or Pub. 915 to figure the social security benefits you must include in gross income.

Common types of income are discussed in *Part Two* of this publication.

Community property states. Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. If you and your spouse lived in a community property state, you must usually follow state law to determine what is community property and what is separate income. For details, see Form 8958 and Pub. 555.

Nevada, Washington, and California domestic partners. A registered domestic partner in Nevada, Washington, or California must generally report half the combined community income of the individual and their domestic partner. See Pub. 555.

Self-employed individuals. If you are self-employed, your gross income includes the amount on line 7 of Schedule C (Form 1040), Profit or Loss From Business; and line 9 of Schedule F (Form 1040), Profit or Loss From Farming. See *Self-Employed Persons*, later, for more information about your filing requirements.

If you don't report all of your self-employment income, your social security benefits may be lower when you retire.

Filing status. Your filing status depends on whether you are single or married and on your family situation. Your filing status is determined on the last day of your tax year, which is December 31 for most taxpayers. See chapter 2 for an explanation of each filing status.

Age. If you are 65 or older at the end of the year, you can generally have a higher amount of gross income than other taxpayers before you must file. See Table 1-1. You are considered 65 on the day before your 65th birthday. For example, if your 65th birthday is on January 1, 2023, you are considered 65 for 2022.

Surviving Spouses, Executors, Administrators, and Legal Representatives

You must file a final return for a decedent (a person who died) if both of the following are true.

- Your spouse died in 2022 or you are the executor, administrator, or legal representative.
- The decedent met the filing requirements at the date of death.

For more information on rules for filing a decedent's final return, see Pub. 559.

U.S. Citizens and Resident Aliens Living Abroad

To determine whether you must file a return, include in your gross income any income you received abroad, including any income you can exclude under the foreign earned income exclusion. For information on special tax rules that may apply to you, see Pub. 54. It is available online and at most U.S. embassies and consulates. See *How To Get Tax Help* in the back of this publication.

Residents of Puerto Rico

If you are a U.S. citizen and also a bona fide resident of Puerto Rico, you must generally file a U.S. income tax return for any year in which you meet the income requirements. This is in addition to any legal requirement you may have to file an income tax return with Puerto Rico.

If you are a bona fide resident of Puerto Rico for the entire year, your U.S. gross income doesn't include income from sources within Puerto Rico. It does, however, include any income you received for your services as an employee of the United States or a U.S. agency. If you receive income from Puerto Rican sources that isn't subject to U.S. tax, you must reduce your standard deduction. As a result, the amount of income you must have before you are required to file a U.S. income tax return is lower than the applicable amount in Table 1-1 or Table 1-2. For more information, see Pub. 570.

Individuals With Income From U.S. Possessions

If you had income from Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, or the U.S. Virgin Islands, special rules may apply when determining whether you must file a U.S. federal income tax return. In addition, you may have to file a return with the individual island government. See Pub. 570 for more information.

Dependents

If you are a dependent (one who meets the dependency tests in chapter 3), see Table 1-2 to find out whether you must file a return. You must also file if your situation is described in Table 1-3.

Responsibility of parent. Generally, a child is responsible for filing their own tax return and for paying any tax on the return. If a dependent child must file an income tax return but can't file due to age or any other reason, then a parent, guardian, or other legally responsible person must file it for the child. If the child can't sign the return, the parent or guardian must sign the child's name followed by the words “By (your signature), parent for minor child.”

Child's earnings. Amounts a child earns by performing services are included in the child's gross income and not the gross income of the parent. This is true even if under local law the child's parent has the right to the earnings and may actually have received them. But if the child doesn't pay the tax due on this income, the parent is liable for the tax.

Certain Children Under Age 19 or Full-Time Students

If a child's only income is interest and dividends (including capital gain distributions and Alaska Permanent Fund dividends), the child was under age 19 at the end of 2022 or was a full-time student under age 24 at the end of 2022, and certain other conditions are met, a parent can elect to include the child's income on the parent's return. If this election is made, the child doesn't have to file a return. See Instructions for Form 8814, Parents' Election To Report Child's Interest and Dividends.

Self-Employed Persons

You are self-employed if you:

- Carry on a trade or business as a sole proprietor,
- Are an independent contractor,
- Are a member of a partnership, or
- Are in business for yourself in any other way.

Self-employment can include work in addition to your regular full-time business activities, such as certain part-time work you do at home or in addition to your regular job.

You must file a return if your gross income is at least as much as the filing requirement amount for your filing status and age (shown in Table 1-1). Also, you must file Form 1040 or 1040-SR and Schedule SE (Form 1040), Self-Employment Tax, if:

1. Your net earnings from self-employment (excluding church employee income) were $400 or more, or
2. You had church employee income of $108.28 or more. (See Table 1-3.)

Use Schedule SE (Form 1040) to figure your self-employment tax. Self-employment tax is comparable to the social security and Medicare tax withheld from an employee's wages. For more information about this tax, see Pub. 334.

Employees of foreign governments or international organizations. If you are a U.S. citizen who works in the United States for an international organization, a foreign government, or a wholly owned instrumentality of a foreign government, and your employer isn't required to withhold social security and Medicare taxes from your wages, you must include your earnings from services performed in the United States when figuring your net earnings from self-employment.

Ministers. You must include income from services you performed as a minister when figuring your net earnings from self-employment, unless you have an exemption from self-employment tax. This also applies to Christian Science practitioners and members of a religious order who have not taken a vow of poverty. For more information, see Pub. 517.

Aliens

Your status as an alien (resident, nonresident, or dual-status) determines whether and how you must file an income tax return.

The rules used to determine your alien status are discussed in Pub. 519.

Resident alien. If you are a resident alien for the entire year, you must file a tax return following the same rules that apply to U.S. citizens. Use the forms discussed in this publication.

Nonresident alien. If you are a nonresident alien, the rules and tax forms that apply to you are different from those that apply to U.S. citizens and resident aliens. See Pub. 519 to find out if U.S. income tax laws apply to you and which forms you should file.

Dual-status taxpayer. If you are a resident alien for part of the tax year and a nonresident alien for the rest of the year, you are a dual-status taxpayer. Different rules apply for each part of the year. For information on dual-status taxpayers, see Pub. 519.

Who Should File

Even if you don't have to file, you should file a federal income tax return to get money back if any of the following conditions apply.

1. You had federal income tax withheld or made estimated tax payments.
2. You qualify for the earned income credit. See Pub. 596 for more information.
3. You qualify for the additional child tax credit. See chapter 14 for more information.
4. You qualify for the premium tax credit. See Pub. 974 for more information.
5. You qualify for the American opportunity credit. See Pub. 970 for more information.
6. You qualify for the credit for federal tax on fuels. See chapter 13 for more information.

Form 1040 or 1040-SR

Use Form 1040 or 1040-SR to file your return. (But also see *Why Should I File Electronically*, later.)

You can use Form 1040 or 1040-SR to report all types of income, deductions, and credits.

Why Should I File Electronically?

Electronic Filing

If your adjusted gross income (AGI) is less than a certain amount, you are eligible for *Free File*, a free tax software service offered by IRS partners, to prepare and *e-file* your return for free. If your income is over the amount, you are still eligible for Free File Fillable Forms, an electronic

Table 1-2. **2022 Filing Requirements for Dependents**

See chapter 3 to find out if someone can claim you as a dependent.

If your parents (or someone else) can claim you as a dependent, use this table to see if you must file a return. (See Table 1-3 for other situations when you must file.)

In this table, unearned income includes taxable interest, ordinary dividends, and capital gain distributions. It also includes unemployment compensation, taxable social security benefits, pensions, annuities, and distributions of unearned income from a trust. Earned income includes salaries, wages, tips, professional fees, and taxable scholarship and fellowship grants. (See *Scholarships and fellowships* in chapter 8.) Gross income is the total of your earned and unearned income.

Single dependents—Were you **either** age 65 or older or blind?

☐ **No.** You must file a return if **any** of the following apply.

- Your unearned income was more than $1,150.
- Your earned income was more than $12,950.
- Your gross income was more than the **larger** of:
  - $1,150, or
  - Your earned income (up to $12,550) plus $400.

☐ **Yes.** You must file a return if **any** of the following apply.

- Your unearned income was more than $2,900 ($4,650 if 65 or older **and** blind).
- Your earned income was more than $14,700 ($16,450 if 65 or older **and** blind).
- Your gross income was more than the **larger** of:
  - $2,900 ($4,650 if 65 or older **and** blind), or
  - Your earned income (up to $12,550) plus $2,150 ($3,900 if 65 or older **and** blind).

Married dependents—Were you **either** age 65 or older or blind?

☐ **No.** You must file a return if **any** of the following apply.

- Your unearned income was more than $1,150.
- Your earned income was more than $12,950.
- Your gross income was at least $5 and your spouse files a separate return and itemizes deductions.
- Your gross income was more than the **larger** of:
  - $1,150, or
  - Your earned income (up to $12,550) plus $400.

☐ **Yes.** You must file a return if **any** of the following apply.

- Your unearned income was more than $2,550 ($3,950 if 65 or older **and** blind).
- Your earned income was more than $14,350 ($15,750 if 65 or older **and** blind).
- Your gross income was at least $5 and your spouse files a separate return and itemizes deductions.
- Your gross income was more than the **larger** of:
  - $2,550 ($3,950 if 65 or older **and** blind), or
  - Your earned income (up to $12,550) plus $1,800 ($3,200 if 65 or older **and** blind).

version of IRS paper forms. Table 1-4 lists the free ways to electronically file your return.

IRS *e-file* uses automation to replace most of the manual steps needed to process paper returns. As a result, the processing of *e-file* returns is faster and more accurate than the processing of paper returns. However, as with a paper return, you are responsible for making sure your return contains accurate information and is filed on time.

If your return is filed with IRS *e-file*, you will receive an acknowledgment that your return was received and accepted. If you owe tax, you can *e-file* and pay electronically. The IRS has processed more than one billion *e-filed* returns safely and securely. Using *e-file* doesn't affect your chances of an IRS examination of your return.

Requirements for an electronic return signature. To file your return electronically, you must sign the return electronically using a personal identification number (PIN). If you are filing online, you must use a Self-Select PIN. For 2022, if we issued you an identity protection personal identification number (IP PIN) (as described in more detail below), all six digits of your IP PIN must appear in the IP PIN spaces provided next to the space for your occupation for your electronic signature to be complete. Failure to include an issued IP PIN on the electronic return will result in an invalid signature and a rejected return. If you are filing a joint return and both taxpayers were issued an IP PIN, enter both IP PINs in the spaces provided. If you are filing electronically using a tax practitioner, you can use a Self-Select PIN or a Practitioner PIN.

Self-Select PIN. The Self-Select PIN method allows you to create your own PIN. If you are married filing jointly, you and your spouse will each need to create a PIN and enter these PINs as your electronic signatures.

A PIN is any combination of five digits you choose except five zeros. If you use a PIN, there is nothing to sign and nothing to mail—not even your Forms W-2.

Your electronic return is considered a valid signed return only when it includes your PIN; last name; date of birth; IP PIN, if applicable; and AGI from your originally filed 2021 federal income tax return, if applicable. If you're filing jointly, your electronic return must also include your spouse's PIN; last name; date of birth; IP PIN, if applicable; and AGI, if applicable, in order to be considered validly signed. Don't use AGI from an amended return (Form 1040-X) or a math error correction made by the IRS. AGI is the amount shown on your 2021 Form 1040 or Form 1040-SR, line 11. If you don't have your 2021 income tax return, you can request a transcript by using our automated self-service tool. Go to *IRS.gov/Transcript*. (If you filed electronically last year, you, and your spouse if filing jointly, may use your prior year PIN to verify your identity instead of your prior year AGI. The prior year PIN is the five-digit PIN you used to electronically sign your 2021 return.) You will also be prompted to enter your date of birth.

You can't use the Self-Select PIN method if you are a first-time filer under age 16 at the end of 2022.

Practitioner PIN. The Practitioner PIN method allows you to authorize your tax practitioner to enter or generate your PIN. Your electronic return is considered a validly signed return only when it includes your PIN; last name; date of birth; and IP PIN, if applicable. If you're filing jointly, your electronic return must also include your spouse's PIN; last name; date of birth; and IP PIN, if applicable, in order to be considered a validly signed return. The practitioner can provide you with details.

Form 8453. You must send in a paper Form 8453 if you have to attach certain forms or other documents that can't be electronically filed. For details, see Form 8453. For more details, visit *IRS.gov/efile*.

Identity Protection PIN. If the IRS gave you an identity protection personal identification number (IP PIN), enter it in the spaces provided on your tax form. If the IRS hasn't given you this type of number, leave these spaces blank. For more information, see the Instructions for Form 1040.

All taxpayers are now eligible for an IP PIN. For more information, see Pub. 5477. To apply for an IP PIN, go to IRS.gov/IPPIN and use the Get an IP PIN tool.

Power of attorney. If an agent is signing your return for you, a power of attorney (POA) must be filed. Attach the POA to Form 8453 and file it using that form's instructions. See *Signatures*, later, for more information on POAs.

State returns. In most states, you can file an electronic state return simultaneously with your federal return. For more information, check with

Table 1-3. **Other Situations When You Must File a 2022 Return**

You must file a return if any of the following apply for 2022.
1. You owe any special taxes, including any of the following (see the instructions for Schedule 2 (Form 1040)). **a.** Alternative minimum tax. **b.** Additional tax on a qualified plan, including an individual retirement arrangement (IRA), or other tax-favored account. **c.** Household employment taxes. **d.** Social security and Medicare tax on tips you didn't report to your employer or on wages you received from an employer who didn't withhold these taxes. **e.** Uncollected social security and Medicare or RRTA tax on tips you reported to your employer or on group-term life insurance and additional taxes on health savings accounts. **f.** Recapture taxes.
2. You (or your spouse, if filing jointly) received health savings account, Archer MSA, or Medicare Advantage MSA distributions.
3. You had net earnings from self-employment of at least $400.
4. You had wages of $108.28 or more from a church or qualified church-controlled organization that is exempt from employer social security and Medicare taxes.
5. Advance payments of the premium tax credit were made for you, your spouse, or a dependent who enrolled in coverage through the Marketplace. You or whoever enrolled you should have received Form(s) 1095-A showing the amount of the advance payments.
6. You are required to include amounts in income under section 965 or you have a net tax liability under section 965 that you are paying in installments under section 965(h) or deferred by making an election under section 965(i).

your local IRS office, state tax agency, tax professional, or the IRS website at *IRS.gov/efile*.

Refunds. You can have a refund check mailed to you, or you can have your refund deposited directly to your checking or savings account or split among two or three accounts. With *e-file*, your refund will be issued faster than if you filed on paper.

As with a paper return, you may not get all of your refund if you owe certain past-due amounts, such as federal tax, state income tax, state unemployment compensation debts, child support, spousal support, or certain other federal nontax debts, such as student loans. See *Offset against debts* under *Refunds*, later.

Refund inquiries. Information about your return will generally be available within 24 hours after the IRS receives your *e-filed* return. See *Refund Information*, later.

Amount you owe. To avoid late-payment penalties and interest, pay your taxes in full by April 18, 2023 (for most people). See *How To Pay*, later, for information on how to pay the amount you owe.

Using Your Personal Computer

You can file your tax return in a fast, easy, and convenient way using your personal computer. A computer with Internet access and tax preparation software are all you need. Best of all, you can *e-file* from the comfort of your home 24 hours a day, 7 days a week.

IRS-approved tax preparation software is available for online use on the Internet, for download from the Internet, and in retail stores. For information, visit *IRS.gov/efile*.

Table 1-4. **Free Ways To *e-file***

Use Free File for free tax software and free *e-file*.

- IRS partners offer name-brand products for free.
- Many taxpayers are eligible for Free File software.
- Everyone is eligible for Free File Fillable Forms, an electronic version of IRS paper forms.
- Free File software and Free File Fillable Forms are available only at *IRS.gov/FreeFile*.

Use VITA/TCE for free tax help from volunteers and free *e-file*.

- Volunteers prepare your return and *e-file* it for free.
- Some sites also offer do-it-yourself software.
- You are eligible based either on your income or age.
- Sites are located nationwide. Find one near you by visiting *IRS.gov/VITA*.

Through Employers and Financial Institutions

Some businesses offer free *e-file* to their employees, members, or customers. Others offer it for a fee. Ask your employer or financial institution if they offer IRS *e-file* as an employee, member, or customer benefit.

Free Help With Your Return

The Volunteer Income Tax Assistance (VITA) program offers free tax help to people who generally make $60,000 or less, persons with disabilities, and limited-English-speaking taxpayers who need help preparing their own tax returns. The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors.

You can go to IRS.gov to see your options for preparing and filing your return, which include the following.

- **Free File.** Go to *IRS.gov/FreeFile*. See if you qualify to use brand-name software to prepare and *e-file* your federal tax return for free.
- **VITA.** Go to *IRS.gov/VITA*, download the free IRS2Go app, or call 800-906-9887 to find the nearest VITA location for free tax return preparation.
- **TCE.** Go to *IRS.gov/TCE*, download the free IRS2Go app, or call 888-227-7669 to find the nearest TCE location for free tax return preparation.

Using a Tax Professional

Many tax professionals electronically file tax returns for their clients. You may personally enter your PIN or complete Form 8879, IRS *e-file* Signature Authorization, to authorize the tax professional to enter your PIN on your return.

Note. Tax professionals may charge a fee for IRS *e-file*. Fees can vary depending on the professional and the specific services rendered.

When Do I Have To File?

April 18, 2023, is the due date for filing your 2022 income tax return if you use the calendar year. The due date is April 18, instead of April 15, because of the Emancipation Day holiday in the District of Columbia—even if you don't live in the District of Columbia. For a quick view of due dates for filing a return with or without an extension of time to file (discussed later), see Table 1-5.

If you use a fiscal year (a year ending on the last day of any month except December, or a 52-53-week year), your income tax return is due by the 15th day of the 4th month after the close of your fiscal year.

When the due date for doing any act for tax purposes—filing a return, paying taxes, etc.—falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.

Filing paper returns on time. Your paper return is filed on time if it is mailed in an envelope that is properly addressed, has enough postage, and is postmarked by the due date. If you send your return by registered mail, the date of the registration is the postmark date. The registration is evidence that the return was delivered. If you send a return by certified mail and have your receipt postmarked by a postal employee, the date on the receipt is the postmark date. The postmarked certified mail receipt is evidence that the return was delivered.

Private delivery services. If you choose to mail your return, you can use certain private delivery services designated by the IRS to meet the "timely mailing treated as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following.

- DHL Express 9:00, DHL Express 10:30, DHL Express 12:00, DHL Express Worldwide, DHL Express Envelope, DHL Import Express 10:30, DHL Import Express 12:00, and DHL Import Express Worldwide.
- UPS Next Day Air Early A.M., UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.
- FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Next Flight Out, FedEx International Priority, FedEx International First, and FedEx International Economy.

To check for any updates to the list of designated private delivery services, go to *IRS.gov/PDS*. For the IRS mailing addresses to use if you're using a private delivery service, go to *IRS.gov/PDSStreetAddresses*.

The private delivery service can tell you how to get written proof of the mailing date.

Table 1-5. **When To File Your 2022 Return**

For U.S. citizens and residents who file returns on a calendar year basis.

	For Most Taxpayers	For Certain Taxpayers Outside the United States
No extension requested	April 18, 2023	June 15, 2023
Automatic extension	October 16, 2023	October 16, 2023

Filing electronic returns on time. If you use IRS *e-file*, your return is considered filed on time if the authorized electronic return transmitter postmarks the transmission by the due date. An authorized electronic return transmitter is a participant in the IRS *e-file* program that transmits electronic tax return information directly to the IRS.

The electronic postmark is a record of when the authorized electronic return transmitter received the transmission of your electronically filed return on its host system. The date and time in your time zone controls whether your electronically filed return is timely.

Filing late. If you don't file your return by the due date, you may have to pay a failure-to-file penalty and interest. For more information, see *Penalties*, later. Also see *Interest* under *Amount You Owe*, later.

If you were due a refund but you didn't file a return, you must generally file within 3 years from the date the return was due (including extensions) to get that refund.

Nonresident alien. If you are a nonresident alien and earn wages subject to U.S. income tax withholding, your 2022 U.S. income tax return (Form 1040-NR) is due by:

- April 18, 2023, if you use a calendar year; or
- The 15th day of the 4th month after the end of your fiscal year, if you use a fiscal year.

If you don't earn wages subject to U.S. income tax withholding, your return is due by:

- June 15, 2023, if you use a calendar year; or
- The 15th day of the 6th month after the end of your fiscal year, if you use a fiscal year.

See Pub. 519 for more filing information.

Filing for a decedent. If you must file a final income tax return for a taxpayer who died during the year (a decedent), the return is due by the 15th day of the 4th month after the end of the decedent's normal tax year. See Pub. 559.

Extensions of Time To File

You may be able to get an extension of time to file your return. There are three types of situations where you may qualify for an extension.

- Automatic extensions.
- You are outside the United States.
- You are serving in a combat zone.

Automatic Extension

If you can't file your 2022 return by the due date, you may be able to get an automatic 6-month extension of time to file.

Example. If your return is due on April 18, 2023, you will have until October 16, 2023, to file.

If you don't pay the tax due by the regular due date (April 15 for most taxpayers), you will owe interest. You may also be charged penalties, discussed later.

How to get the automatic extension. You can get the automatic extension by:

1. Using IRS *e-file* (electronic filing), or
2. Filing a paper form.

***E-file* options.** There are two ways you can use *e-file* to get an extension of time to file. Complete Form 4868 to use as a worksheet. If you think you may owe tax when you file your return, use *Part II* of the form to estimate your balance due. If you *e-file* Form 4868 to the IRS, don't send a paper Form 4868.

E-file using your personal computer or a tax professional. You can use a tax software package with your personal computer or a tax professional to file Form 4868 electronically. Free File and Free File Fillable Forms, both available at IRS.gov, allow you to prepare and *e-file* Form 4868 for free. You will need to provide certain information from your 2021 tax return. If you wish to make a payment by direct transfer from your bank account, see *Pay online* under *How To Pay*, later, in this chapter.

E-file and pay by credit or debit card or by direct transfer from your bank account. You can get an extension by paying part or all of your estimate of tax due by using a credit or debit card or by direct transfer from your bank account. You can do this by phone or over the Internet. You don't file Form 4868. See *Pay online* under *How To Pay*, later, in this chapter.

Filing a paper Form 4868. You can get an extension of time to file by filing a paper Form 4868. If you are a fiscal year taxpayer, you must file a paper Form 4868. Mail it to the address shown in the form instructions.

If you want to make a payment with the form, make your check or money order payable to "United States Treasury." Write your SSN, daytime phone number, and "2022 Form 4868" on your check or money order.

When to file. You must request the automatic extension by the due date for your return. You can file your return any time before the 6-month extension period ends.

When you file your return. Enter any payment you made related to the extension of time to file on Schedule 3 (Form 1040), line 10.

Individuals Outside the United States

You are allowed an automatic 2-month extension, without filing Form 4868 (until June 15, 2023, if you use the calendar year), to file your 2022 return and pay any federal income tax due if:

1. You are a U.S. citizen or resident; and
2. On the due date of your return:
   a. You are living outside the United States and Puerto Rico, and your main place of business or post of duty is outside the United States and Puerto Rico; or
   b. You are in military or naval service on duty outside the United States and Puerto Rico.

However, if you pay the tax due after the regular due date (April 15 for most taxpayers), interest will be charged from that date until the date the tax is paid.

If you served in a combat zone or qualified hazardous duty area, you may be eligible for a longer extension of time to file. See *Individuals Serving in Combat Zone*, later, for special rules that apply to you.

Married taxpayers. If you file a joint return, only one spouse has to qualify for this automatic extension. If you and your spouse file separate returns, the automatic extension applies only to the spouse who qualifies.

How to get the extension. To use this automatic extension, you must attach a statement to your return explaining what situation qualified you for the extension. (See the situations listed under (2), earlier.)

Extensions beyond 2 months. If you can't file your return within the automatic 2-month extension period, you may be able to get an additional 4-month extension, for a total of 6 months. File Form 4868 and check the box on line 8.

No further extension. An extension of more than 6 months will generally not be granted. However, if you are outside the United States and meet certain tests, you may be granted a longer extension. For more information, see *When To File and Pay* in Pub. 54.

Individuals Serving in Combat Zone

The deadline for filing your tax return, paying any tax you may owe, and filing a claim for refund is automatically extended if you serve in a combat zone. This applies to members of the Armed Forces, as well as merchant marines serving aboard vessels under the operational control of the Department of Defense, Red Cross personnel, accredited correspondents, and civilians under the direction of the Armed Forces in support of the Armed Forces.

Combat zone. A combat zone is any area the President of the United States designates by executive order as an area in which the U.S. Armed Forces are engaging or have engaged in combat. An area usually becomes a combat zone and ceases to be a combat zone on the dates the President designates by executive order. For purposes of the automatic extension, the term "combat zone" includes the following areas.

1. The Arabian peninsula area, effective January 17, 1991.
2. The Kosovo area, effective March 24, 1999.
3. The Afghanistan area, effective September 19, 2001.

See Pub. 3 for more detailed information on the locations comprising each combat zone. Pub. 3 also has information about other tax benefits available to military personnel serving in a combat zone.

Extension period. The deadline for filing your return, paying any tax due, filing a claim for refund, and taking other actions with the IRS is extended in two steps. First, your deadline is extended for 180 days after the later of:

1. The last day you are in a combat zone or the last day the area qualifies as a combat zone, or
2. The last day of any continuous qualified hospitalization (defined later) for injury from service in the combat zone.

Second, in addition to the 180 days, your deadline is also extended by the number of days you had left to take action with the IRS when you entered the combat zone. For example, you have 3½ months (January 1–April 15) to file your tax return. Any days left in this period when you entered the combat zone (or the entire 3½ months if you entered it before the beginning of the year) are added to the 180 days. See *Extension of Deadlines* in Pub. 3 for more information.

The rules on the extension for filing your return also apply when you are deployed outside the United States (away from your permanent duty station) while participating in a designated contingency operation.

Qualified hospitalization. The hospitalization must be the result of an injury received while serving in a combat zone or a contingency operation. Qualified hospitalization means:

- Any hospitalization outside the United States, and
- Up to 5 years of hospitalization in the United States.

See Pub. 3 for more information on qualified hospitalizations.

How Do I Prepare My Return?

This section explains how to get ready to fill in your tax return and when to report your income and expenses. It also explains how to complete certain sections of the form. You may find Table 1-6 helpful when you prepare your paper return.

Table 1-6. **Six Steps for Preparing Your Paper Return**

1 —	Get your records together for income and expenses.
2 —	Get the forms, schedules, and publications you need.
3 —	Fill in your return.
4 —	Check your return to make sure it is correct.
5 —	Sign and date your return.
6 —	Attach all required forms and schedules.

Electronic returns. For information you may find useful in preparing an electronic return, see *Why Should I File Electronically*, earlier.

Substitute tax forms. You can't use your own version of a tax form unless it meets the requirements explained in Pub. 1167.

Form W-2. If you were an employee, you should receive Form W-2 from your employer. You will need the information from this form to prepare your return. See *Form W-2* under *Credit for Withholding and Estimated Tax for 2022* in chapter 4.

Your employer is required to provide or send Form W-2 to you no later than January 31, 2023. If it is mailed, you should allow adequate time to receive it before contacting your employer. If you still don't get the form by early February, the IRS can help you by requesting the form from your employer. When you request IRS help, be prepared to provide the following information.

- Your name, address (including ZIP code), and phone number.
- Your SSN.
- Your dates of employment.
- Your employer's name, address (including ZIP code), and phone number.

Form 1099. If you received certain types of income, you may receive a Form 1099. For example, if you received taxable interest of $10 or more, the payer is required to provide or send Form 1099 to you no later than January 31, 2023 (or by February 15, 2023, if furnished by a broker). If it is mailed, you should allow adequate time to receive it before contacting the payer. If you still don't get the form by February 15 (or by March 1, 2023, if furnished by a broker), call the IRS for help.

When Do I Report My Income and Expenses?

You must figure your taxable income on the basis of a tax year. A "tax year" is an annual accounting period used for keeping records and reporting income and expenses. You must account for your income and expenses in a way that clearly shows your taxable income. The way you do this is called an accounting method.

This section explains which accounting periods and methods you can use.

Accounting Periods

Most individual tax returns cover a calendar year—the 12 months from January 1 through December 31. If you don't use a calendar year, your accounting period is a fiscal year. A regular fiscal year is a 12-month period that ends on the last day of any month except December. A 52-53-week fiscal year varies from 52 to 53 weeks and always ends on the same day of the week.

You choose your accounting period (tax year) when you file your first income tax return. It can’t be longer than 12 months.

More information. For more information on accounting periods, including how to change your accounting period, see Pub. 538.

Accounting Methods

Your accounting method is the way you account for your income and expenses. Most taxpayers use either the cash method or an accrual method. You choose a method when you file your first income tax return. If you want to change your accounting method after that, you must generally get IRS approval. Use Form 3115 to request an accounting method change.

Cash method. If you use this method, report all items of income in the year in which you actually or constructively receive them. Generally, you deduct all expenses in the year you actually pay them. This is the method most individual taxpayers use.

Constructive receipt. Generally, you constructively receive income when it is credited to your account or set apart in any way that makes it available to you. You don't need to have physical possession of it. For example, interest credited to your bank account on December 31, 2022, is taxable income to you in 2022 if you could have withdrawn it in 2022 (even if the amount isn't entered in your records or withdrawn until 2023).

Garnished wages. If your employer uses your wages to pay your debts, or if your wages are attached or garnished, the full amount is constructively received by you. You must include these wages in income for the year you would have received them.

Debts paid for you. If another person cancels or pays your debts (but not as a gift or loan), you have constructively received the amount and must generally include it in your gross income for the year. See Canceled Debts in chapter 8 for more information.

Payment to third party. If a third party is paid income from property you own, you have constructively received the income. It is the same as if you had actually received the income and paid it to the third party.

Payment to an agent. Income an agent receives for you is income you constructively received in the year the agent receives it. If you indicate in a contract that your income is to be paid to another person, you must include the amount in your gross income when the other person receives it.

Check received or available. A valid check that was made available to you before the end of the tax year is constructively received by you in that year. A check that was “made available to you” includes a check you have already received, but not cashed or deposited. It also includes, for example, your last paycheck of the year that your employer made available for you to pick up at the office before the end of the year. It is constructively received by you in that year whether or not you pick it up before the end of the year or wait to receive it by mail after the end of the year.

No constructive receipt. There may be facts to show that you didn't constructively receive income.

Example. Taxpayer Z, a teacher, agreed to the school board's condition that, in Z’s absence, Z would receive only the difference between Z’s regular salary and the salary of a substitute teacher hired by the school board. Therefore, Z didn't constructively receive the amount by which Z’s salary was reduced to pay the substitute teacher.

Accrual method. If you use an accrual method, you generally report income when you earn it, rather than when you receive it. You generally deduct your expenses when you incur them, rather than when you pay them.

Income paid in advance. An advance payment of income is generally included in gross income in the year you receive it. Your method of accounting doesn't matter as long as the income is available to you. An advance payment may include rent or interest you receive in advance and pay for services you will perform later.

A limited deferral until the next tax year may be allowed for certain advance payments. See Pub. 538 for specific information.

Additional information. For more information on accounting methods, including how to change your accounting method, see Pub. 538.

Social Security Number (SSN)

You must enter your SSN on your return. If you are married, enter the SSNs for both you and your spouse, whether you file jointly or separately.

If you are filing a joint return, include the SSNs in the same order as the names. Use this same order in submitting other forms and documents to the IRS.

CAUTION *If you, or your spouse if filing jointly, don't have an SSN (or ITIN) issued on or before the due date of your 2022 return (including extensions), you can't claim certain tax benefits on your original or an amended 2022 return.*

Once you are issued an SSN, use it to file your tax return. Use your SSN to file your tax return even if your SSN does not authorize employment or if you have been issued an SSN that authorizes employment and you lose your employment authorization. An ITIN will not be issued to you once you have been issued an SSN. If you received your SSN after previously using an ITIN, stop using your ITIN. Use your SSN instead.

Check that both the name and SSN on your Form 1040 or 1040-SR, W-2, and 1099 agree with your social security card. If they don't, certain deductions and credits on your Form 1040 or 1040-SR may be reduced or disallowed and you may not receive credit for your social security earnings. If your Form W-2 shows an incorrect SSN or name, notify your employer or the form-issuing agent as soon as possible to make sure your earnings are credited to your social security record. If the name or SSN on your social security card is incorrect, call the Social Security Administration (SSA) at 800-772-1213.

Name change. If you changed your name because of marriage, divorce, etc., be sure to report the change to your local SSA office before filing your return. This prevents delays in processing your return and issuing refunds. It also safeguards your future social security benefits.

Dependent's SSN. You must provide the SSN of each dependent you claim, regardless of the dependent's age. This requirement applies to all dependents (not just your children) claimed on your tax return.

Your child must have an SSN valid for employment issued before the due date of your 2022 return (including extensions) to be considered a qualifying child for certain tax benefits on your original or amended 2022 return. See chapter 14.

Exception. If your child was born and died in 2022 and didn't have an SSN, enter “DIED” in column (2) of the *Dependents* section of Form 1040 or 1040-SR and include a copy of the child's birth certificate, death certificate, or hospital records. The document must show that the child was born alive.

No SSN. File Form SS-5, Application for a Social Security Card, with your local SSA office to get an SSN for yourself or your dependent. It usually takes about 2 weeks to get an SSN. If you or your dependent isn't eligible for an SSN, see *Individual taxpayer identification number (ITIN)*, later.

If you are a U.S. citizen or resident alien, you must show proof of age, identity, and citizenship or alien status with your Form SS-5. If you are 12 or older and have never been assigned an SSN, you must appear in person with this proof at an SSA office.

Form SS-5 is available at any SSA office, on the Internet at *SSA.gov/forms/ss-5.pdf*, or by calling 800-772-1213. If you have any questions about which documents you can use as proof of age, identity, or citizenship, contact your SSA office.

If your dependent doesn't have an SSN by the time your return is due, you may want to ask for an extension of time to file, as explained earlier under *When Do I Have To File*.

If you don't provide a required SSN or if you provide an incorrect SSN, your tax may be increased and any refund may be reduced.

Adoption taxpayer identification number (ATIN). If you are in the process of adopting a child who is a U.S. citizen or resident and can’t

get an SSN for the child until the adoption is final, you can apply for an ATIN to use instead of an SSN.

File Form W-7A, Application for Taxpayer Identification Number for Pending U.S. Adoptions, with the IRS to get an ATIN if all of the following are true.

- You have a child living with you who was placed in your home for legal adoption.
- You can't get the child's existing SSN even though you have made a reasonable attempt to get it from the birth parents, the placement agency, and other persons.
- You can't get an SSN for the child from the SSA because, for example, the adoption isn't final.
- You are eligible to claim the child as a dependent on your tax return.

After the adoption is final, you must apply for an SSN for the child. You can't continue using the ATIN.

See Form W-7A for more information.

Nonresident alien spouse. If your spouse is a nonresident alien, your spouse must have either an SSN or an ITIN if:

- You file a joint return, or
- Your spouse is filing a separate return.

If your spouse isn't eligible for an SSN, see the following discussion on ITINs.

Individual taxpayer identification number (ITIN). The IRS will issue you an ITIN if you are a nonresident or resident alien and you don't have and aren't eligible to get an SSN. This also applies to an alien spouse or dependent. To apply for an ITIN, file Form W-7 with the IRS. It usually takes about 7 weeks to get an ITIN. Enter the ITIN on your tax return wherever an SSN is requested.

Make sure your ITIN hasn't expired. See *Individual taxpayer identification number (ITIN) renewal*, earlier, for more information on expiration and renewal of ITINs. You can also find more information at *IRS.gov/ITIN*.

If you are applying for an ITIN for yourself, your spouse, or a dependent in order to file your tax return, attach your completed tax return to your Form W-7. See the Form W-7 instructions for how and where to file.

You can't e-file *a return using an ITIN in the calendar year the ITIN is issued; however, you can* e-file *returns in the following years.*

ITIN for tax use only. An ITIN is for federal tax use only. It doesn't entitle you to social security benefits or change your employment or immigration status under U.S. law.

Penalty for not providing social security number. If you don't include your SSN or the SSN of your spouse or dependent as required, you may have to pay a penalty. See the discussion on *Penalties*, later, for more information.

SSN on correspondence. If you write to the IRS about your tax account, be sure to include your SSN (and the name and SSN of your spouse, if you filed a joint return) in your correspondence. Because your SSN is used to identify your account, this helps the IRS respond to your correspondence promptly.

Presidential Election Campaign Fund

This fund helps pay for Presidential election campaigns. The fund also helps pay for pediatric medical research. If you want $3 to go to this fund, check the box. If you are filing a joint return, your spouse can also have $3 go to the fund. If you check the box, your tax or refund won't change.

Computations

The following information may be useful in making the return easier to complete.

Rounding off dollars. You can round off cents to whole dollars on your return and schedules. If you do round to whole dollars, you must round all amounts. To round, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. For example, $1.39 becomes $1 and $2.50 becomes $3.

If you have to add two or more amounts to figure the amount to enter on a line, include cents when adding the amounts and round off only the total.

If you are entering amounts that include cents, make sure to include the decimal point. There is no cents column on Form 1040 or 1040-SR.

Equal amounts. If you are asked to enter the smaller or larger of two equal amounts, enter that amount.

Negative amounts. If you file a paper return and you need to enter a negative amount, put the amount in parentheses rather than using a minus sign. To combine positive and negative amounts, add all the positive amounts together and then subtract the negative amounts.

Attachments

Depending on the form you file and the items reported on your return, you may have to complete additional schedules and forms and attach them to your paper return.

You may be able to file a paperless return using IRS e-file*. There's nothing to attach or mail, not even your Forms W-2. See* Why Should I File Electronically*, earlier.*

Form W-2. Form W-2 is a statement from your employer of wages and other compensation paid to you and taxes withheld from your pay. You should have a Form W-2 from each employer. If you file a paper return, be sure to attach a copy of Form W-2 in the place indicated on your return. For more information, see *Form W-2* in chapter 4.

Form 1099-R. If you received a Form 1099-R showing federal income tax withheld, and you file a paper return, attach a copy of that form in the place indicated on your return.

Form 1040 or 1040-SR. If you file a paper return, attach any forms and schedules behind Form 1040 or 1040-SR in order of the "Attachment Sequence No." shown in the upper right corner of the form or schedule. Then, arrange all other statements or attachments in the same order as the forms and schedules they relate to and attach them last. Don't attach items unless required to do so.

Third Party Designee

If you want to allow your preparer, a friend, a family member, or any other person you choose to discuss your 2022 tax return with the IRS, check the "Yes" box in the "Third Party Designee" area of your return. Also, enter the designee's name, phone number, and any five digits the designee chooses as his or her personal identification number (PIN).

If you check the "Yes" box, you, and your spouse if filing a joint return, are authorizing the IRS to call the designee to answer any questions that arise during the processing of your return. You are also authorizing the designee to:

- Give information that is missing from your return to the IRS;
- Call the IRS for information about the processing of your return or the status of your refund or payments;
- Receive copies of notices or transcripts related to your return, upon request; and
- Respond to certain IRS notices about math errors, offsets (see *Refunds*, later), and return preparation.

You aren't authorizing the designee to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the IRS. If you want to expand the designee's authorization, see Pub. 947.

The authorization will automatically end no later than the due date (without any extensions) for filing your 2023 tax return. This is April 15, 2024, for most people.

See your form instructions for more information.

Signatures

You must sign and date your return. If you file a joint return, both you and your spouse must sign the return, even if only one of you had income.

If you file a joint return, both spouses are generally liable for the tax, and the entire tax liability may be assessed against either spouse. See chapter 2*.*

Your return isn't considered a valid return unless you sign it in accordance with the requirements in the instructions for your return.

You must handwrite your signature on your return if you file it on paper. Digital, electronic, or typed-font signatures are not valid signatures for Forms 1040 or 1040-SR filed on paper.

If you electronically file your return, you can use an electronic signature to sign your return in accordance with the requirements contained in the instructions for your return.

Failure to sign your return in accordance with these requirements may prevent you from obtaining a refund.

Enter your occupation. If you file a joint return, enter both your occupation and your spouse's occupation.

When someone can sign for you. You can appoint an agent to sign your return if you are:

1. Unable to sign the return because of disease or injury,
2. Absent from the United States for a continuous period of at least 60 days before the due date for filing your return, or
3. Given permission to do so by the IRS office in your area.

Power of attorney. A return signed by an agent in any of these cases must have a power of attorney (POA) attached that authorizes the agent to sign for you. You can use a POA that states that the agent is granted authority to sign the return, or you can use Form 2848. Part I of Form 2848 must state that the agent is granted authority to sign the return.

Court-appointed conservator, guardian, or other fiduciary. If you are a court-appointed conservator, guardian, or other fiduciary for a mentally or physically incompetent individual who has to file a tax return, sign your name for the individual. File Form 56.

Unable to sign. If the taxpayer is mentally competent but physically unable to sign the return or POA, a valid "signature" is defined under state law. It can be anything that clearly indicates the taxpayer's intent to sign. For example, the taxpayer's "X" with the signatures of two witnesses might be considered a valid signature under a state's law.

Spouse unable to sign. If your spouse is unable to sign for any reason, see *Signing a joint return* in chapter 2.

Child's return. If a child has to file a tax return but can't sign the return, the child's parent, guardian, or another legally responsible person must sign the child's name, followed by the words "By (your signature), parent for minor child."

Paid Preparer

Generally, anyone you pay to prepare, assist in preparing, or review your tax return must sign it and fill in the other blanks, including their Preparer Tax Identification Number (PTIN), in the paid preparer's area of your return.

Many preparers are required to *e-file* the tax returns they prepare. They sign these *e-filed* returns using their tax preparation software. However, you can choose to have your return completed on paper if you prefer. In that case, the paid preparer can sign the paper return manually or use a rubber stamp or mechanical device. The preparer is personally responsible for affixing their signature to the return.

If the preparer is self-employed (that is, not employed by any person or business to prepare the return), the preparer should check the self-employed box in the "Paid Preparer Use Only" space on the return.

The preparer must give you a copy of your return in addition to the copy filed with the IRS.

If you prepare your own return, leave this area blank. If another person prepares your return and doesn't charge you, that person shouldn't sign your return.

If you have questions about whether a preparer must sign your return, contact any IRS office.

Refunds

When you complete your return, you will determine if you paid more income tax than you owed. If so, you can get a refund of the amount you overpaid or you can choose to apply all or part of the overpayment to your next year's (2023) estimated tax.

If you choose to have a 2022 overpayment applied to your 2023 estimated tax, you can't change your mind and have any of it refunded to you after the due date (without extensions) of your 2022 return.

Follow the Instructions for Form 1040 to complete the entries to claim your refund and/or to apply your overpayment to your 2023 estimated tax.

If your refund for 2022 is large, you may want to decrease the amount of income tax withheld from your pay in 2023. See chapter 4 for more information.

DIRECT DEPOSIT Simple. Safe. Secure. Instead of getting a paper check, you may be able to have your refund deposited directly into your checking or savings account, including an individual retirement arrangement (IRA). Follow the Instructions for Form 1040 to request direct deposit. If the direct deposit can't be done, the IRS will send a check instead.

Don't request a deposit of any part of your refund to an account that isn't in your name. Don't allow your tax preparer to deposit any part of your refund into the preparer's account. The number of direct deposits to a single account or prepaid debit card is limited to three refunds a year. After this limit is exceeded, paper checks will be sent instead. Learn more at *IRS.gov/Individuals/Direct-Deposit-Limits*.

IRA. You can have your refund (or part of it) directly deposited to a traditional IRA, Roth IRA, or SEP-IRA, but not a SIMPLE IRA. You must establish the IRA at a bank or financial institution before you request direct deposit.

TreasuryDirect®. You can request a deposit of your refund to a TreasuryDirect® online account to buy U.S. Treasury marketable securities (if available) and savings bonds. For more information, go to *https://TreasuryDirect.gov*.

Split refunds. If you choose direct deposit, you may be able to split the refund and have it deposited among two or three accounts or buy up to $5,000 in paper or electronic series I savings bonds. Complete Form 8888 and attach it to your return.

Overpayment less than one dollar. If your overpayment is less than one dollar, you won't get a refund unless you ask for it in writing.

Cashing your refund check. Cash your tax refund check soon after you receive it. Checks expire the last business day of the 12th month of issue.

If your check has expired, you can apply to the IRS to have it reissued.

Refund more or less than expected. If you receive a check for a refund you aren't entitled to, or for an overpayment that should have been credited to estimated tax, don't cash the check. Call the IRS.

If you receive a check for more than the refund you claimed, don't cash the check until you receive a notice explaining the difference.

If your refund check is for less than you claimed, it should be accompanied by a notice explaining the difference. Cashing the check doesn't stop you from claiming an additional amount of refund.

If you didn't receive a notice and you have any questions about the amount of your refund, you should wait 2 weeks. If you still haven't received a notice, call the IRS.

Offset against debts. If you are due a refund but haven't paid certain amounts you owe, all or part of your refund may be used to pay all or part of the past-due amount. This includes past-due federal income tax, other federal debts (such as student loans), state income tax, child and spousal support payments, and state unemployment compensation debt. You will be notified if the refund you claimed has been offset against your debts.

Joint return and injured spouse. When a joint return is filed and only one spouse owes a past-due amount, the other spouse can be considered an injured spouse. An injured spouse should file Form 8379, Injured Spouse Allocation, if both of the following apply and the spouse wants a refund of their share of the overpayment shown on the joint return.

1. You aren't legally obligated to pay the past-due amount.
2. You made and reported tax payments (such as federal income tax withheld from your wages or estimated tax payments), or claimed a refundable tax credit (see the credits listed under *Who Should File*, earlier).

Note. If the injured spouse's residence was in a community property state at any time during the tax year, special rules may apply. See the Instructions for Form 8379.

If you haven't filed your joint return and you know that your joint refund will be offset, file Form 8379 with your return. You should receive your refund within 14 weeks from the date the paper return is filed or within 11 weeks from the date the return is filed electronically.

If you filed your joint return and your joint refund was offset, file Form 8379 by itself. When filed after offset, it can take up to 8 weeks to receive your refund. Don't attach the previously filed tax return, but do include copies of all Forms W-2 and W-2G for both spouses and any Forms 1099 that show income tax withheld. The processing of Form 8379 may be delayed if these forms aren't attached, or if the form is incomplete when filed.

A separate Form 8379 must be filed for each tax year to be considered.

An injured spouse claim is different from an innocent spouse relief request. An injured spouse uses Form 8379 to request the division of the tax overpayment attributed to each spouse. An innocent spouse uses Form 8857, Request for Innocent Spouse Relief, to request relief from joint liability for tax, interest, and penalties on a joint return for items of the other spouse (or former spouse) that were incorrectly reported on the joint return. For information on innocent spouses, see Relief from joint responsibility *under* Filing a Joint Return *in chapter 2.*

Amount You Owe

When you complete your return, you will determine if you have paid the full amount of tax that you owe. If you owe additional tax, you should pay it with your return.

You don't have to pay if the amount you owe is under $1.

If the IRS figures your tax for you, you will receive a bill for any tax that is due. You should pay this bill within 30 days (or by the due date of your return, if later). See *Tax Figured by IRS* in chapter 13.

If you don't pay your tax when due, you may have to pay a failure-to-pay penalty. See Penalties*, later. For more information about your balance due, see Pub. 594.*

If the amount you owe for 2022 is large, you may want to increase the amount of income tax withheld from your pay or make estimated tax payments for 2023. See chapter 4 *for more information.*

How To Pay

You can pay online, by phone, by mobile device, in cash, or by check or money order. Don't include any estimated tax payment for 2023 in this payment. Instead, make the estimated tax payment separately.

Bad check or payment. The penalty for writing a bad check to the IRS is $25 or 2% of the check, whichever is more. This penalty also applies to other forms of payment if the IRS doesn't receive the funds.

Pay online. Paying online is convenient and secure and helps make sure we get your payments on time.

You can pay online with a direct transfer from your bank account using IRS Direct Pay or the Electronic Federal Tax Payment System (EFTPS), or by debit or credit card.

To pay your taxes online or for more information, go to *IRS.gov/Payments*.

Pay by phone. Paying by phone is another safe and secure method of paying online. Use one of the following methods.

- EFTPS.
- Debit or credit card.

To get more information about EFTPS or to enroll in EFTPS, visit *EFTPS.gov* or call 800-555-4477. To contact EFTPS using Telecommunications Relay Services (TRS) for people who are deaf, hard of hearing, or have a speech disability, dial 711 and then provide the TRS assistant the 800-555-4477 number or 800-733-4829. Additional information about EFTPS is also available in Pub. 966.

To pay using a debit or credit card, you can call one of the following service providers. There is a convenience fee charged by these providers that varies by provider, card type, and payment amount.

Link2Gov Corporation
888-PAY-1040™ (888-729-1040)
www.PAY1040.com

WorldPay US, Inc.
844-PAY-TAX-8™ (844-729-8298)
www.payUSAtax.com

ACI Payments, Inc.
888-UPAY-TAX™ (888-872-9829)
fed.acipayonline.com

For the latest details on how to pay by phone, go to *IRS.gov/Payments*.

Pay by cash. Cash is an in-person payment option for individuals provided through retail partners with a maximum of $1,000 per day per transaction. To make a cash payment, you must first be registered online at *fed.acipayonline.com*. Don't send cash payments through the mail.

Pay by check or money order. Make your check or money order payable to "United States Treasury" for the full amount due. Don't send cash. Don't attach the payment to your return. Show your correct name, address, SSN, daytime phone number, and the tax year and form number on the front of your check or money order. If you are filing a joint return, enter the SSN shown first on your tax return.

Notice to taxpayers presenting checks. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

No checks of $100 million or more accepted. The IRS can't accept a single check (including a cashier's check) for amounts of $100,000,000 ($100 million) or more. If you are sending $100 million or more by check, you'll need to spread the payment over two or more checks with each check made out for an amount less than $100 million. This limit doesn't apply to other methods of payment (such as electronic payments). Please consider a method of payment other than check if the amount of the payment is over $100 million.

Estimated tax payments. Don't include any 2023 estimated tax payment in the payment for your 2022 income tax return. See chapter 4 for information on how to pay estimated tax.

Interest

Interest is charged on tax you don't pay by the due date of your return. Interest is charged even if you get an extension of time for filing.

If the IRS figures your tax for you, to avoid interest for late payment, you must pay the bill by the date specified on the bill or by the due date of your return, whichever is later. For information, see Tax Figured by IRS *in chapter 13.*

Interest on penalties. Interest is charged on the failure-to-file penalty, the accuracy-related penalty, and the fraud penalty from the due date of the return (including extensions) to the date of payment. Interest on other penalties starts on the date of notice and demand, but isn't charged on penalties paid within 21 calendar days from the date of the notice (or within 10 business days if the notice is for $100,000 or more).

Interest due to IRS error or delay. All or part of any interest you were charged can be forgiven if the interest is due to an unreasonable error or delay by an officer or employee of the IRS in performing a ministerial or managerial act.

A ministerial act is a procedural or mechanical act that occurs during the processing of your case. A managerial act includes personnel transfers and extended personnel training. A decision concerning the proper application of federal tax law isn't a ministerial or managerial act.

The interest can be forgiven only if you aren't responsible in any important way for the error or delay and the IRS has notified you in writing of the deficiency or payment. For more information, see Pub. 556.

Interest and certain penalties may also be suspended for a limited period if you filed your return by the due date (including extensions) and the IRS doesn't provide you with a notice specifically stating your liability and the basis for it before the close of the 36-month period beginning on the later of:

- The date the return is filed, or
- The due date of the return without regard to extensions.

For more information, see Pub. 556.

Installment Agreement

If you can't pay the full amount due with your return, you can ask to make monthly installment payments for the full or a partial amount. However, you will be charged interest and may be charged a late payment penalty on the tax not paid by the date your return is due, even if your request to pay in installments is granted. If your request is granted, you must also pay a fee. To limit the interest and penalty charges, pay as much of the tax as possible with your return. But before requesting an installment agreement, you should consider other less costly alternatives, such as a bank loan or credit card payment.

To apply for an installment agreement online, go to IRS.gov/OPA. You can also use Form 9465.

In addition to paying by check or money order, you can use a credit or debit card or direct payment from your bank account to make installment agreement payments. See How To Pay, earlier.

Gift To Reduce Debt Held by the Public

You can make a contribution (gift) to reduce debt held by the public. If you wish to do so, make a separate check payable to “Bureau of the Fiscal Service.”

Send your check to:

Bureau of the Fiscal Service
ATTN: Department G
P.O. Box 2188
Parkersburg, WV 26106-2188

Or enclose your separate check in the envelope with your income tax return. Don't add this gift to any tax you owe.

For information on making this type of gift online, go to TreasuryDirect.gov/Help-Center/Public-Debt-FAQs/#DebtFinance and see the information under “How do you make a contribution to reduce the debt?”

You may be able to deduct this gift as a charitable contribution on next year's tax return if you itemize your deductions on Schedule A (Form 1040).

Name and Address

After you have completed your return, fill in your name and address in the appropriate area of Form 1040 or 1040-SR.

You must include your SSN in the correct place on your tax return.

P.O. box. If your post office doesn't deliver mail to your street address and you have a P.O. box, enter your P.O. box number on the line for your present home address instead of your street address.

Foreign address. If your address is outside the United States or its possessions or territories, enter the city name on the appropriate line of your Form 1040 or 1040-SR. Don't enter any other information on that line, but also complete the spaces below that line.

1. Foreign country name.
2. Foreign province/state/county.
3. Foreign postal code.

Don’t abbreviate the country name. Follow the country's practice for entering the postal code and the name of the province, county, or state.

Where Do I File?

After you complete your return, you must send it to the IRS. You can mail it or you may be able to file it electronically. See Why Should I File Electronically, earlier.

Mailing your paper return. Mail your paper return to the address shown in the Instructions for Form 1040.

What Happens After I File?

After you send your return to the IRS, you may have some questions. This section discusses concerns you may have about recordkeeping, your refund, and what to do if you move.

What Records Should I Keep?

This part discusses why you should keep records, what kinds of records you should keep, and how long you should keep them.

You must keep records so that you can prepare a complete and accurate income tax return. The law doesn't require any special form of records. However, you should keep all receipts, canceled checks or other proof of payment, and any other records to support any deductions or credits you claim.

If you file a claim for refund, you must be able to prove by your records that you have overpaid your tax.

This part doesn't discuss the records you should keep when operating a business. For information on business records, see Pub. 583.

Why Keep Records?

Good records help you:

- **Identify sources of income.** Your records can identify the sources of your income to help you separate business from nonbusiness income and taxable from nontaxable income.
- **Keep track of expenses.** You can use your records to identify expenses for which you can claim a deduction. This helps you determine if you can itemize deductions on your tax return.
- **Keep track of the basis of property.** You need to keep records that show the basis of your property. This includes the original cost or other basis of the property and any improvements you made.
- **Prepare tax returns.** You need records to prepare your tax return.
- **Support items reported on tax returns.** The IRS may question an item on your return. Your records will help you explain any item and arrive at the correct tax. If you can’t produce the correct documents, you may have to pay additional tax and be subject to penalties.

Kinds of Records To Keep

The IRS doesn't require you to keep your records in a particular way. Keep them in a manner that allows you and the IRS to determine your correct tax.

You can use your checkbook to keep a record of your income and expenses. You also need to keep documents, such as receipts and sales slips, that can help prove a deduction.

In this section, you will find guidance about basic records that everyone should keep. The section also provides guidance about specific records you should keep for certain items.

Electronic records. All requirements that apply to hard copy books and records also apply to electronic storage systems that maintain tax books and records. When you replace hard copy books and records, you must maintain the electronic storage systems for as long as they are material to the administration of tax law.

For details on electronic storage system requirements, see Revenue Procedure 97-22, which is on page 9 of Internal Revenue Bulletin 1997-13 at IRS.gov/pub/irs-irbs/irb97-13.pdf.

Copies of tax returns. You should keep copies of your tax returns as part of your tax records. They can help you prepare future tax returns, and you will need them if you file an amended return or are audited. Copies of your returns and other records can be helpful to your survivor or the executor or administrator of your estate.

If necessary, you can request a copy of a return and all attachments (including Form W-2) from the IRS by using Form 4506. There is a charge for a copy of a return. For information on the cost and where to file, see the Instructions for Form 4506.

If you just need information from your return, you can order a transcript in one of the following ways.

- Go to IRS.gov/Transcript.
- Call 800-908-9946.
- Use Form 4506-T or Form 4506T-EZ.

There is no fee for a transcript. For more information, see Form 4506-T.

Basic Records

Basic records are documents that everybody should keep. These are the records that prove your income and expenses. If you own a home or investments, your basic records should contain documents related to those items.

Income. Your basic records prove the amounts you report as income on your tax return. Your income may include wages, dividends, interest, and partnership or S corporation distributions. Your records can also prove that certain amounts aren’t taxable, such as tax-exempt interest.

Note. If you receive a Form W-2, keep Copy C until you begin receiving social security benefits. This will help protect your benefits in case there is a question about your work record or earnings in a particular year.

Expenses. Your basic records prove the expenses for which you claim a deduction (or credit) on your tax return. Your deductions may include alimony, charitable contributions, mortgage interest, and real estate taxes. You may also have childcare expenses for which you can claim a credit.

Home. Your basic records should enable you to determine the basis or adjusted basis of your home. You need this information to determine if you have a gain or loss when you sell your home or to figure depreciation if you use part of your home for business purposes or for rent. Your records should show the purchase price, settlement or closing costs, and the cost of any improvements. They may also show any casualty losses deducted and insurance reimbursements for casualty losses.

For detailed information on basis, including which settlement or closing costs are included in the basis of your home, see Pub. 551.

When you sell your home, your records should show the sales price and any selling expenses, such as commissions. For information on selling your home, see Pub. 523.

Investments. Your basic records should enable you to determine your basis in an investment and whether you have a gain or loss when you sell it. Investments include stocks, bonds, and mutual funds. Your records should show the purchase price, sales price, and commissions. They may also show any reinvested dividends, stock splits and dividends, load charges, and original issue discount (OID).

For information on stocks, bonds, and mutual funds, see Pub. 550 and Pub. 551.

Proof of Payment

One of your basic records is proof of payment. You should keep these records to support certain amounts shown on your tax return. Proof of payment alone isn't proof that the item claimed on your return is allowable. You should also keep other documents that will help prove that the item is allowable.

Generally, you prove payment with a cash receipt, financial account statement, credit card statement, canceled check, or substitute check. If you make payments in cash, you should get a dated and signed receipt showing the amount and the reason for the payment.

If you make payments using your bank account, you may be able to prove payment with an account statement.

Account statements. You may be able to prove payment with a legible financial account statement prepared by your bank or other financial institution.

Pay statements. You may have deductible expenses withheld from your paycheck, such as medical insurance premiums. You should keep your year-end or final pay statements as proof of payment of these expenses.

How Long To Keep Records

You must keep your records as long as they may be needed for the administration of any provision of the Internal Revenue Code. Generally, this means you must keep records that support items shown on your return until the period of limitations for that return runs out.

The period of limitations is the period of time in which you can amend your return to claim a credit or refund or the IRS can assess additional tax. Table 1-7 contains the periods of limitations that apply to income tax returns. Unless otherwise stated, the years refer to the period beginning after the return was filed. Returns filed before the due date are treated as being filed on the due date.

Table 1-7. **Period of Limitations**

	IF you...	THEN the period is...
1	File a return and (2), (3), and (4) don't apply to you,	3 years.
2	Don't report income that you should and it is more than 25% of the gross income shown on your return,	6 years.
3	File a fraudulent return,	No limit.
4	Don't file a return,	No limit.
5	File a claim for credit or refund after you filed your return,	The later of 3 years or 2 years after tax was paid.
6	File a claim for a loss from worthless securities or bad debt deduction,	7 years.

Property. Keep records relating to property until the period of limitations expires for the year in which you dispose of the property in a taxable disposition. You must keep these records to figure your basis for computing gain or loss when you sell or otherwise dispose of the property.

Generally, if you received property in a nontaxable exchange, your basis in that property is the same as the basis of the property you gave up. You must keep the records on the old property, as well as the new property, until the period of limitations expires for the year in which you dispose of the new property in a taxable disposition.

Refund Information

You can go online to check the status of your 2022 refund 24 hours after the IRS receives your *e-filed* return, or 4 weeks after you mail a paper return. If you filed Form 8379 with your return, allow 14 weeks (11 weeks if you filed electronically) before checking your refund status. Be sure to have a copy of your 2022 tax return handy because you will need to know the filing status, the first SSN shown on the return, and the exact whole-dollar amount of the refund. To check on your refund, do one of the following.

- Go to *IRS.gov/Refunds*.
- Download the free IRS2Go app to your smart phone and use it to check your refund status.
- Call the automated refund hotline at 800-829-1954.

Interest on Refunds

If you are due a refund, you may get interest on it. The interest rates are adjusted quarterly.

If the refund is made within 45 days after the due date of your return, no interest will be paid. If you file your return after the due date (including extensions), no interest will be paid if the refund is made within 45 days after the date you filed. If the refund isn't made within this 45-day period, interest will be paid from the due date of the return or from the date you filed, whichever is later.

Accepting a refund check doesn't change your right to claim an additional refund and interest. File your claim within the period of time that applies. See *Amended Returns and Claims for Refund*, later. If you don't accept a refund check, no more interest will be paid on the overpayment included in the check.

Interest on erroneous refund. All or part of any interest you were charged on an erroneous refund will generally be forgiven. Any interest charged for the period before demand for repayment was made will be forgiven unless:

1. You, or a person related to you, caused the erroneous refund in any way; or
2. The refund is more than $50,000.

For example, if you claimed a refund of $100 on your return, but the IRS made an error and sent you $1,000, you wouldn't be charged interest for the time you held the $900 difference. You must, however, repay the $900 when the IRS asks.

Change of Address

If you have moved, file your return using your new address.

If you move after you filed your return, you should give the IRS clear and concise notification of your change of address. The notification may be written, electronic, or oral. Send written notification to the Internal Revenue Service Center serving your old address. You can use Form 8822, Change of Address. If you are expecting a refund, also notify the post office serving your old address. This will help in forwarding your check to your new address (unless you chose direct deposit of your refund). For more information, see Revenue Procedure 2010-16, 2010-19 I.R.B. 664, available at *IRS.gov/irb/2010-19_IRB/ar07.html*.

Be sure to include your SSN (and the name and SSN of your spouse if you filed a joint return) in any correspondence with the IRS.

What if I Made a Mistake?

Errors may delay your refund or result in notices being sent to you. If you discover an error, you can file an amended return or claim for refund.

Amended Returns and Claims for Refund

You should correct your return if, after you have filed it, you find that:

1. You didn't report some income,
2. You claimed deductions or credits you shouldn't have claimed,
3. You didn't claim deductions or credits you could have claimed, or
4. You should have claimed a different filing status. (Once you file a joint return, you can't choose to file separate returns for that year after the due date of the return. However, an executor may be able to make this change for a deceased spouse.)

If you need a copy of your return, see *Copies of tax returns* under *Kinds of Records To Keep*, earlier, in this chapter.

Form 1040-X. Use Form 1040-X to correct a return you have already filed.

Completing Form 1040-X. On Form 1040-X, enter your income, deductions, and credits as you originally reported them on your return; the changes you are making; and the corrected amounts. Then, figure the tax on the corrected amount of taxable income and the amount you owe or your refund.

If you owe tax, the IRS offers several payment options. See *How To Pay*, earlier. The tax owed won't be subtracted from any amount you had credited to your estimated tax.

If you can't pay the full amount due with your return, you can ask to make monthly installment payments. See *Installment Agreement*, earlier.

If you overpaid tax, you can have all or part of the overpayment refunded to you, or you can apply all or part of it to your estimated tax. If you choose to get a refund, it will be sent separately from any refund shown on your original return.

Filing Form 1040-X. When completing Form 1040-X, don't forget to show the year of your original return and explain all changes you made. Be sure to attach any forms or schedules needed to explain your changes. Mail your Form 1040-X to the Internal Revenue Service Center serving the area where you now live (as shown in the Instructions for Form 1040-X). However, if you are filing Form 1040-X in response to a notice you received from the IRS, mail it to the address shown on the notice.

File a separate form for each tax year involved.

You can file Form 1040-X electronically to amend 2019 or later Forms 1040 and 1040-SR. For more information, see Instructions for Form 1040-X.

Time for filing a claim for refund. Generally, you must file your claim for a credit or refund within 3 years after the date you filed your original return or within 2 years after the date you paid the tax, whichever is later. Returns filed before the due date (without regard to extensions) are considered filed on the due date (even if the due date was a Saturday, Sunday, or legal holiday). These time periods are suspended while you are financially disabled, discussed later.

If the last day for claiming a credit or refund is a Saturday, Sunday, or legal holiday, you can file the claim on the next business day.

If you don't file a claim within this period, you may not be entitled to a credit or a refund.

Federally declared disaster. If you were affected by a federally declared disaster, you may have additional time to file your amended return. See Pub. 556 for details.

Protective claim for refund. Generally, a protective claim is a formal claim or amended return for credit or refund normally based on current litigation or expected changes in tax law or other legislation. You file a protective claim when your right to a refund is contingent on future events and may not be determinable until after the statute of limitations expires. A valid protective claim doesn't have to list a particular dollar amount or demand an immediate refund. However, a valid protective claim must:

- Be in writing and signed;
- Include your name, address, SSN or ITIN, and other contact information;
- Identify and describe the contingencies affecting the claim;
- Clearly alert the IRS to the essential nature of the claim; and
- Identify the specific year(s) for which a refund is sought.

Mail your protective claim for refund to the address listed in the Instructions for Form 1040-X under *Where To File.*

Generally, the IRS will delay action on the protective claim until the contingency is resolved.

Limit on amount of refund. If you file your claim within 3 years after the date you filed your return, the credit or refund can't be more than the part of the tax paid within the 3-year period (plus any extension of time for filing your return) immediately before you filed the claim. This time period is suspended while you are financially disabled, discussed later.

Tax paid. Payments, including estimated tax payments, made before the due date (without regard to extensions) of the original return are considered paid on the due date. For example, income tax withheld during the year is considered paid on the due date of the return, which is April 15 for most taxpayers.

Example 1. You made estimated tax payments of $500 and got an automatic extension of time to October 15, 2019, to file your 2018 income tax return. When you filed your return on that date, you paid an additional $200 tax. On October 15, 2022, you filed an amended return and claimed a refund of $700. Because you filed your claim within 3 years after you filed your original return, you can get a refund of up to $700, the tax paid within the 3 years plus the 6-month extension period immediately before you filed the claim.

Example 2. The situation is the same as in *Example 1*, except you filed your return on October 30, 2019, 2 weeks after the extension period ended. You paid an additional $200 on that date. On October 31, 2022, you filed an amended return and claimed a refund of $700. Although you filed your claim within 3 years from the date you filed your original return, the refund was limited to $200, the tax paid within the 3 years plus the 6-month extension period immediately before you filed the claim. The estimated tax of $500 paid before that period can't be refunded or credited.

If you file a claim more than 3 years after you file your return, the credit or refund can't be more than the tax you paid within the 2 years immediately before you file the claim.

Example. You filed your 2018 tax return on April 15, 2019. You paid taxes of $500. On November 5, 2020, after an examination of your 2018 return, you had to pay an additional tax of $200. On May 12, 2022, you file a claim for a refund of $300. However, because you filed your claim more than 3 years after you filed your return, your refund will be limited to the $200 you paid during the 2 years immediately before you filed your claim.

Financially disabled. The time periods for claiming a refund are suspended for the period in which you are financially disabled. For a joint income tax return, only one spouse has to be financially disabled for the time period to be suspended. You are financially disabled if you are unable to manage your financial affairs because of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. However, you aren't treated as financially disabled during any period your spouse or any other person is authorized to act on your behalf in financial matters.

To claim that you are financially disabled, you must send in the following written statements with your claim for refund.

1. A statement from your qualified physician that includes:
   a. The name and a description of your physical or mental impairment;
   b. The physician's medical opinion that the impairment prevented you from managing your financial affairs;
   c. The physician's medical opinion that the impairment was or can be expected to result in death, or that its duration has lasted, or can be expected to last, at least 12 months;
   d. The specific time period (to the best of the physician's knowledge); and
   e. The following certification signed by the physician: "I hereby certify that, to the best of my knowledge and belief, the above representations are true, correct, and complete."
2. A statement made by the person signing the claim for credit or refund that no person, including your spouse, was authorized to act on your behalf in financial matters during the period of disability (or the exact dates that a person was authorized to act for you).

Exceptions for special types of refunds. If you file a claim for one of the items in the following list, the dates and limits discussed earlier may not apply. These items, and where to get more information, are as follows.

- Bad debt. See Pub. 550.

- Worthless security. See Pub. 550.
- Foreign tax paid or accrued. See Pub. 514.
- Net operating loss carryback. See Pub. 536.
- Carryback of certain business tax credits. See Form 3800.
- Claim based on an agreement with the IRS extending the period for assessment of tax.

Processing claims for refund. Claims are usually processed 8–12 weeks after they are filed. Your claim may be accepted as filed, disallowed, or subject to examination. If a claim is examined, the procedures are the same as in the examination of a tax return.

If your claim is disallowed, you will receive an explanation of why it was disallowed.

Taking your claim to court. You can sue for a refund in court, but you must first file a timely claim with the IRS. If the IRS disallows your claim or doesn't act on your claim within 6 months after you file it, you can then take your claim to court. For information on the burden of proof in a court proceeding, see Pub. 556.

The IRS provides a direct method to move your claim to court if:

- You are filing a claim for a credit or refund based solely on contested income tax or on estate tax or gift tax issues considered in your previously examined returns, and
- You want to take your case to court instead of appealing it within the IRS.

When you file your claim with the IRS, you get the direct method by requesting in writing that your claim be immediately rejected. A notice of claim disallowance will be sent to you.

You have 2 years from the date of mailing of the notice of claim disallowance to file a refund suit in the U.S. District Court having jurisdiction or in the U.S. Court of Federal Claims.

Interest on refund. If you receive a refund because of your amended return, interest will be paid on it from the due date of your original return or the date you filed your original return, whichever is later, to the date you filed the amended return. However, if the refund isn't made within 45 days after you file the amended return, interest will be paid up to the date the refund is paid.

Reduced refund. Your refund may be reduced by an additional tax liability that has been assessed against you.

Also, your refund may be reduced by amounts you owe for past-due federal tax, state income tax, state unemployment compensation debts, child support, spousal support, or certain other federal nontax debts, such as student loans. If your spouse owes these debts, see *Offset against debts* under *Refunds*, earlier, for the correct refund procedures to follow.

Effect on state tax liability. If your return is changed for any reason, it may affect your state income tax liability. This includes changes made as a result of an examination of your return by the IRS. Contact your state tax agency for more information.

Penalties

The law provides penalties for failure to file returns or pay taxes as required.

Civil Penalties

If you don't file your return and pay your tax by the due date, you may have to pay a penalty. You may also have to pay a penalty if you substantially understate your tax, understate a reportable transaction, file an erroneous claim for refund or credit, file a frivolous tax submission, or fail to supply your SSN or ITIN. If you provide fraudulent information on your return, you may have to pay a civil fraud penalty.

Filing late. If you don't file your return by the due date (including extensions), you may have to pay a failure-to-file penalty. The penalty is usually 5% for each month or part of a month that a return is late, but not more than 25%. The penalty is based on the tax not paid by the due date (without regard to extensions).

Fraud. If your failure to file is due to fraud, the penalty is 15% for each month or part of a month that your return is late, up to a maximum of 75%.

Return over 60 days late. If you file your return more than 60 days after the due date, or extended due date, the minimum penalty is the smaller of $450 or 100% of the unpaid tax.

Exception. You won't have to pay the penalty if you show that you failed to file on time because of reasonable cause and not because of willful neglect.

Paying tax late. You will have to pay a failure-to-pay penalty of 1/2 of 1% (0.50%) of your unpaid taxes for each month, or part of a month, after the due date that the tax isn't paid. This penalty doesn't apply during the automatic 6-month extension of time to file period if you paid at least 90% of your actual tax liability on or before the due date of your return and pay the balance when you file the return.

The monthly rate of the failure-to-pay penalty is half the usual rate (0.25% instead of 0.50%) if an installment agreement is in effect for that month. You must have filed your return by the due date (including extensions) to qualify for this reduced penalty.

If a notice of intent to levy is issued, the rate will increase to 1% at the start of the first month beginning at least 10 days after the day that the notice is issued. If a notice and demand for immediate payment is issued, the rate will increase to 1% at the start of the first month beginning after the day that the notice and demand is issued.

This penalty can't be more than 25% of your unpaid tax. You won't have to pay the penalty if you can show that you had a good reason for not paying your tax on time.

Combined penalties. If both the failure-to-file penalty and the failure-to-pay penalty (discussed earlier) apply in any month, the 5% (or 15%) failure-to-file penalty is reduced by the failure-to-pay penalty. However, if you file your return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of $450 or 100% of the unpaid tax.

Accuracy-related penalty. You may have to pay an accuracy-related penalty if you underpay your tax because:

1. You show negligence or disregard of the rules or regulations,
2. You substantially understate your income tax,
3. You claim tax benefits for a transaction that lacks economic substance, or
4. You fail to disclose a foreign financial asset.

The penalty is equal to 20% of the underpayment. The penalty is 40% of any portion of the underpayment that is attributable to an undisclosed noneconomic substance transaction or an undisclosed foreign financial asset transaction. The penalty won't be figured on any part of an underpayment on which the fraud penalty (discussed later) is charged.

Negligence or disregard. The term "negligence" includes a failure to make a reasonable attempt to comply with the tax law or to exercise ordinary and reasonable care in preparing a return. Negligence also includes failure to keep adequate books and records. You won't have to pay a negligence penalty if you have a reasonable basis for a position you took.

The term "disregard" includes any careless, reckless, or intentional disregard.

Adequate disclosure. You can avoid the penalty for disregard of rules or regulations if you adequately disclose on your return a position that has at least a reasonable basis. See *Disclosure statement*, later.

This exception won't apply to an item that is attributable to a tax shelter. In addition, it won't apply if you fail to keep adequate books and records, or substantiate items properly.

Substantial understatement of income tax. You understate your tax if the tax shown on your return is less than the correct tax. The understatement is substantial if it is more than the larger of 10% of the correct tax or $5,000. However, the amount of the understatement may be reduced to the extent the understatement is due to:

1. Substantial authority, or
2. Adequate disclosure and a reasonable basis.

If an item on your return is attributable to a tax shelter, there is no reduction for an adequate disclosure. However, there is a reduction for a position with substantial authority, but only if you reasonably believed that your tax treatment was more likely than not the proper treatment.

Substantial authority. Whether there is or was substantial authority for the tax treatment of an item depends on the facts and circumstances. Some of the items that may be considered are court opinions, Treasury regulations, revenue rulings, revenue procedures, and notices and announcements issued by the IRS and published in the Internal Revenue Bulletin that involve the same or similar circumstances as yours.

Disclosure statement. To adequately disclose the relevant facts about your tax

treatment of an item, use Form 8275. You must also have a reasonable basis for treating the item the way you did.

In cases of substantial understatement only, items that meet the requirements of Revenue Procedure 2021-52 (or later update) are considered adequately disclosed on your return without filing Form 8275.

Use Form 8275-R to disclose items or positions contrary to regulations.

Transaction lacking economic substance. For more information on economic substance, see section 7701(o).

Foreign financial asset. For more information on undisclosed foreign financial assets, see section 6662(j).

Reasonable cause. You won't have to pay a penalty if you show a good reason (reasonable cause) for the way you treated an item. You must also show that you acted in good faith. This doesn't apply to a transaction that lacks economic substance.

Filing erroneous claim for refund or credit. You may have to pay a penalty if you file an erroneous claim for refund or credit. The penalty is equal to 20% of the disallowed amount of the claim, unless you can show a reasonable basis for the way you treated an item. However, any disallowed amount due to a transaction that lacks economic substance won't be treated as having a reasonable basis. The penalty won't be figured on any part of the disallowed amount of the claim that relates to the earned income credit or on which the accuracy-related or fraud penalties are charged.

Frivolous tax submission. You may have to pay a penalty of $5,000 if you file a frivolous tax return or other frivolous submissions. A frivolous tax return is one that doesn't include enough information to figure the correct tax or that contains information clearly showing that the tax you reported is substantially incorrect. For more information on frivolous returns, frivolous submissions, and a list of positions that are identified as frivolous, see Notice 2010-33, 2010-17 I.R.B. 609, available at *IRS.gov/irb/2010-17_IRB/ar13.html*.

You will have to pay the penalty if you filed this kind of return or submission based on a frivolous position or a desire to delay or interfere with the administration of federal tax laws. This includes altering or striking out the preprinted language above the space provided for your signature.

This penalty is added to any other penalty provided by law.

Fraud. If there is any underpayment of tax on your return due to fraud, a penalty of 75% of the underpayment due to fraud will be added to your tax.

Joint return. The fraud penalty on a joint return doesn't apply to a spouse unless some part of the underpayment is due to the fraud of that spouse.

Failure to supply SSN. If you don't include your SSN or the SSN of another person where required on a return, statement, or other document, you will be subject to a penalty of $50 for each failure. You will also be subject to a penalty of $50 if you don't give your SSN to another person when it is required on a return, statement, or other document.

For example, if you have a bank account that earns interest, you must give your SSN to the bank. The number must be shown on the Form 1099-INT or other statement the bank sends you. If you don't give the bank your SSN, you will be subject to the $50 penalty. (You may also be subject to "backup" withholding of income tax. See chapter 4.)

You won't have to pay the penalty if you are able to show that the failure was due to reasonable cause and not willful neglect.

Criminal Penalties

You may be subject to criminal prosecution (brought to trial) for actions such as:

1. Tax evasion;
2. Willful failure to file a return, supply information, or pay any tax due;
3. Fraud and false statements;
4. Preparing and filing a fraudulent return; or
5. Identity theft.

Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your SSN has been lost or stolen or you suspect you are a victim of tax-related identity theft, visit *IRS.gov/IdentityTheft* to learn what steps you should take.

For more information, see Pub. 5027.

All taxpayers are now eligible for an Identity Protection Personal Identification Number (IP PIN). For more information, see Pub. 5477. To apply for an IP PIN, go to IRS.gov/IPPIN and use the Get an IP PIN tool.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the National Taxpayer Advocate helpline at 877-777-4778 or 800-829-4059 (TTY/TDD). Deaf or hard-of-hearing individuals can also contact the IRS through the Telecommunications Relay Services (TRS) at *FCC.gov/TRS*.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common form is the act of sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS doesn't initiate contacts with taxpayers via emails. Also, the IRS doesn't request detailed personal information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward the message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, forms, or other IRS property to the Treasury Inspector General for Tax Administration toll free at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission (FTC) at *spam@uce.gov* or report them at *ftc.gov/complaint*. You can contact them at *ftc.gov/idtheft* or 877-IDTHEFT (877-438-4338). If you have been a victim of identity theft, see *IdentityTheft.gov* or Pub. 5027. People who are deaf, hard of hearing, or have a speech disability and who have access to TTY/TDD equipment can call 866-653-4261.

Go to *IRS.gov/IDProtection* to learn more about identity theft and how to reduce your risk.

2.

Filing Status

Introduction

This chapter helps you determine which filing status to use. There are five filing statuses.

- Single.
- Married Filing Jointly.
- Married Filing Separately.
- Head of Household.
- Qualifying Surviving Spouse.

If more than one filing status applies to you, choose the one that will give you the lowest tax.

You must determine your filing status before you can determine whether you must file a tax return (chapter 1), your standard deduction (chapter 10), and your tax (chapter 11). You also use your filing status to determine whether you are eligible to claim certain deductions and credits.

Useful Items

You may want to see:

Publication

- ❑ **501** Dependents, Standard Deduction, and Filing Information
- ❑ **503** Child and Dependent Care Expenses

❏ **519** U.S. Tax Guide for Aliens

❏ **555** Community Property

❏ **559** Survivors, Executors, and Administrators

❏ **596** Earned Income Credit (EIC)

❏ **925** Passive Activity and At-Risk Rules

For these and other useful items, go to *IRS.gov/Forms*.

Marital Status

In general, your filing status depends on whether you are considered unmarried or married.

Unmarried persons. You are considered unmarried for the whole year if, on the last day of your tax year, you are either:

- Unmarried, or
- Legally separated from your spouse under a divorce or separate maintenance decree.

State law governs whether you are married or legally separated under a divorce or separate maintenance decree.

Divorced persons. If you are divorced under a final decree by the last day of the year, you are considered unmarried for the whole year.

Divorce and remarriage. If you obtain a divorce for the sole purpose of filing tax returns as unmarried individuals, and at the time of divorce you intend to and do, in fact, remarry each other in the next tax year, you and your spouse must file as married individuals in both years.

Annulled marriages. If you obtain a court decree of annulment, which holds that no valid marriage ever existed, you are considered unmarried even if you filed joint returns for earlier years. File Form 1040-X, Amended U.S. Individual Income Tax Return, claiming single or head of household status for all tax years that are affected by the annulment and not closed by the statute of limitations for filing a tax return. Generally, for a credit or refund, you must file Form 1040-X within 3 years (including extensions) after the date you filed your original return or within 2 years after the date you paid the tax, whichever is later. If you filed your original return early (for example, March 1), your return is considered filed on the due date (generally April 15). However, if you had an extension to file (for example, until October 15) but you filed earlier and we received it on July 1, your return is considered filed on July 1.

Head of household or qualifying surviving spouse. If you are considered unmarried, you may be able to file as head of household or as qualifying surviving spouse. See *Head of Household* and *Qualifying Surviving Spouse*, later, to see if you qualify.

Married persons. If you are considered married, you and your spouse can file a joint return or separate returns.

Considered married. You are considered married for the whole year if, on the last day of your tax year, you and your spouse meet any one of the following tests.

1. You are married and living together.
2. You are living together in a common law marriage recognized in the state where you now live or in the state where the common law marriage began.
3. You are married and living apart, but not legally separated under a decree of divorce or separate maintenance.
4. You are separated under an interlocutory (not final) decree of divorce.

Spouse died during the year. If your spouse died during the year, you are considered married for the whole year for filing status purposes.

If you didn't remarry before the end of the tax year, you can file a joint return for yourself and your deceased spouse. For the next 2 years, you may be entitled to the special benefits described later under *Qualifying Surviving Spouse*.

If you remarried before the end of the tax year, you can file a joint return with your new spouse. Your deceased spouse's filing status is married filing separately for that year.

Married persons living apart. If you live apart from your spouse and meet certain tests, you may be able to file as head of household even if you aren't divorced or legally separated. If you qualify to file as head of household instead of married filing separately, your standard deduction will be higher. Also, your tax may be lower, and you may be able to claim the earned income credit. See *Head of Household*, later.

Single

Your filing status is single if you are considered unmarried and you don't qualify for another filing status. To determine your marital status, see *Marital Status*, earlier.

Spouse died before January 1, 2022. Your filing status may be single if your spouse died before January 1, 2022, and you didn't remarry before the end of 2022. You may, however, be able to use another filing status that will give you a lower tax. See *Head of Household* and *Qualifying Surviving Spouse*, later, to see if you qualify.

How to file. On Form 1040 or 1040-SR, show your filing status as single by checking the "Single" box on the *Filing Status* line at the top of the form. Use the *Single* column of the Tax Table, or Section A of the Tax Computation Worksheet, to figure your tax.

Married Filing Jointly

You can choose married filing jointly as your filing status if you are considered married and both you and your spouse agree to file a joint return. On a joint return, you and your spouse report your combined income and deduct your combined allowable expenses. You can file a joint return even if one of you had no income or deductions.

If you and your spouse decide to file a joint return, your tax may be lower than your combined tax for the other filing statuses. Also, your standard deduction (if you don't itemize deductions) may be higher, and you may qualify for tax benefits that don't apply to other filing statuses.

How to file. On Form 1040 or 1040-SR, show your filing status as married filing jointly by checking the "Married filing jointly" box on the *Filing Status* line at the top of the form. Use the *Married filing jointly* column of the Tax Table, or Section B of the Tax Computation Worksheet, to figure your tax.

If you and your spouse each have income, you may want to figure your tax both on a joint return and on separate returns (using the filing status of married filing separately). You can choose the method that gives the two of you the lower combined tax unless you are required to file separately.

Spouse died. If your spouse died during the year, you are considered married for the whole year and can choose married filing jointly as your filing status. See *Spouse died during the year*, under *Married persons*, earlier, for more information.

If your spouse died in 2023 before filing a 2022 return, you can choose married filing jointly as your filing status on your 2022 return.

Divorced persons. If you are divorced under a final decree by the last day of the year, you are considered unmarried for the whole year and you can't choose married filing jointly as your filing status.

Filing a Joint Return

Both you and your spouse must include all of your income and deductions on your joint return.

Accounting period. Both of you must use the same accounting period, but you can use different accounting methods. See *Accounting Periods* and *Accounting Methods* in chapter 1.

Joint responsibility. Both of you may be held responsible, jointly and individually, for the tax and any interest or penalty due on your joint return. This means that if one spouse doesn't pay the tax due, the other may have to. Or, if one spouse doesn't report the correct tax, both spouses may be responsible for any additional taxes assessed by the IRS. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse.

You may want to file separately if:

- You believe your spouse isn't reporting all of their income, or
- You don't want to be responsible for any taxes due if your spouse doesn't have enough tax withheld or doesn't pay enough estimated tax.

Divorced taxpayer. You may be held jointly and individually responsible for any tax, interest, and penalties due on a joint return filed before your divorce. This responsibility may apply even if your divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

Relief from joint responsibility. In some cases, one spouse may be relieved of joint responsibility for tax, interest, and penalties on a

joint return for items of the other spouse that were incorrectly reported on the joint return. You can ask for relief no matter how small the liability.

There are three types of relief available.

1. Innocent spouse relief.
2. Separation of liability (available only to joint filers whose spouse has died, or who are divorced, legally separated, or haven't lived together for the 12 months ending on the date the election for this relief is filed).
3. Equitable relief.

You must file Form 8857, Request for Innocent Spouse Relief, to request relief from joint responsibility. Pub. 971, Innocent Spouse Relief, explains these kinds of relief and who may qualify for them.

Signing a joint return. For a return to be considered a joint return, both spouses must generally sign the return.

Spouse died before signing. If your spouse died before signing the return, the executor or administrator must sign the return for your spouse. If neither you nor anyone else has yet been appointed as executor or administrator, you can sign the return for your spouse and enter "Filing as surviving spouse" in the area where you sign the return.

Spouse away from home. If your spouse is away from home, you should prepare the return, sign it, and send it to your spouse to sign so that it can be filed on time.

Injury or disease prevents signing. If your spouse can't sign because of disease or injury and tells you to sign for them, you can sign your spouse's name in the proper space on the return followed by the words "By (your name), Spouse." Be sure to sign in the space provided for your signature. Attach a dated statement, signed by you, to the return. The statement should include the form number of the return you are filing, the tax year, and the reason your spouse can't sign; it should also state that your spouse has agreed to your signing for them.

Signing as guardian of spouse. If you are the guardian of your spouse who is mentally incompetent, you can sign the return for your spouse as guardian.

Spouse in combat zone. You can sign a joint return for your spouse if your spouse can't sign because they are serving in a combat zone (such as the Persian Gulf Area, Serbia, Montenegro, Albania, or Afghanistan), even if you don't have a power of attorney or other statement. Attach a signed statement to your return explaining that your spouse is serving in a combat zone. For more information on special tax rules for persons who are serving in a combat zone, or who are in missing status as a result of serving in a combat zone, see Pub. 3, Armed Forces' Tax Guide.

Power of attorney. In order for you to sign a return for your spouse in any of these cases, you must attach to the return a power of attorney (POA) that authorizes you to sign for your spouse. You can use a POA that states that you have been granted authority to sign the return, or you can use Form 2848. Part I of Form 2848 must state that you are granted authority to sign the return.

Nonresident alien or dual-status alien. Generally, a married couple can't file a joint return if either one is a nonresident alien at any time during the tax year. However, if one spouse was a nonresident alien or dual-status alien who was married to a U.S. citizen or resident alien at the end of the year, the spouses can choose to file a joint return. If you do file a joint return, you and your spouse are both treated as U.S. residents for the entire tax year. See chapter 1 of Pub. 519, U.S. Tax Guide for Aliens.

Married Filing Separately

You can choose married filing separately as your filing status if you are married. This filing status may benefit you if you want to be responsible only for your own tax or if it results in less tax than filing a joint return.

If you and your spouse don't agree to file a joint return, you must use this filing status unless you qualify for head of household status, discussed later.

You may be able to choose head of household filing status if you are considered unmarried because you live apart from your spouse and meet certain tests (explained under *Head of Household*, later). This can apply to you even if you aren't divorced or legally separated. If you qualify to file as head of household, instead of as married filing separately, your tax may be lower, you may be able to claim the earned income credit and certain other benefits, and your standard deduction will be higher. The head of household filing status allows you to choose the standard deduction even if your spouse chooses to itemize deductions. See *Head of Household*, later, for more information.

You will generally pay more combined tax on separate returns than you would on a joint return for the reasons listed under Special Rules*, later. However, unless you are required to file separately, you should figure your tax both ways (on a joint return and on separate returns). This way, you can make sure you are using the filing status that results in the lowest combined tax. When figuring the combined tax of a married couple, you may want to consider state taxes as well as federal taxes.*

How to file. If you file a separate return, you generally report only your own income, credits, and deductions.

Select this filing status by checking the "Married filing separately" box on the *Filing Status* line at the top of Form 1040 or 1040-SR. Enter your spouse's full name and SSN or ITIN in the entry space at the bottom of the *Filing Status* section. If your spouse doesn't have and isn't required to have an SSN or ITIN, enter "NRA" in the space for your spouse's SSN. Use the *Married filing separately* column of the Tax Table, or Section C of the Tax Computation Worksheet, to figure your tax.

Special Rules

If you choose married filing separately as your filing status, the following special rules apply. Because of these special rules, you usually pay more tax on a separate return than if you use another filing status you qualify for.

1. Your tax rate is generally higher than on a joint return.
2. Your exemption amount for figuring the alternative minimum tax is half that allowed on a joint return.
3. You can't take the credit for child and dependent care expenses in most cases, and the amount you can exclude from income under an employer's dependent care assistance program is limited to $2,500 (instead of $5,000 on a joint return). However, if you are legally separated or living apart from your spouse, you may be able to file a separate return and still take the credit. For more information about these expenses, the credit, and the exclusion, see *What's Your Filing Status?* in Pub. 503, Child and Dependent Care Expenses.
4. You can't take the earned income credit, unless you were separated from your spouse at the end of 2022 and meet certain requirements. For more information about these requirements, see *Rule 3—If Your Filing Status is Married Filing Separately, You Must Meet Certain Rules* in Pub. 596, Earned Income Credit (EIC).
5. You can't take the exclusion or credit for adoption expenses in most cases.
6. You can't take the education credits (the American opportunity credit and lifetime learning credit), or the deduction for student loan interest.
7. You can't exclude any interest income from qualified U.S. savings bonds you used for higher education expenses.
8. If you lived with your spouse at any time during the tax year:
   a. You can't claim the credit for the elderly or the disabled, and
   b. You must include in income a greater percentage (up to 85%) of any social security or equivalent railroad retirement benefits you received.
9. The following credits and deductions are reduced at income levels half of those for a joint return:
   a. The child tax credit and the credit for other dependents, and
   b. The retirement savings contributions credit.
10. Your capital loss deduction limit is $1,500 (instead of $3,000 on a joint return).
11. If your spouse itemizes deductions, you can't claim the standard deduction. If you can claim the standard deduction, your basic standard deduction is half of the amount allowed on a joint return.

Adjusted gross income (AGI) limits. If your AGI on a separate return is lower than it would have been on a joint return, you may be able to deduct a larger amount for certain deductions that are limited by AGI, such as medical expenses.

Individual retirement arrangements (IRAs). You may not be able to deduct all or part of your contributions to a traditional IRA if you or your spouse were covered by an employee retirement plan at work during the year. Your deduction is reduced or eliminated if your income is more than a certain amount. This amount is much lower for married individuals who file separately and lived together at any time during the year. For more information, see How Much Can You Deduct in chapter 9.

Rental activity losses. If you actively participated in a passive rental real estate activity that produced a loss, you can generally deduct the loss from your nonpassive income, up to $25,000. This is called a "special allowance." However, married persons filing separate returns who lived together at any time during the year can't claim this special allowance. Married persons filing separate returns who lived apart at all times during the year are each allowed a $12,500 maximum special allowance for losses from passive real estate activities. See *Rental Activities* in Pub. 925, Passive Activity and At-Risk Rules, for more information.

Community property states. If you live in a community property state and file separately, your income may be considered separate income or community income for income tax purposes. Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. See Pub. 555, Community Property, for more information.

Joint Return After Separate Returns

You can change your filing status from a separate return to a joint return by filing an amended return using Form 1040-X.

You can generally change to a joint return any time within 3 years from the due date of the separate return or returns. This doesn't include any extensions. A separate return includes a return filed by you or your spouse claiming married filing separately, single, or head of household filing status.

Separate Returns After Joint Return

Once you file a joint return, you can't choose to file separate returns for that year after the due date of the return.

Exception. A personal representative for a decedent can change from a joint return elected by the surviving spouse to a separate return for the decedent. The personal representative has 1 year from the due date (including extensions) of the return to make the change. See Pub. 559, Survivors, Executors, and Administrators, for more information on filing a return for a decedent.

Head of Household

You may be able to file as head of household if you meet all of the following requirements.

1. You are unmarried or considered unmarried on the last day of the year. See Marital Status, earlier, and Considered Unmarried, later.
2. You paid more than half of the cost of keeping up a home for the year.
3. A qualifying person lived with you in the home for more than half the year (except for temporary absences, such as school). However, if the qualifying person is your dependent parent, your dependent parent doesn't have to live with you. See Special rule for parent, later, under *Qualifying Person*.

If you qualify to file as head of household, your tax rate will usually be lower than the rates for single or married filing separately. You will also receive a higher standard deduction than if you file as single or married filing separately.

How to file. Indicate your choice of this filing status by checking the "Head of household" box on the *Filing Status* line at the top of Form 1040 or 1040-SR. If the child who qualifies you for this filing status isn't claimed as your dependent in the *Dependents* section of Form 1040 or 1040-SR, enter the child's name in the entry space at the bottom of the *Filing Status* section. Use the *Head of a household* column of the Tax Table, or Section D of the Tax Computation Worksheet, to figure your tax.

Considered Unmarried

To qualify for head of household status, you must be either unmarried or considered unmarried on the last day of the year. You are considered unmarried on the last day of the tax year if you meet all of the following tests.

1. You file a separate return. A separate return includes a return claiming married filing separately, single, or head of household filing status.
2. You paid more than half of the cost of keeping up your home for the tax year.
3. Your spouse didn't live in your home during the last 6 months of the tax year. Your spouse is considered to live in your home even if your spouse is temporarily absent due to special circumstances. See Temporary absences under *Qualifying Person*, later.
4. Your home was the main home of your child, stepchild, or foster child for more than half the year. (See Home of qualifying person under *Qualifying Person*, later, for rules applying to a child's birth, death, or temporary absence during the year.)
5. You must be able to claim the child as a dependent. However, you meet this test if you can't claim the child as a dependent only because the noncustodial parent can claim the child using the rules described in Children of divorced or separated parents (or parents who live apart) under *Qualifying Child* in chapter 3, or referred to in Support Test for Children of Divorced or Separated Parents (or Parents Who Live Apart) under *Qualifying Relative* in chapter 3. The general rules for claiming a child as a dependent are explained in chapter 3.

If you were considered married for part of the year and lived in a community property state (listed earlier under Married Filing Separately*), special rules may apply in determining your income and expenses. See Pub. 555 for more information.*

Nonresident alien spouse. You are considered unmarried for head of household purposes if your spouse was a nonresident alien at any time during the year and you don't choose to treat your nonresident spouse as a resident alien. However, your spouse isn't a qualifying person for head of household purposes. You must have another qualifying person and meet the other tests to be eligible to file as head of household.

Choice to treat spouse as resident. You are considered married if you choose to treat your spouse as a resident alien. See chapter 1 of Pub. 519.

Keeping Up a Home

To qualify for head of household status, you must pay more than half of the cost of keeping up a home for the year. You can determine whether you paid more than half of the cost of keeping up a home by using Worksheet 2-1.

Costs you include. Include in the cost of keeping up a home expenses, such as rent, mortgage interest, real estate taxes, insurance on the home, repairs, utilities, and food eaten in the home.

Costs you don't include. Don't include the costs of clothing, education, medical treatment, vacations, life insurance, or transportation. Also don't include the value of your services or those of a member of your household.

Qualifying Person

See Table 2-1 to see who is a qualifying person. Any person not described in Table 2-1 isn't a qualifying person.

Example 1—Child. Your unmarried child lived with you all year and was 18 years old at the end of the year. Your child didn't provide more than half of their own support and doesn't meet the tests to be a qualifying child of anyone else. As a result, this child is your qualifying child (see Qualifying Child in chapter 3) and, because this child is single, your qualifying person for head of household purposes.

Example 2—Child who isn't qualifying person. The facts are the same as in *Example 1*, except your child was 25 years old at the end of the year and your child's gross income was $5,000. Because your child doesn't meet the age test (explained under *Qualifying Child*

Worksheet 2-1. **Cost of Keeping Up a Home**

Keep for Your Records

	Amount You Paid	Total Cost
Property taxes	$	$
Mortgage interest expense		
Rent		
Utility charges		
Repairs/Maintenance		
Property insurance		
Food eaten in the home		
Other household expenses		
Totals	$	$
Minus total **amount you paid**		(__________)
Amount others paid		$
If the total amount you paid is more than the amount others paid, you meet the requirement of paying more than half of the cost of keeping up the home.		

in chapter 3), your child isn't your qualifying child. Because the child doesn't meet the gross income test (explained under *Qualifying Relative* in chapter 3), the child isn't your qualifying relative. As a result, this child isn't your qualifying person for head of household purposes.

Example 3—Friend. Your friend lived with you all year. Even though your friend may be your qualifying relative if the gross income and support tests (explained in chapter 3) are met, your friend isn't your qualifying person for head of household purposes because your friend isn't related to you in one of the ways listed under *Relatives who don't have to live with you* in chapter 3. See Table 2-1.

Example 4—Friend's child. The facts are the same as in *Example 3*, except your friend's 10-year-old child also lived with you all year. Your friend's child isn't your qualifying child and, because the child is your friend's qualifying child, your friend's child isn't your qualifying relative (see *Not a Qualifying Child Test* in chapter 3). As a result, your friend's child isn't your qualifying person for head of household purposes.

Home of qualifying person. Generally, the qualifying person must live with you for more than half the year.

Special rule for parent. If your qualifying person is your parent, you may be eligible to file as head of household even if your parent doesn't live with you. However, you must be able to claim your parent as a dependent. Also, you must pay more than half of the cost of keeping up a home that was the main home for the entire year for your parent.

If you pay more than half of the cost of keeping your parent in a rest home or home for the elderly, that counts as paying more than half of the cost of keeping up your parent's main home.

Death or birth. You may be eligible to file as head of household even if the individual who qualifies you for this filing status is born or dies during the year. If the individual is your qualifying child, the child must have lived with you for more than half the part of the year the child was alive. If the individual is anyone else, see Pub. 501 for more information.

Temporary absences. You and your qualifying person are considered to live together even if one or both of you are temporarily absent from your home due to special circumstances, such as illness, education, business, vacation, military service, or detention in a juvenile facility. It must be reasonable to assume the absent person will return to the home after the temporary absence. You must continue to keep up the home during the absence.

Kidnapped child. You may be eligible to file as head of household even if the child who is your qualifying person has been kidnapped. For more information, see Pub. 501.

Qualifying Surviving Spouse

If your spouse died in 2022, you can use married filing jointly as your filing status for 2022 if you otherwise qualify to use that status. The year of death is the last year for which you can file jointly with your deceased spouse. See *Married Filing Jointly*, earlier.

You may be eligible to use qualifying surviving spouse as your filing status for 2 years following the year your spouse died. For example, if your spouse died in 2021, and you haven't remarried, you may be able to use this filing status for 2022 and 2023.

This filing status entitles you to use joint return tax rates and the highest standard deduction amount (if you don't itemize deductions). It doesn't entitle you to file a joint return.

How to file. Indicate your choice of this filing status by checking the "Qualifying surviving spouse" box on the *Filing Status* line at the top of Form 1040 or 1040-SR. If the child who qualifies you for this filing status isn't claimed as your dependent in the *Dependents* section of Form 1040 or 1040-SR, enter the child's name in the entry space at the bottom of the *Filing Status* section. Use the *Married filing jointly* column of the Tax Table, or Section B of the Tax Computation Worksheet, to figure your tax.

Eligibility rules. You are eligible to file your 2022 return as a qualifying surviving spouse if you meet all of the following tests.

- You were entitled to file a joint return with your spouse for the year your spouse died. It doesn't matter whether you actually filed a joint return.
- Your spouse died in 2020 or 2021 and you didn't remarry before the end of 2022.
- You have a child or stepchild (not a foster child) whom you can claim as a dependent or could claim as a dependent except that, for 2022:
  a. The child had gross income of $4,400 or more,
  b. The child filed a joint return, or
  c. You could be claimed as a dependent on someone else's return.

  If the child isn't claimed as your dependent in the *Dependents* section on Form 1040 or 1040-SR, enter the child's name in the entry space at the bottom of the *Filing Status* section. If you don't enter the name, it will take us longer to process your return.
- This child lived in your home all year, except for temporary absences. See *Temporary absences*, earlier, under *Head of Household*. There are also exceptions, described later, for a child who was born or died during the year and for a kidnapped child.
- You paid more than half of the cost of keeping up a home for the year. See *Keeping Up a Home*, earlier, under *Head of Household*.

Example. A's spouse died in 2020. A hasn't remarried. During 2021 and 2022, A continued to keep up a home for A and A's child, who lives with A and whom A can claim as a dependent. For 2020, A was entitled to file a joint return for A and A's deceased spouse. For 2021 and 2022, A can file as qualifying surviving spouse. After 2022, A can file as head of household if A qualifies.

Death or birth. You may be eligible to file as a qualifying surviving spouse if the child who qualifies you for this filing status is born or dies during the year. You must have provided more than half of the cost of keeping up a home that was the child's main home during the entire part of the year the child was alive.

Kidnapped child. You may be eligible to file as a qualifying surviving spouse even if the child who qualifies you for this filing status has been kidnapped. See Pub. 501 for more information.

As mentioned earlier, this filing status is available for only 2 years following the year your spouse died.

Table 2-1. **Who Is a Qualifying Person Qualifying You To File as Head of Household?**[1]

Caution. See the text of this chapter for the other requirements you must meet to claim head of household filing status.

IF the person is your . . .	AND . . .	THEN that person is . . .
qualifying child (such as a son, daughter, or grandchild who lived with you more than half the year and meets certain other tests)[2]	the child is single	a qualifying person, whether or not the child meets the *Citizen or Resident Test* in chapter 3.
	the child is married **and** you can claim the child as a dependent	a qualifying person.
	the child is married **and** you can't claim the child as a dependent	not a qualifying person.[3]
qualifying relative[4] who is your father or mother	you can claim your parent as a dependent[5]	a qualifying person.[6]
	you can't claim your parent as a dependent	not a qualifying person.
qualifying relative[4] other than your father or mother (such as a grandparent, brother, or sister who meets certain tests)	your relative lived with you more than half the year, **and** your relative is related to you in one of the ways listed under *Relatives who don't have to live with you* in chapter 3 **and** you can claim your relative as a dependent[5]	a qualifying person.
	your relative didn't live with you more than half the year	not a qualifying person.
	your relative isn't related to you in one of the ways listed under *Relatives who don't have to live with you* in chapter 3 **and** is your qualifying relative only because your relative lived with you all year as a member of your household	not a qualifying person.
	you can't claim your relative as a dependent	not a qualifying person.

[1] A person can't qualify more than one taxpayer to use the head of household filing status for the year.

[2] The term qualifying child is defined in chapter 3. **Note.** If you are a noncustodial parent, the term "qualifying child" for head of household filing status doesn't include a child who is your qualifying child only because of the rules described under *Children of divorced or separated parents (or parents who live apart)* under *Qualifying Child* in chapter 3. If you are the custodial parent and those rules apply, the child is generally your qualifying child for head of household filing status even though the child isn't a qualifying child you can claim as a dependent.

[3] This person is a qualifying person if the only reason you can't claim the person as a dependent is that you, or your spouse if filing jointly, can be claimed as a dependent on another taxpayer's return.

[4] The term qualifying relative is defined in chapter 3.

[5] If you can claim a person as a dependent only because of a multiple support agreement, that person isn't a qualifying person. See *Multiple Support Agreement* in chapter 3.

[6] See *Special rule for parent* under *Qualifying Person*, earlier.

3.

Dependents

Introduction

This chapter discusses the following topics.

- Dependents—You can generally claim your qualifying child or qualifying relative as a dependent.
- Social security number (SSN) requirement for dependents—You must list the SSN of any person you claim as a dependent.

How to claim dependents. On page 1 of your Form 1040 or 1040-SR, enter the names of your dependents in the *Dependents* section.

Useful Items

You may want to see:

Publication

- ❑ **501** Dependents, Standard Deduction, and Filing Information
- ❑ **503** Child and Dependent Care Expenses
- ❑ **526** Charitable Contributions

Form (and Instructions)

- ❑ **2120** Multiple Support Declaration
- ❑ **8332** Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

Dependents

The term "dependent" means:

- A qualifying child, or
- A qualifying relative.

The terms "qualifying child" and "qualifying relative" are defined later.

All the requirements for claiming a dependent are summarized in Table 3-1.

Housekeepers, maids, or servants. If these people work for you, you can't claim them as dependents.

Child tax credit. You may be entitled to a child tax credit for each qualifying child who was under age 17 at the end of the year if you claimed that child as a dependent. For more information, see chapter 14.

Table 3-1. **Overview of the Rules for Claiming a Dependent**

Caution. This table is only an overview of the rules. For details, see the rest of this chapter.

- You can't claim any dependents if you (or your spouse, if filing jointly) could be claimed as a dependent by another taxpayer.
- You can't claim a married person who files a joint return as a dependent unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid.
- You can't claim a person as a dependent unless that person is a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico.[1]
- You can't claim a person as a dependent unless that person is your **qualifying child** or **qualifying relative.**

Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
1. The child must be your son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of them.	1. The person can't be your qualifying child or the qualifying child of any other taxpayer.
2. The child must be (a) under age 19 at the end of the year and younger than you (or your spouse, if filing jointly); (b) under age 24 at the end of the year, a student, and younger than you (or your spouse, if filing jointly); or (c) any age if permanently and totally disabled.	2. The person either (a) must be related to you in one of the ways listed under *Relatives who don't have to live with you*, or (b) must live with you all year as a member of your household[2] (and your relationship must not violate local law).
3. The child must have lived with you for more than half of the year.[2]	3. The person's gross income for the year must be less than $4,400.[3]
4. The child must not have provided more than half of the child's own support for the year.	4. You must provide more than half of the person's total support for the year.[4]
5. The child must not be filing a joint return for the year (unless that return is filed only to get a refund of income tax withheld or estimated tax paid).	
If the child meets the rules to be a qualifying child of more than one person, generally only one person can actually treat the child as a qualifying child. See *Qualifying Child of More Than One Person*, later, to find out which person is the person entitled to claim the child as a qualifying child.	

[1] There is an exception for certain adopted children.

[2] There are exceptions for temporary absences, children who were born or died during the year, children of divorced or separated parents (or parents who live apart), and kidnapped children.

[3] There is an exception if the person is disabled and has income from a sheltered workshop.

[4] There are exceptions for multiple support agreements, children of divorced or separated parents (or parents who live apart), and kidnapped children.

Credit for other dependents. You may be entitled to a credit for other dependents for each qualifying child who does not qualify you for the child tax credit and for each qualifying relative. For more information, see chapter 14.

Exceptions

Even if you have a qualifying child or qualifying relative, you can claim that person as a dependent only if these three tests are met.

1. Dependent taxpayer test.
2. Joint return test.
3. Citizen or resident test.

These three tests are explained in detail here.

Dependent Taxpayer Test

If you can be claimed as a dependent by another taxpayer, you can't claim anyone else as a dependent. Even if you have a qualifying child or qualifying relative, you can't claim that person as a dependent.

If you are filing a joint return and your spouse can be claimed as a dependent by another taxpayer, you and your spouse can't claim any dependents on your joint return.

Joint Return Test

You generally can't claim a married person as a dependent if that person files a joint return.

Exception. You can claim a person as a dependent who files a joint return if that person and that person's spouse file the joint return only to claim a refund of income tax withheld or estimated tax paid.

Example 1—Child files joint return. You supported your 18-year-old child who lived with you all year while your child's spouse was in the Armed Forces. Your child's spouse earned $35,000 for the year. The couple files a joint return. You can't claim your child as a dependent.

Example 2—Child files joint return only as claim for refund of withheld tax. Your 18-year-old child and your child's 17-year-old spouse had $800 of wages from part-time jobs and no other income. They lived with you all year. Neither is required to file a tax return. They don't have a child. Taxes were taken out of their pay, so they filed a joint return only to get a refund of the withheld taxes. The exception to the joint return test applies, so you aren't disqualified from claiming each of them as a dependent just because they file a joint return. You can claim each of them as a dependent if all the other tests to do so are met.

Example 3—Child files joint return to claim American opportunity credit. The facts are the same as in *Example 2*, except no taxes were taken out of your child's pay or your child's spouse's pay. However, they file a joint return to claim an American opportunity credit of $124 and get a refund of that amount. Because claiming the American opportunity credit is their reason for filing the return, they aren't filing it only to get a refund of income tax withheld or estimated tax paid. The exception to the joint return test doesn't apply, so you can't claim either of them as a dependent.

Citizen or Resident Test

You generally can't claim a person as a dependent unless that person is a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico. However, there is an exception for certain adopted children, as explained next.

Exception for adopted child. If you are a U.S. citizen or U.S. national who has legally adopted a child who isn't a U.S. citizen, U.S. resident alien, or U.S. national, this test is met if the child lived with you as a member of your household all year. This exception also applies if the child was lawfully placed with you for legal adoption and the child lived with you for the rest of the year after placement.

Child's place of residence. Children are usually citizens or residents of the country of their parents.

If you were a U.S. citizen when your child was born, the child may be a U.S. citizen and meet this test even if the other parent was a nonresident alien and the child was born in a foreign country.

Foreign students' place of residence. Foreign students brought to this country under a qualified international education exchange program and placed in American homes for a temporary period generally aren't U.S. residents and don't meet this test. You can't claim them as dependents. However, if you provided a home for a foreign student, you may be able to take a charitable contribution deduction. See *Expenses Paid for Student Living With You* in Pub. 526, Charitable Contributions.

U.S. national. A U.S. national is an individual who, although not a U.S. citizen, owes his or her allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who chose to become U.S. nationals instead of U.S. citizens.

Qualifying Child

Five tests must be met for a child to be your qualifying child. The five tests are:

1. Relationship,
2. Age,
3. Residency,
4. Support, and
5. Joint return.

These tests are explained next.

If a child meets the five tests to be the qualifying child of more than one person, there are rules you must use to determine which person can actually treat the child as a qualifying child. See Qualifying Child of More Than One Person, later.

Relationship Test

To meet this test, a child must be:

- Your son, daughter, stepchild, or foster child, or a descendant (for example, your grandchild) of any of them; or
- Your brother, sister, half brother, half sister, stepbrother, or stepsister, or a descendant (for example, your niece or nephew) of any of them.

Adopted child. An adopted child is always treated as your own child. The term "adopted child" includes a child who was lawfully placed with you for legal adoption.

Foster child. A foster child is an individual who is placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Age Test

To meet this test, a child must be:

- Under age 19 at the end of the year and younger than you (or your spouse if filing jointly);
- A student under age 24 at the end of the year and younger than you (or your spouse if filing jointly); or
- Permanently and totally disabled at any time during the year, regardless of age.

Example. Your child turned 19 on December 10. Unless this child was permanently and totally disabled or a student, this child doesn't meet the age test because, at the end of the year, this child wasn't **under** age 19.

Child must be younger than you or spouse. To be your qualifying child, a child who isn't permanently and totally disabled must be younger than you. However, if you are married filing jointly, the child must be younger than you or your spouse but doesn't have to be younger than both of you.

Example 1—Child not younger than you or spouse. Your 23-year-old sibling, who is a student and unmarried, lives with you and your spouse, who provide more than half of your sibling's support. Your sibling isn't disabled. Both you and your spouse are 21 years old, and you file a joint return. Your sibling isn't your qualifying child because your sibling isn't younger than you or your spouse.

Example 2—Child younger than your spouse but not younger than you. The facts are the same as in *Example 1*, except your spouse is 25 years old. Because your sibling is younger than your spouse, and you and your spouse are filing a joint return, your sibling is your qualifying child, even though your sibling isn't younger than you.

Student defined. To qualify as a student, your child must be, during some part of each of any 5 calendar months of the year:

1. A full-time student at a school that has a regular teaching staff and course of study, and a regularly enrolled student body at the school; or
2. A student taking a full-time, on-farm training course given by a school described in (1), or by a state, county, or local government agency.

The 5 calendar months don't have to be consecutive.

Full-time student. A full-time student is a student who is enrolled for the number of hours or courses the school considers to be full-time attendance.

School defined. A school can be an elementary school; a junior or senior high school; a college; a university; or a technical, trade, or mechanical school. However, an on-the-job training course, correspondence school, or school offering courses only through the Internet doesn't count as a school.

Vocational high school students. Students who work on "co-op" jobs in private industry as a part of a school's regular course of classroom and practical training are considered full-time students.

Permanently and totally disabled. Your child is permanently and totally disabled if both of the following apply.

- Your child can't engage in any substantial gainful activity because of a physical or mental condition.
- A doctor determines the condition has lasted or can be expected to last continuously for at least a year or can lead to death.

Residency Test

To meet this test, your child must have lived with you for more than half the year. There are exceptions for temporary absences, children who were born or died during the year, kidnapped children, and children of divorced or separated parents.

Temporary absences. Your child is considered to have lived with you during periods of time when one of you, or both, is temporarily absent due to special circumstances such as:

- Illness,
- Education,
- Business,
- Vacation,

- Military service, or
- Detention in a juvenile facility.

Death or birth of child. A child who was born or died during the year is treated as having lived with you more than half of the year if your home was the child's home more than half of the time the child was alive during the year. The same is true if the child lived with you more than half the year except for any required hospital stay following birth.

Child born alive. You may be able to claim as a dependent a child born alive during the year, even if the child lived only for a moment. State or local law must treat the child as having been born alive. There must be proof of a live birth shown by an official document, such as a birth certificate. The child must be your qualifying child or qualifying relative, and all the other tests to claim the child as a dependent must be met.

Stillborn child. You can't claim a stillborn child as a dependent.

Kidnapped child. You may be able to treat your child as meeting the residency test even if the child has been kidnapped. See Pub. 501 for details.

Children of divorced or separated parents (or parents who live apart). In most cases, because of the residency test, a child of divorced or separated parents is the qualifying child of the custodial parent. However, the child will be treated as the qualifying child of the noncustodial parent if all four of the following statements are true.

1. The parents:
   a. Are divorced or legally separated under a decree of divorce or separate maintenance;
   b. Are separated under a written separation agreement; or
   c. Lived apart at all times during the last 6 months of the year, whether or not they are or were married.
2. The child received over half of the child's support for the year from the parents.
3. The child is in the custody of one or both parents for more than half of the year.
4. Either of the following statements is true.
   a. The custodial parent signs a written declaration, discussed later, that they won't claim the child as a dependent for the year, and the noncustodial parent attaches this written declaration to their return. (If the decree or agreement went into effect after 1984 and before 2009, see Post-1984 and pre-2009 divorce decree or separation agreement, later. If the decree or agreement went into effect after 2008, see Post-2008 divorce decree or separation agreement, later.)
   b. A pre-1985 decree of divorce or separate maintenance or written separation agreement that applies to 2022 states that the noncustodial parent can claim the child as a dependent, the decree or agreement wasn't changed after 1984 to say the noncustodial parent can't claim the child as a dependent, and the noncustodial parent provides at least $600 for the child's support during the year.

If statements (1) through (4) are all true, only the noncustodial parent can:

- Claim the child as a dependent; and
- Claim the child as a qualifying child for the child tax credit or credit for other dependents.

However, this doesn't allow the noncustodial parent to claim head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the earned income credit. See Applying the tiebreaker rules to divorced or separated parents (or parents who live apart), later.

Example—Earned income credit. Even if statements (1) through (4) are all true and the custodial parent signs Form 8332 or a substantially similar statement that the custodial parent won't claim the child as a dependent for 2022, this doesn't allow the noncustodial parent to claim the child as a qualifying child for the earned income credit. The custodial parent or another taxpayer, if eligible, can claim the child for the earned income credit.

Custodial parent and noncustodial parent. The custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent.

If the parents divorced or separated during the year and the child lived with both parents before the separation, the custodial parent is the one with whom the child lived for the greater number of nights during the rest of the year.

A child is treated as living with a parent for a night if the child sleeps:

- At that parent's home, whether or not the parent is present; or
- In the company of the parent, when the child doesn't sleep at a parent's home (for example, the parent and child are on vacation together).

Equal number of nights. If the child lived with each parent for an equal number of nights during the year, the custodial parent is the parent with the higher AGI.

December 31. The night of December 31 is treated as part of the year in which it begins. For example, the night of December 31, 2022, is treated as part of 2022.

Emancipated child. If a child is emancipated under state law, the child is treated as not living with either parent. See *Examples* 5 and 6.

Absences. If a child wasn't with either parent on a particular night (because, for example, the child was staying at a friend's house), the child is treated as living with the parent with whom the child normally would have lived for that night, except for the absence. But if it can't be determined with which parent the child normally would have lived or if the child wouldn't have lived with either parent that night, the child is treated as not living with either parent that night.

Parent works at night. If, due to a parent's nighttime work schedule, a child lives for a greater number of days, but not nights, with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as living at the primary residence registered with the school.

Example 1—Child lived with one parent for a greater number of nights. You and your child's other parent are divorced. In 2022, your child lived with you 210 nights and with the other parent 155 nights. You are the custodial parent.

Example 2—Child is away at camp. In 2022, your child lives with each parent for alternate weeks. In the summer, your child spends 6 weeks at summer camp. During those 6 weeks, your child is treated as living with you for 3 weeks and with your child's other parent, your ex-spouse, for 3 weeks because this is how long the child would have lived with each parent if the child had not attended summer camp.

Example 3—Child lived same number of nights with each parent. Your child lived with you 180 nights during the year and lived the same number of nights with the child's other parent, your ex-spouse. Your AGI is $40,000. Your ex-spouse's AGI is $25,000. You are treated as your child's custodial parent because you have the higher AGI.

Example 4—Child is at parent's home but with other parent. Your child normally lives with you during the week and with the child's other parent, your ex-spouse, every other weekend. You become ill and are hospitalized. The other parent lives in your home with your child for 10 consecutive days while you are in the hospital. Your child is treated as living with you during this 10-day period because your child was living in your home.

Example 5—Child emancipated in May. Your child turned 18 in May 2022 and became emancipated under the law of the state where your child lives. As a result, your child isn't considered in the custody of either parent for more than half of the year. The special rule for children of divorced or separated parents doesn't apply.

Example 6—Child emancipated in August. Your child lives with you from January 1, 2022, until May 31, 2022, and lives with the child's other parent, your ex-spouse, from June 1, 2022, through the end of the year. Your child turns 18 and is emancipated under state law on August 1, 2022. Because your child is treated as not living with either parent beginning on August 1, your child is treated as living with you the greater number of nights in 2022. You are the custodial parent.

Written declaration. The custodial parent must use either Form 8332 or a similar statement (containing the same information required by the form) to make the written declaration to release a claim to an exemption for a child to the noncustodial parent. Although the exemption amount is zero for tax year 2022, this release allows the noncustodial parent to claim the child tax credit, additional child tax credit,

and credit for other dependents, if applicable, for the child. The noncustodial parent must attach a copy of the form or statement to their tax return.

The release can be for 1 year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration.

Post-1984 and pre-2009 divorce decree or separation agreement. If the divorce decree or separation agreement went into effect after 1984 and before 2009, the noncustodial parent may be able to attach certain pages from the decree or agreement instead of Form 8332. The decree or agreement must state all three of the following.

1. The noncustodial parent can claim the child as a dependent without regard to any condition, such as payment of support.
2. The custodial parent won't claim the child as a dependent for the year.
3. The years for which the noncustodial parent, rather than the custodial parent, can claim the child as a dependent.

The noncustodial parent must attach all of the following pages of the decree or agreement to their tax return.

- The cover page (write the other parent's SSN on this page).
- The pages that include all of the information identified in items (1) through (3) above.
- The signature page with the other parent's signature and the date of the agreement.

Post-2008 divorce decree or separation agreement. The noncustodial parent can't attach pages from the decree or agreement instead of Form 8332 if the decree or agreement went into effect after 2008. The custodial parent must sign either Form 8332 or a similar statement whose only purpose is to release the custodial parent's claim to an exemption for a child, and the noncustodial parent must attach a copy to their return. The form or statement must release the custodial parent's claim to the child without any conditions. For example, the release must not depend on the noncustodial parent paying support.

The noncustodial parent must attach the required information even if it was filed with a return in an earlier year.

Revocation of release of claim to an exemption. The custodial parent can revoke a release of claim to an exemption. For the revocation to be effective for 2022, the custodial parent must have given (or made reasonable efforts to give) written notice of the revocation to the noncustodial parent in 2021 or earlier. The custodial parent can use Part III of Form 8332 for this purpose and must attach a copy of the revocation to their return for each tax year the custodial parent claims the child as a dependent as a result of the revocation.

Remarried parent. If you remarry, the support provided by your new spouse is treated as provided by you.

Parents who never married. This special rule for divorced or separated parents also applies to parents who never married and who lived apart at all times during the last 6 months of the year.

Support Test (To Be a Qualifying Child)

To meet this test, the child can't have provided more than half of the child's own support for the year.

This test is different from the support test to be a qualifying relative, which is described later. However, to see what is or isn't support, see *Support Test (To Be a Qualifying Relative)*, later. If you aren't sure whether a child provided more than half of their own support, you may find Worksheet 3-1 helpful.

Example. You provided $4,000 toward your 16-year-old child's support for the year and the child provided $6,000. Your child provided more than half their own support. The child isn't your qualifying child.

Foster care payments and expenses. Payments you receive for the support of a foster child from a child placement agency are considered support provided by the agency. Similarly, payments you receive for the support of a foster child from a state or county are considered support provided by the state or county.

If you aren't in the trade or business of providing foster care and your unreimbursed out-of-pocket expenses in caring for a foster child were mainly to benefit an organization qualified to receive deductible charitable contributions, the expenses are deductible as charitable contributions but aren't considered support you provided. For more information about the deduction for charitable contributions, see Pub. 526. If your unreimbursed expenses aren't deductible as charitable contributions, they may qualify as support you provided.

If you are in the trade or business of providing foster care, your unreimbursed expenses aren't considered support provided by you.

Example 1. L, a foster child, lived with married couple, A and B Smith for the last 3 months of the year. The Smiths cared for L because they wanted to adopt L (although L hadn't been placed with them for adoption). They didn't care for L as a trade or business or to benefit the agency that placed L in their home. The Smiths' unreimbursed expenses aren't deductible as charitable contributions but are considered support they provided for L.

Example 2. You provided $3,000 toward your 10-year-old foster child's support for the year. The state government provided $4,000, which is considered support provided by the state, not by the child. See *Support provided by the state (welfare, food stamps, housing, etc.)*, later. Your foster child didn't provide more than half of their own support for the year.

Scholarships. A scholarship received by a child who is a student isn't taken into account in determining whether the child provided more than half of their own support.

Joint Return Test (To Be a Qualifying Child)

To meet this test, the child can't file a joint return for the year.

Exception. An exception to the joint return test applies if your child and the child's spouse file a joint return only to claim a refund of income tax withheld or estimated tax paid.

Example 1—Child files joint return. You supported your 18-year-old child who lived with you all year while your child's spouse was in the Armed Forces. Your child's spouse earned $35,000 for the year. The couple files a joint return so this child isn't your qualifying child.

Example 2—Child files joint return only as a claim for refund of withheld tax. Your 18-year-old child and your child's 17-year-old spouse had $800 of wages from part-time jobs and no other income. They lived with you all year. Neither is required to file a tax return. They don't have a child. Taxes were taken out of their pay so they filed a joint return only to get a refund of the withheld taxes. The exception to the joint return test applies, so this child may be your qualifying child if all the other tests are met.

Example 3—Child files joint return to claim American opportunity credit. The facts are the same as in *Example 2*, except no taxes were taken out of either spouse's pay. However, they file a joint return to claim an American opportunity credit of $124 and get a refund of that amount. Because claiming the American opportunity credit is their reason for filing the return, they aren't filing it only to get a refund of income tax withheld or estimated tax paid. The exception to the joint return test doesn't apply, so this child isn't your qualifying child.

Qualifying Child of More Than One Person

If your qualifying child isn't a qualifying child of anyone else, this topic doesn't apply to you and you don't need to read about it. This is also true if your qualifying child isn't a qualifying child of anyone else except your spouse with whom you plan to file a joint return.

If a child is treated as the qualifying child of the noncustodial parent under the rules for children of divorced or separated parents (or parents who live apart) described earlier, see Applying the tiebreaker rules to divorced or separated parents (or parents who live apart), later.

Sometimes, a child meets the relationship, age, residency, support, and joint return tests to be a qualifying child of more than one person. Although the child is a qualifying child of each of these persons, generally only one person can actually treat the child as a qualifying child to take all of the following tax benefits (provided the person is eligible for each benefit).

1. The child tax credit, credit for other dependents, or additional child tax credit.

Worksheet 3-1. **Worksheet for Determining Support** *Keep for Your Records*

	Funds Belonging to the Person You Supported		
1.	Enter the total funds belonging to the person you supported, including income received (taxable and nontaxable) and amounts borrowed during the year, plus the amount in savings and other accounts at the beginning of the year. Don't include funds provided by the state; include those amounts on line 23 instead	**1.**	
2.	Enter the amount on line 1 that was used for the person's support	**2.**	
3.	Enter the amount on line 1 that was used for other purposes	**3.**	
4.	Enter the total amount in the person's savings and other accounts at the end of the year	**4.**	
5.	Add lines 2 through 4. (This amount should equal line 1.)	**5.**	
	Expenses for Entire Household (where the person you supported lived)		
6.	Lodging (complete line 6a or 6b):		
	a. Enter the total rent paid	**6a.**	
	b. Enter the fair rental value of the home. If the person you supported owned the home, also include this amount in line 21	**6b.**	
7.	Enter the total food expenses	**7.**	
8.	Enter the total amount of utilities (heat, light, water, etc., not included in line 6a or 6b)	**8.**	
9.	Enter the total amount of repairs (not included in line 6a or 6b)	**9.**	
10.	Enter the total of other expenses. Don't include expenses of maintaining the home, such as mortgage interest, real estate taxes, and insurance	**10.**	
11.	Add lines 6a through 10. These are the total household expenses	**11.**	
12.	Enter total number of persons who lived in the household	**12.**	
	Expenses for the Person You Supported		
13.	Divide line 11 by line 12. This is the person's share of the household expenses	**13.**	
14.	Enter the person's total clothing expenses	**14.**	
15.	Enter the person's total education expenses	**15.**	
16.	Enter the person's total medical and dental expenses not paid for or reimbursed by insurance	**16.**	
17.	Enter the person's total travel and recreation expenses	**17.**	
18.	Enter the total of the person's other expenses	**18.**	
19.	Add lines 13 through 18. This is the total cost of the person's support for the year	**19.**	
	Did the Person Provide More Than Half of the Person's Own Support?		
20.	Multiply line 19 by 50% (0.50)	**20.**	
21.	Enter the amount from line 2, plus the amount from line 6b if the person you supported owned the home. This is the amount the person provided for their own support	**21.**	
22.	Is line 21 more than line 20?		

☐ **No.** You meet the support test for this person to be your qualifying child. If this person also meets the other tests to be a qualifying child, stop here; don't complete lines 23–26. Otherwise, go to line 23 and fill out the rest of the worksheet to determine if this person is your qualifying relative.

☐ **Yes.** You don't meet the support test for this person to be either your qualifying child or your qualifying relative. **Stop here.**

	Did You Provide More Than Half?		
23.	Enter the amount others provided for the person's support. Include amounts provided by state, local, and other welfare societies or agencies. Don't include any amounts included on line 1	**23.**	
24.	Add lines 21 and 23	**24.**	
25.	Subtract line 24 from line 19. This is the amount you provided for the person's support	**25.**	
26.	Is line 25 more than line 20?		

☐ **Yes.** You meet the support test for this person to be your qualifying relative.

☐ **No.** You don't meet the support test for this person to be your qualifying relative. You can't claim this person as a dependent unless you can do so under a multiple support agreement, the support test for children of divorced or separated parents, or the special rule for kidnapped children. See Multiple Support Agreement or Support Test for Children of Divorced or Separated Parents (or Parents Who Live Apart), or Kidnapped child under *Qualifying Relative*.

2. Head of household filing status.
3. The credit for child and dependent care expenses.
4. The exclusion from income for dependent care benefits.
5. The earned income credit.

The other person can't take any of these benefits based on this qualifying child. In other words, you and the other person can't agree to divide these benefits between you.

Tiebreaker rules. To determine which person can treat the child as a qualifying child to claim these five tax benefits, the following tiebreaker rules apply.

- If only one of the persons is the child's parent, the child is treated as the qualifying child of the parent.
- If the parents file a joint return together and can claim the child as a qualifying child, the child is treated as the qualifying child of the parents.
- If the parents don't file a joint return together but both parents claim the child as a qualifying child, the IRS will treat the child as the qualifying child of the parent with whom the child lived for the longer period of time during the year. If the child lived with each parent for the same amount of time, the IRS will treat the child as the qualifying child of the parent who had the higher AGI for the year.
- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the year.
- If a parent can claim the child as a qualifying child but no parent does so claim the child, the child is treated as the qualifying child of the person who had the highest AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who can claim the child.

Subject to these tiebreaker rules, you and the other person may be able to choose which of you claims the child as a qualifying child.

You may be able to qualify for the earned income credit under the rules for taxpayers without a qualifying child if you have a qualifying child for the earned income credit who is claimed as a qualifying child by another taxpayer. For more information, see Pub. 596.

Example 1—Child lived with parent and grandparent. You and your 3-year-old child J lived with your parent all year. You are 25 years old and unmarried, and your AGI is $9,000. Your parent's AGI is $15,000. Your child's other parent didn't live with you or your child. You haven't signed Form 8332 (or a similar statement).

J is a qualifying child of both you and your parent because J meets the relationship, age, residency, support, and joint return tests for both you and your parent. However, only one of you can claim J. J isn't a qualifying child of anyone else, including J's other parent. You agree to let your parent claim J. This means your parent can claim J as a qualifying child for all of the five tax benefits listed earlier, if your parent qualifies for each of those benefits (and if you don't claim J as a qualifying child for any of those tax benefits).

Example 2—Parent has higher AGI than grandparent. The facts are the same as in *Example 1*, except your AGI is $18,000. Because your parent's AGI isn't higher than yours, your parent can't claim J. Only you can claim J.

Example 3—Two persons claim same child. The facts are the same as in *Example 1*, except you and your parent both claim J as a qualifying child. In this case, you, as the child's parent, will be the only one allowed to claim J as a qualifying child. The IRS will disallow your parent's claim to the five tax benefits listed earlier based on J. However, your parent may qualify for the earned income credit as a taxpayer without a qualifying child.

Example 4—Qualifying children split between two persons. The facts are the same as in *Example 1*, except you also have two other young children who are qualifying children of both you and your parent. Only one of you can claim each child. However, if your parent's AGI is higher than yours, you can allow your parent to claim one or more of the children. For example, if you claim one child, your parent can claim the other two.

Example 5—Taxpayer who is a qualifying child. The facts are the same as in *Example 1*, except you are only 18 years old and didn't provide more than half of your own support for the year. This means you are your parent's qualifying child. If your parent can claim you as a dependent, then you can't claim your child as a dependent because of the *Dependent Taxpayer Test*, explained earlier.

Example 6—Separated parents. You, your spouse, and your 10-year-old child lived together until August 1, 2022, when your spouse moved out of the household. In August and September, your child lived with you. For the rest of the year, your child lived with your spouse, the child's parent. Your child is a qualifying child of both you and your spouse because your child lived with each of you for more than half the year and because your child met the relationship, age, support, and joint return tests for both of you. At the end of the year, you and your spouse still weren't divorced, legally separated, or separated under a written separation agreement, so the rule for children of divorced or separated parents (or parents who live apart) doesn't apply.

You and your spouse will file separate returns. Your spouse agrees to let you treat your child as a qualifying child. This means, if your spouse doesn't claim your child as a qualifying child, you can claim this child as a qualifying child for the child tax credit and exclusion for dependent care benefits (if you qualify for each of those tax benefits). However, you can't claim head of household filing status because you and your spouse didn't live apart for the last 6 months of the year. As a result, your filing status is married filing separately, so you can't claim the earned income credit because you and your spouse didn't live apart for the last 6 months of 2022, and you aren't legally separated under a written separation agreement or decree of separate maintenance. Therefore, you don't meet the requirements to take the earned income credit as married filing separately. You also can't take the credit for child and dependent care expenses because your filing status is married filing separately and you and your spouse didn't live apart for the last 6 months of 2022.

Example 7—Separated parents claim same child. The facts are the same as in *Example 6*, except you and your spouse both claim your child as a qualifying child. In this case, only your spouse will be allowed to treat your child as a qualifying child. This is because, during 2022, the child lived with your spouse longer than with you. If you claimed the child tax credit for your child, the IRS will disallow your claim to the child tax credit. If you don't have another qualifying child or dependent, the IRS will also disallow your claim to the exclusion for dependent care benefits. In addition, because you and your spouse didn't live apart for the last 6 months of the year, your spouse can't claim head of household filing status. As a result, your spouse's filing status is married filing separately, so your spouse can't claim the earned income credit because you and your spouse didn't live apart for the last 6 months of 2022, and you aren't legally separated under a written separation agreement or decree of separate maintenance. Therefore, your spouse doesn't meet the requirements to take the earned income credit as married filing separately. Your spouse also can't take the credit for child and dependent care expenses because your spouse's filing status is married filing separately and you and your spouse didn't live apart for the last 6 months of 2022.

Example 8—Unmarried parents. You, your 5-year-old child, L, and L's other parent lived together all year. You and L's other parent aren't married. L is a qualifying child of both you and L's other parent because L meets the relationship, age, residency, support, and joint return tests for both you and L's other parent. Your AGI is $12,000 and L's other parent's AGI is $14,000. L's other parent agrees to let you claim the child as a qualifying child. This means you can claim L as a qualifying child for the child tax credit, head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the earned income credit, if you qualify for each of those tax benefits (and if L's other parent doesn't claim L as a qualifying child for any of those tax benefits).

Example 9—Unmarried parents claim same child. The facts are the same as in *Example 8*, except you and L's other parent both claim L as a qualifying child. In this case, only L's other parent will be allowed to treat L as a qualifying child. This is because L's other parent's AGI, $14,000, is more than your AGI, $12,000. If you claimed the child tax credit for L, the IRS will disallow your claim to this credit. If you don't have another qualifying child or dependent, the IRS will also disallow your claim to head of household filing status, the credit for

child and dependent care expenses, and the exclusion for dependent care benefits. However, you may be able to claim the earned income credit as a taxpayer without a qualifying child.

Example 10—Child didn't live with a parent. You and your sibling's child, M, lived with your parent all year. You are 25 years old, and your AGI is $9,300. Your parent's AGI is $15,000. M's parents file jointly, have an AGI of less than $9,000, and don't live with you or M. M is a qualifying child of both you and your parent because M meets the relationship, age, residency, support, and joint return tests for both you and your parent. However, only your parent can treat M as a qualifying child. This is because your parent's AGI, $15,000, is more than your AGI, $9,300.

Applying the tiebreaker rules to divorced or separated parents (or parents who live apart). If a child is treated as the qualifying child of the noncustodial parent under the rules described earlier for children of divorced or separated parents (or parents who live apart), only the noncustodial parent can claim the child as a dependent and claim the child tax credit or credit for other dependents for the child. However, only the custodial parent can claim the credit for child and dependent care expenses or the exclusion for dependent care benefits for the child. Also, generally, the noncustodial parent can't claim the child as a qualifying child for head of household filing status or the earned income credit. Instead, generally, the custodial parent, if eligible, or other eligible person can claim the child as a qualifying child for those two benefits. If the child is the qualifying child of more than one person for these benefits, then the tiebreaker rules just explained determine whether the custodial parent or another eligible person can treat the child as a qualifying child.

Example 1. You and your 5-year-old child, E, lived all year with your parent, who paid the entire cost of keeping up the home. Your AGI is $10,000. Your parent's AGI is $25,000. E's other parent didn't live with you or E.

Under the rules explained earlier for children of divorced or separated parents (or parents who live apart), E is treated as the qualifying child of E's other parent, who can claim the child tax credit for E. Because of this, you can't claim the child tax credit for E. However, those rules don't allow E's other parent to claim E as a qualifying child for head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, or the earned income credit.

You and your parent didn't have any child care expenses or dependent care benefits, so neither of you can claim the credit for child and dependent care expenses or the exclusion for dependent care benefits. But E is a qualifying child of both you and your parent for head of household filing status and the earned income credit because E meets the relationship, age, residency, support, and joint return tests for both you and your parent. (The support test doesn't apply for the earned income credit.) However, you agree to let your parent claim E. This means your parent can claim E for head of household filing status and the earned income credit if your parent qualifies for each and if you don't claim E as a qualifying child for the earned income credit. (You can't claim head of household filing status because your parent paid the entire cost of keeping up the home.) You may be able to claim the earned income credit as a taxpayer without a qualifying child.

Example 2. The facts are the same as in *Example 1*, except your AGI is $25,000 and your parent's AGI is $21,000. Your parent can't claim E as a qualifying child for any purpose because your parent's AGI isn't higher than yours.

Example 3. The facts are the same as in *Example 1*, except you and your parent both claim E as a qualifying child for the earned income credit. Your parent also claims E as a qualifying child for head of household filing status. You, as the child's parent, will be the only one allowed to claim E as a qualifying child for the earned income credit. The IRS will disallow your parent's claim to head of household filing status unless your parent has another qualifying child or dependent. Your parent can't claim the earned income credit as a taxpayer without a qualifying child because your parent's AGI is more than $16,480.

Qualifying Relative

Four tests must be met for a person to be your qualifying relative. The four tests are:

1. Not a qualifying child test,
2. Member of household or relationship test,
3. Gross income test, and
4. Support test.

Age. Unlike a qualifying child, a qualifying relative can be any age. There is no age test for a qualifying relative.

Kidnapped child. You may be able to treat a child as your qualifying relative even if the child has been kidnapped. See Pub. 501 for details.

Not a Qualifying Child Test

A child isn't your qualifying relative if the child is your qualifying child or the qualifying child of any other taxpayer.

Example 1. Your 22-year-old child, who is a student, lives with you and meets all the tests to be your qualifying child. This child isn't your qualifying relative.

Example 2. Your 2-year-old child lives with your parents and meets all the tests to be their qualifying child. This child isn't your qualifying relative.

Example 3. Your 30-year old child lives with you. This child isn't a qualifying child because the age test isn't met. This child may be your qualifying relative if the gross income test and the support test are met.

Example 4. Your 13-year-old grandchild only lived with you for 5 months during the year. Your grandchild isn't your qualifying child because the residency test isn't met. Your grandchild may be your qualifying relative if the gross income test and the support test are met.

Child of person not required to file a return. A child isn't the qualifying child of any other taxpayer and so may qualify as your qualifying relative if the child's parent (or other person for whom the child is defined as a qualifying child) isn't required to file an income tax return and either:

- Doesn't file an income tax return, or
- Files a return only to get a refund of income tax withheld or estimated tax paid.

Example 1—Return not required. You support an unrelated friend and your friend's 3-year-old child, who lived with you all year in your home. Your friend has no gross income, isn't required to file a 2022 tax return, and doesn't file a 2022 tax return. Both your friend and your friend's child are your qualifying relatives if the support test is met.

Example 2—Return filed to claim refund. The facts are the same as in *Example 1*, except your friend had wages of $1,500 during the year and had income tax withheld from your friend's wages. Your friend files a return only to get a refund of the income tax withheld and doesn't claim the earned income credit or any other tax credits or deductions. Both your friend and your friend's child are your qualifying relatives if the support test is met.

Example 3—Earned income credit claimed. The facts are the same as in *Example 2*, except your friend had wages of $8,000 during the year and claimed the earned income credit. Your friend's child is the qualifying child of another taxpayer (your friend), so you can't claim your friend's child as your qualifying relative. Also, you can't claim your friend as your qualifying relative because of the gross income test explained later.

Child in Canada or Mexico. You may be able to claim your child as a dependent even if the child lives in Canada or Mexico. If the child doesn't live with you, the child doesn't meet the residency test to be your qualifying child. However, the child may still be your qualifying relative. If the persons the child does live with aren't U.S. citizens and have no U.S. gross income, those persons aren't "taxpayers," so the child isn't the qualifying child of any other taxpayer. If the child isn't the qualifying child of any other taxpayer, the child is your qualifying relative as long as the gross income test and the support test are met.

You can't claim as a dependent a child who lives in a foreign country other than Canada or Mexico, unless the child is a U.S. citizen, U.S. resident alien, or U.S. national. There is an exception for certain adopted children who lived with you all year. See *Citizen or Resident Test*, earlier.

Example. You provide all the support of your children, ages 6, 8, and 12, who live in Mexico with your parent and have no income. You are single and live in the United States. Your parent isn't a U.S. citizen and has no U.S. income, so your parent isn't a "taxpayer." Your children aren't your qualifying children because they don't meet the residency test. But since they aren't the qualifying children of any other taxpayer, they may be your qualifying relatives

and you may be permitted to claim them as dependents. You may also be able to claim your parent as a dependent if the gross income and support tests are met.

Member of Household or Relationship Test

To meet this test, a person must either:

1. Live with you all year as a member of your household, or
2. Be related to you in one of the ways listed under *Relatives who don't have to live with you* below.

If at any time during the year the person was your spouse, that person can't be your qualifying relative.

Relatives who don't have to live with you. A person related to you in any of the following ways doesn't have to live with you all year as a member of your household to meet this test.

- Your child, stepchild, or foster child, or a descendant of any of them (for example, your grandchild). (A legally adopted child is considered your child.)
- Your brother, sister, half brother, half sister, stepbrother, or stepsister.
- Your father, mother, grandparent, or other direct ancestor, but not foster parent.
- Your stepfather or stepmother.
- A son or daughter of your brother or sister.
- A son or daughter of your half brother or half sister.
- A brother or sister of your father or mother.
- Your son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

Any of these relationships that were established by marriage aren't ended by death or divorce.

Example. In 2016, you and your spouse began supporting your spouse's unmarried parent, G. Your spouse died in 2021. Despite your spouse's death, G continues to meet this test, even if G doesn't live with you. You can claim G as a dependent if all other tests are met, including the gross income and support tests.

Foster child. A foster child is an individual who is placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Joint return. If you file a joint return, the person can be related to either you or your spouse. Also, the person doesn't need to be related to the spouse who provides support.

For example, you provide more than half the support for your spouse's stepparent. Your spouse's stepparent may be your qualifying relative even if the stepparent doesn't live with you. However, if you and your spouse file separate returns, your spouse's stepparent can be your qualifying relative only if the stepparent lives with you all year as a member of your household.

Temporary absences. A person is considered to live with you as a member of your household during periods of time when one of you, or both, is temporarily absent due to special circumstances such as:

- Illness,
- Education,
- Business,
- Vacation,
- Military service, or
- Detention in a juvenile facility.

If the person is placed in a nursing home for an indefinite period of time to receive constant medical care, the absence may be considered temporary.

Death or birth. A person who died during the year, but lived with you as a member of your household until death, will meet this test. The same is true for a child who was born during the year and lived with you as a member of your household for the rest of the year. The test is also met if a child lived with you as a member of your household except for any required hospital stay following birth.

If your dependent died during the year and you otherwise qualify to claim that person as a dependent, you can still claim that person as a dependent.

Example. Your parent, who met the tests to be your qualifying relative, died on January 15. You can claim your parent as a dependent on your return.

Local law violated. A person doesn't meet this test if at any time during the year the relationship between you and that person violates local law.

Example. Your significant other, T, lived with you as a member of your household all year. However, your relationship with T violated the laws of the state where you live because T was married to someone else. Therefore, T doesn't meet this test and you can't claim T as a dependent.

Adopted child. An adopted child is always treated as your own child. The term "adopted child" includes a child who was lawfully placed with you for legal adoption.

Cousin. Your cousin must live with you all year as a member of your household to meet this test. A cousin is a descendant of a brother or sister of your father or mother.

Gross Income Test

To meet this test, a person's gross income for the year must be less than $4,400.

Gross income defined. Gross income is all income in the form of money, property, and services that isn't exempt from tax.

In a manufacturing, merchandising, or mining business, gross income is the total net sales minus the cost of goods sold, plus any miscellaneous income from the business.

Gross receipts from rental property are gross income. Don't deduct taxes, repairs, or other expenses to determine the gross income from rental property.

Gross income includes a partner's share of the gross (not a share of the net) partnership income.

Gross income also includes all taxable unemployment compensation, taxable social security benefits, and certain amounts received as scholarship and fellowship grants. Scholarships received by degree candidates and used for tuition, fees, supplies, books, and equipment required for particular courses generally aren't included in gross income. For more information about scholarships, see chapter 8.

Disabled dependent working at sheltered workshop. For purposes of the gross income test, the gross income of an individual who is permanently and totally disabled at any time during the year doesn't include income for services the individual performs at a sheltered workshop. The availability of medical care at the workshop must be the main reason for the individual's presence there. Also, the income must come solely from activities at the workshop that are incident to this medical care.

A "sheltered workshop" is a school that:

- Provides special instruction or training designed to alleviate the disability of the individual; and
- Is operated by certain tax-exempt organizations, or by a state, a U.S. possession, a political subdivision of a state or possession, the United States, or the District of Columbia.

Permanently and totally disabled has the same meaning here as under *Qualifying Child*, earlier.

Support Test (To Be a Qualifying Relative)

To meet this test, you must generally provide more than half of a person's total support during the calendar year.

However, if two or more persons provide support, but no one person provides more than half of a person's total support, see *Multiple Support Agreement*, later.

How to determine if support test is met. You figure whether you have provided more than half of a person's total support by comparing the amount you contributed to that person's support with the entire amount of support that person received from all sources. This includes support the person provided from the person's own funds.

You may find Worksheet 3-1 helpful in figuring whether you provided more than half of a person's support.

Person's own funds not used for support. A person's own funds aren't support unless they are actually spent for support.

Example. Your parent received $2,400 in social security benefits and $300 in interest, paid $2,000 for lodging and $400 for recreation, and put $300 in a savings account.

Even though your parent received a total of $2,700 ($2,400 + $300), your parent spent only $2,400 ($2,000 + $400) for your parent's own support. If you spent more than $2,400 for your parent's support and no other support was received, you have provided more than half of your parent's support.

Child's wages used for own support. You can't include in your contribution to your child's

support any support paid for by the child with the child's own wages, even if you paid the wages.

Year support is provided. The year you provide the support is the year you pay for it, even if you do so with borrowed money that you repay in a later year.

If you use a fiscal year to report your income, you must provide more than half of the dependent's support for the calendar year in which your fiscal year begins.

Armed Forces dependency allotments. The part of the allotment contributed by the government and the part taken out of your military pay are both considered provided by you in figuring whether you provide more than half of the support. If your allotment is used to support persons other than those you name, you can claim them as dependents if they otherwise qualify.

Example. You are in the Armed Forces. You authorize an allotment for your surviving parent that your surviving parent uses to support themselves and their sibling. If the allotment provides more than half of each person's support, you can claim each of them as a dependent, if they otherwise qualify, even though you authorize the allotment only for your surviving parent.

Tax-exempt military quarters allowances. These allowances are treated the same way as dependency allotments in figuring support. The allotment of pay and the tax-exempt basic allowance for quarters are both considered as provided by you for support.

Tax-exempt income. In figuring a person's total support, include tax-exempt income, savings, and borrowed amounts used to support that person. Tax-exempt income includes certain social security benefits, welfare benefits, nontaxable life insurance proceeds, Armed Forces family allotments, nontaxable pensions, and tax-exempt interest.

Example 1. You provide $4,000 towards your parent's support during the year. Your parent has earned income of $600, nontaxable social security benefits of $4,800, and tax-exempt interest of $200, all of which your parent uses for self-support. You can't claim your parent as a dependent because the $4,000 you provide isn't more than half of your parent's total support of $9,600 ($4,000 + $600 +$4,800 + $200).

Example 2. K, your sibling's child, takes out a student loan of $2,500 and uses it to pay college tuition. K is personally responsible for the loan. You provide $2,000 toward K's total support. You can't claim K as a dependent because you provide less than half of K's support.

Social security benefits. If a married couple receives benefits that are paid by one check made out to both of them, half of the total paid is considered to be for the support of each spouse, unless they can show otherwise.

If a child receives social security benefits and uses them toward their own support, the benefits are considered as provided by the child.

Support provided by the state (welfare, food stamps, housing, etc.). Benefits provided by the state to a needy person are generally considered support provided by the state. However, payments based on the needs of the recipient won't be considered as used entirely for that person's support if it is shown that part of the payments weren't used for that purpose.

Foster care. Payments you receive for the support of a foster child from a child placement agency are considered support provided by the agency. See *Foster care payments and expenses*, earlier.

Home for the aged. If you make a lump-sum advance payment to a home for the aged to take care of your relative for life and the payment is based on that person's life expectancy, the amount of support you provide each year is the lump-sum payment divided by the relative's life expectancy. The amount of support you provide also includes any other amounts you provided during the year.

Total Support

To figure if you provided more than half of a person's support, you must first determine the total support provided for that person. Total support includes amounts spent to provide food, lodging, clothing, education, medical and dental care, recreation, transportation, and similar necessities.

Generally, the amount of an item of support is the amount of the expense incurred in providing that item. For lodging, the amount of support is the fair rental value of the lodging.

Expenses not directly related to any one member of a household, such as the cost of food for the household, must be divided among the members of the household.

Example 1. G Brown, parent of M Miller, lives with F and M Miller and their two children. G gets social security benefits of $2,400, which G spends for clothing, transportation, and recreation. G has no other income. F and M's total food expense for the household is $5,200. They pay G's medical and drug expenses of $1,200. The fair rental value of the lodging provided for G is $1,800 a year, based on the cost of similar rooming facilities. Figure G's total support as follows.

Fair rental value of lodging	$ 1,800
Clothing, transportation, and recreation	2,400
Medical expenses	1,200
Share of food (1/5 of $5,200)	1,040
Total support	$6,440

The support F and M provide, $4,040 ($1,800 lodging + $1,200 medical expenses + $1,040 food), is more than half of G's $6,440 total support.

Example 2. Your parents, A and B, live with you, your spouse, and your two children in a house you own. The fair rental value of your parents' share of the lodging is $2,000 a year ($1,000 each), which includes furnishings and utilities. A receives a nontaxable pension of $4,200, which A spends equally between A and B for items of support such as clothing, transportation, and recreation. Your total food expense for the household is $6,000. Your heat and utility bills amount to $1,200. B has hospital and medical expenses of $600, which you pay during the year. Figure your parents' total support as follows.

Support provided	**A**	**B**
Fair rental value of lodging	$1,000	$1,000
Pension spent for their support	2,100	2,100
Share of food (1/6 of $6,000)	1,000	1,000
Medical expenses for B		600
Parents' total support	$4,100	$4,700

You must apply the support test separately to each parent. You provide $2,000 ($1,000 lodging + $1,000 food) of A's total support of $4,100—less than half. You provide $2,600 to B ($1,000 lodging + $1,000 food + $600 medical)—more than half of B's total support of $4,700. You meet the support test for B, but not A. Heat and utility costs are included in the fair rental value of the lodging, so these aren't considered separately.

Lodging. If you provide a person with lodging, you are considered to provide support equal to the fair rental value of the room, apartment, house, or other shelter in which the person lives. Fair rental value includes a reasonable allowance for the use of furniture and appliances, and for heat and other utilities that are provided.

Fair rental value defined. Fair rental value is the amount you could reasonably expect to receive from a stranger for the same kind of lodging. It is used instead of actual expenses such as taxes, interest, depreciation, paint, insurance, utilities, and the cost of furniture and appliances. In some cases, fair rental value may be equal to the rent paid.

If you provide the total lodging, the amount of support you provide is the fair rental value of the room the person uses, or a share of the fair rental value of the entire dwelling if the person has use of your entire home. If you don't provide the total lodging, the total fair rental value must be divided depending on how much of the total lodging you provide. If you provide only a part and the person supplies the rest, the fair rental value must be divided between both of you according to the amount each provides.

Example. Your parents live rent free in a house you own. It has a fair rental value of $5,400 a year furnished, which includes a fair rental value of $3,600 for the house and $1,800 for the furniture. This doesn't include heat and utilities. The house is completely furnished with furniture belonging to your parents. You pay $600 for their utility bills. Utilities usually aren't included in rent for houses in the area where your parents live. Therefore, you consider the total fair rental value of the lodging to be $6,000 ($3,600 fair rental value of the unfurnished house + $1,800 allowance for the furnishings provided by your parents + $600 cost of utilities) of which you are considered to provide $4,200 ($3,600 + $600).

Person living in their own home. The total fair rental value of a person's home that the person owns is considered support contributed by that person.

Living with someone rent free. If you live with a person rent free in that person's home, you must reduce the amount you provide for support of that person by the fair rental value of lodging the person provides you.

Property. Property provided as support is measured by its fair market value. Fair market value is the price that property would sell for on the open market. It is the price that would be agreed upon between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.

Capital expenses. Capital items, such as furniture, appliances, and cars, bought for a person during the year can be included in total support under certain circumstances.

The following examples show when a capital item is or isn't support.

Example 1. You buy a $200 power lawn mower for your 13-year-old child. The child is given the duty of keeping the lawn trimmed. Because the lawn mower benefits all members of the household, don't include the cost of the lawn mower in the support of your child.

Example 2. You buy a $150 television set as a birthday present for your 12-year-old child. The television set is placed in your child's bedroom. You can include the cost of the television set in the support of your child.

Example 3. You pay $5,000 for a car and register it in your name. You and your 17-year-old child use the car equally. Because you own the car and don't give it to your child but merely let your child use it, don't include the cost of the car in your child's total support. However, you can include in your child's support your out-of-pocket expenses of operating the car for your child's benefit.

Example 4. Your 17-year-old child, using personal funds, buys a car for $4,500. You provide the rest of your child's support, $4,000. Because the car is bought and owned by your child, the car's fair market value ($4,500) must be included in your child's support. Your child has provided more than half of their own total support of $8,500 ($4,500 + $4,000), so this child isn't your qualifying child. You didn't provide more than half of this child's total support, so this child isn't your qualifying relative. You can't claim this child as a dependent.

Medical insurance premiums. Medical insurance premiums you pay, including premiums for supplementary Medicare coverage, are included in the support you provide.

Medical insurance benefits. Medical insurance benefits, including basic and supplementary Medicare benefits, aren't part of support.

Tuition payments and allowances under the GI Bill. Amounts veterans receive under the GI Bill for tuition payments and allowances while they attend school are included in total support.

Example. During the year, your child receives $2,200 from the government under the GI Bill. Your child uses this amount for your child's education. You provide the rest of his support, $2,000. Because GI benefits are included in total support, your child's total support is $4,200 ($2,200 + $2,000). You haven't provided more than half of your child's support.

Childcare expenses. If you pay someone to provide child or dependent care, you can include these payments in the amount you provided for the support of your child or disabled dependent, even if you claim a credit for the payments. For information on the credit, see Pub. 503, Child and Dependent Care Expenses.

Other support items. Other items may be considered as support depending on the facts in each case.

Don't Include in Total Support

The following items aren't included in total support.

1. Federal, state, and local income taxes paid by persons from their own income.
2. Social security and Medicare taxes paid by persons from their own income.
3. Life insurance premiums.
4. Funeral expenses.
5. Scholarships received by your child if your child is a student.
6. Survivors' and Dependents' Educational Assistance payments used for the support of the child who receives them.

Multiple Support Agreement

Sometimes no one provides more than half of the support of a person. Instead, two or more persons, each of whom would be able to claim the person as a dependent but for the support test, together provide more than half of the person's support.

When this happens, you can agree that any one of you who individually provides more than 10% of the person's support, but only one, can claim the person as a dependent. Each of the others must sign a statement agreeing not to claim the person as a dependent for that year. The person who claims the person as a dependent must keep these signed statements for their own records. A multiple support declaration identifying each of the others who agreed not to claim the person as a dependent must be attached to the return of the person claiming the person as a dependent. Form 2120 can be used for this purpose.

You can claim someone as a dependent under a multiple support agreement for someone related to you or for someone who lived with you all year as a member of your household.

Example 1. You, and your siblings, S, B, and D, provide the entire support of your parent for the year. You provide 45%, S provides 35%, and B and D each provide 10%. Either you or S can claim your parent as a dependent; the one who doesn't must sign a statement agreeing not to claim your parent as a dependent. The one who claims your parent as a dependent must attach Form 2120, or a similar declaration, to their return and must keep the statement signed by the other for their records. Because neither B nor D provides more than 10% of the support, neither can claim your parent as a dependent and neither has to sign a statement.

Example 2. You and your sibling each provide 20% of your parent's support for the year. The remaining 60% of your parent's support is provided equally by two persons who are unrelated. Your parent doesn't live with them. Because more than half of your parent's support is provided by persons who can't claim your parent as a dependent, no one can claim your parent as a dependent.

Support Test for Children of Divorced or Separated Parents (or Parents Who Live Apart)

In most cases, a child of divorced or separated parents (or parents who live apart) will be a qualifying child of one of the parents. See *Children of divorced or separated parents (or parents who live apart)* under *Qualifying Child*, earlier. However, if the child doesn't meet the requirements to be a qualifying child of either parent, the child may be a qualifying relative of one of the parents. If you think this might apply to you, see Pub. 501.

Social Security Numbers (SSNs) for Dependents

You must show the SSN of any dependent you list in the *Dependents* section of your Form 1040 or 1040-SR.

If you don't show the dependent's SSN when required, or if you show an incorrect SSN, certain tax benefits may be disallowed.

No SSN. If a person whom you expect to claim as a dependent on your return doesn't have an SSN, either you or that person should apply for an SSN as soon as possible by filing Form SS-5, Application for a Social Security Card, with the Social Security Administration (SSA). You can get Form SS-5 online at *SSA.gov/forms/ss-5.pdf* or at your local SSA office.

It usually takes about 2 weeks to get an SSN once the SSA has all the information it needs. If you don't have a required SSN by the filing due date, you can file Form 4868 for an extension of time to file.

Born and died in 2022. If your child was born and died in 2022, and you don't have an SSN for the child, you may attach a copy of the child's birth certificate, death certificate, or hospital records instead. The document must show the child was born alive. If you do this, enter "DIED" in column (2) of the *Dependents* section of your Form 1040 or 1040-SR.

Alien or adoptee with no SSN. If your dependent doesn't have and can't get an SSN, you must show the ITIN or adoption taxpayer identification number (ATIN) instead of an SSN.

Taxpayer identification numbers for aliens. If your dependent is a resident or nonresident alien who doesn't have and isn't eligible to get an SSN, your dependent must apply for an ITIN. For details on how to apply, see Form W-7, Application for IRS Individual Taxpayer Identification Number.

Taxpayer identification numbers for adoptees. If you have a child who was placed with you by an authorized placement agency, you may be able to claim the child as a dependent. However, if you can't get an SSN or an ITIN for the child, you must get an adoption taxpayer identification number (ATIN) for the child from the IRS. See Form W-7A, Application for Taxpayer Identification Number for Pending U.S. Adoptions, for details.

4.

Tax Withholding and Estimated Tax

What's New for 2023

Tax law changes for 2023. When you figure how much income tax you want withheld from your pay and when you figure your estimated tax, consider tax law changes effective in 2023. For more information, see Pub. 505, Tax Withholding and Estimated Tax.

Reminders

Estimated tax safe harbor for higher income taxpayers. If your 2022 adjusted gross income was more than $150,000 ($75,000 if you are married filing a separate return), you must pay the smaller of 90% of your expected tax for 2023 or 110% of the tax shown on your 2022 return to avoid an estimated tax penalty.

Introduction

This chapter discusses how to pay your tax as you earn or receive income during the year. In general, the federal income tax is a pay-as-you-go tax. There are two ways to pay as you go.

- ***Withholding.*** If you are an employee, your employer probably withholds income tax from your pay. Tax may also be withheld from certain other income, such as pensions, bonuses, commissions, and gambling winnings. The amount withheld is paid to the IRS in your name.
- ***Estimated tax.*** If you don't pay your tax through withholding, or don't pay enough tax that way, you may have to pay estimated tax. People who are in business for themselves will generally have to pay their tax this way. Also, you may have to pay estimated tax if you receive income such as dividends, interest, capital gains, rent, and royalties. Estimated tax is used to pay not only income tax, but self-employment tax and alternative minimum tax as well.

This chapter explains these methods. In addition, it also explains the following.

- ***Credit for withholding and estimated tax.*** When you file your 2022 income tax return, take credit for all the income tax withheld from your salary, wages, pensions, etc., and for the estimated tax you paid for 2022. Also take credit for any excess social security or railroad retirement tax withheld. See Pub. 505.
- ***Underpayment penalty.*** If you didn't pay enough tax during the year, either through withholding or by making estimated tax payments, you may have to pay a penalty. In most cases, the IRS can figure this penalty for you. See Underpayment Penalty for 2022 at the end of this chapter.

Useful Items

You may want to see:

Publication

- ❏ **505** Tax Withholding and Estimated Tax

Form (and Instructions)

- ❏ **W-4** Employee's Withholding Certificate
- ❏ **W-4P** Withholding Certificate for Periodic Pension or Annuity Payments
- ❏ **W-4S** Request for Federal Income Tax Withholding From Sick Pay
- ❏ **W-4V** Voluntary Withholding Request
- ❏ **1040-ES** Estimated Tax for Individuals
- ❏ **2210** Underpayment of Estimated Tax by Individuals, Estates, and Trusts
- ❏ **2210-F** Underpayment of Estimated Tax by Farmers and Fishermen

Tax Withholding for 2023

This section discusses income tax withholding on:

- Salaries and wages,
- Tips,
- Taxable fringe benefits,
- Sick pay,
- Pensions and annuities,
- Gambling winnings,
- Unemployment compensation, and
- Certain federal payments.

This section explains the rules for withholding tax from each of these types of income.

This section also covers backup withholding on interest, dividends, and other payments.

Salaries and Wages

Income tax is withheld from the pay of most employees. Your pay includes your regular pay, bonuses, commissions, and vacation allowances. It also includes reimbursements and other expense allowances paid under a nonaccountable plan. See Supplemental Wages, later, for more information about reimbursements and allowances paid under a nonaccountable plan.

If your income is low enough that you won't have to pay income tax for the year, you may be exempt from withholding. This is explained under Exemption From Withholding, later.

You can ask your employer to withhold income tax from noncash wages and other wages not subject to withholding. If your employer doesn't agree to withhold tax, or if not enough is withheld, you may have to pay estimated tax, as discussed later under Estimated Tax for 2023.

Military retirees. Military retirement pay is treated in the same manner as regular pay for income tax withholding purposes, even though it is treated as a pension or annuity for other tax purposes.

Household workers. If you are a household worker, you can ask your employer to withhold income tax from your pay. A household worker is an employee who performs household work in a private home, local college club, or local fraternity or sorority chapter.

Tax is withheld only if you want it withheld and your employer agrees to withhold it. If you don't have enough income tax withheld, you may have to pay estimated tax, as discussed later under Estimated Tax for 2023.

Farmworkers. Generally, income tax is withheld from your cash wages for work on a farm unless your employer does both of these:

- Pays you cash wages of less than $150 during the year, and
- Has expenditures for agricultural labor totaling less than $2,500 during the year.

Differential wage payments. When employees are on leave from employment for military duty, some employers make up the difference between the military pay and civilian pay. Payments to an employee who is on active duty for a period of more than 30 days will be subject to income tax withholding, but not subject to social security, Medicare, or federal unemployment (FUTA) tax withholding. The wages and withholding will be reported on Form W-2, Wage and Tax Statement.

Determining Amount of Tax Withheld Using Form W-4

The amount of income tax your employer withholds from your regular pay depends on two things.

- The amount you earn in each payroll period.
- The information you give your employer on Form W-4.

Form W-4 includes steps to help you figure your withholding. Complete Steps 2 through 4 only if they apply to you.

- **Step 1.** Enter your personal information including your filing status.
- **Step 2.** Complete this step if you have more than one job at the same time or are married filing jointly and you and your spouse both work.
- **Step 3.** Complete this step if you claim dependents and other credits.
- **Step 4.** Complete this optional step to make other adjustments.
  *Other income
  *Deductions
  *Extra withholding

New Job

When you start a new job, you must fill out Form W-4 and give it to your employer. Your employer should have copies of the form. If you need to change the information later, you must fill out a new form.

If you work only part of the year (for example, you start working after the beginning of the year), too much tax may be withheld. You may be able to avoid overwithholding if your employer agrees to use the part-year method. See *Part-Year Method* in chapter 1 of Pub. 505 for more information.

Employee also receiving pension income. If you receive pension or annuity income and begin a new job, you will need to file Form W-4 with your new employer. However, you can choose to split your withholding between your pension and job in any manner.

Changing Your Withholding

During the year, changes may occur to your marital status, adjustments, deductions, or credits you expect to claim on your tax return. When this happens, you may need to give your employer a new Form W-4 to change your withholding status.

If a change in personal circumstances reduces the amount of withholding you are entitled to claim, you are required to give your employer a new Form W-4 within 10 days after the change occurs.

Changing your withholding for 2024. If events in 2023 will change the amount of withholding you should claim for 2024, you must give your employer a new Form W-4 by December 1, 2023. If the event occurs in December 2023, submit a new Form W-4 within 10 days.

Checking Your Withholding

After you have given your employer a Form W-4, you can check to see whether the amount of tax withheld from your pay is too little or too much. If too much or too little tax is being withheld, you should give your employer a new Form W-4 to change your withholding. You should try to have your withholding match your actual tax liability. If not enough tax is withheld, you will owe tax at the end of the year and may have to pay interest and a penalty. If too much tax is withheld, you will lose the use of that money until you get your refund. Always check your withholding if there are personal or financial changes in your life or changes in the law that might change your tax liability.

Note. You can't give your employer a payment to cover withholding on salaries and wages for past pay periods or a payment for estimated tax.

Completing Form W-4 and Worksheets

Form W-4 has worksheets to help you figure the correct amount of withholding you can claim. The worksheets are for your own records. Don't give them to your employer.

Multiple Jobs Worksheet. If you have income from more than one job at the same time, or are married filing jointly and you and your spouse both work, complete the Multiple Jobs Worksheet on the Form W-4.

If you and your spouse expect to file separate returns, figure your withholding using separate worksheets based on your own individual income, adjustments, deductions, and credits.

Deductions Worksheet. Use the Deductions Worksheet on Form W-4 if you plan to itemize deductions or claim certain adjustments to income and you want to reduce your withholding. Also complete this worksheet when you have changes to these items to see if you need to change your withholding.

Getting the Right Amount of Tax Withheld

In most situations, the tax withheld from your pay will be close to the tax you figure on your return if you follow these two rules.

- You accurately complete all the Form W-4 worksheets that apply to you.
- You give your employer a new Form W-4 when changes occur.

But because the worksheets and withholding methods don't account for all possible situations, you may not be getting the right amount withheld. This is most likely to happen in the following situations.

- You are married and both you and your spouse work.
- You have more than one job at a time.
- You have nonwage income, such as interest, dividends, alimony, unemployment compensation, or self-employment income.
- You will owe additional amounts with your return, such as self-employment tax.
- Your withholding is based on obsolete Form W-4 information for a substantial part of the year.
- You work only part of the year.
- You change the amount of your withholding during the year.
- You are subject to Additional Medicare Tax or Net Investment Income Tax (NIIT). If you anticipate liability for Additional Medicare Tax or NIIT, you may request that your employer withhold an additional amount of income tax withholding on Form W-4.

Cumulative wage method. If you change the amount of your withholding during the year, too much or too little tax may have been withheld for the period before you made the change. You may be able to compensate for this if your employer agrees to use the cumulative wage withholding method for the rest of the year. You must ask your employer in writing to use this method.

To be eligible, you must have been paid for the same kind of payroll period (weekly, biweekly, etc.) since the beginning of the year.

Publication 505

To make sure you are getting the right amount of tax withheld, get Pub. 505. It will help you compare the total tax to be withheld during the year with the tax you can expect to figure on your return. It will also help you determine how much, if any, additional withholding is needed each payday to avoid owing tax when you file your return. If you don't have enough tax withheld, you may have to pay estimated tax, as explained under *Estimated Tax for 2023*, later.

You can use the Tax Withholding Estimator at IRS.gov/W4App, instead of Pub. 505 or the worksheets included with Form W-4, to determine whether you need to have your withholding increased or decreased.

Rules Your Employer Must Follow

It may be helpful for you to know some of the withholding rules your employer must follow. These rules can affect how to fill out your Form W-4 and how to handle problems that may arise.

New Form W-4. When you start a new job, your employer should have you complete a Form W-4. Beginning with your first payday, your employer will use the information you give on the form to figure your withholding.

If you later fill out a new Form W-4, your employer can put it into effect as soon as possible. The deadline for putting it into effect is the start of the first payroll period ending 30 or more days after you turn it in.

No Form W-4. If you don't give your employer a completed Form W-4, your employer must withhold at the highest rate, as if you were single.

Repaying withheld tax. If you find you are having too much tax withheld because you didn't claim the correct amount of withholding you are entitled to, you should give your employer a new Form W-4. Your employer can't repay any of the tax previously withheld. Instead, claim the full amount withheld when you file your tax return.

However, if your employer has withheld more than the correct amount of tax for the Form W-4 you have in effect, you don't have to fill out a new Form W-4 to have your withholding lowered to the correct amount. Your employer can repay the amount that was withheld incorrectly. If you aren't repaid, your Form W-2 will reflect the full amount actually withheld, which you would claim when you file your tax return.

Exemption From Withholding

If you claim exemption from withholding, your employer won't withhold federal income tax from your wages. The exemption applies only to income tax, not to social security, Medicare, or FUTA tax withholding.

You can claim exemption from withholding for 2023 only if both of the following situations apply.

- For 2022, you had a right to a refund of all federal income tax withheld because you had no tax liability.
- For 2023, you expect a refund of all federal income tax withheld because you expect to have no tax liability.

Students. If you are a student, you aren't automatically exempt. See chapter 1 to find out if you must file a return. If you work only part time or only during the summer, you may qualify for exemption from withholding.

Age 65 or older or blind. If you are 65 or older or blind, use Worksheet 1-1 or 1-2 in chapter 1 of Pub. 505 to help you decide if you qualify for exemption from withholding. Don't use either worksheet if you will itemize deductions or claim tax credits on your 2023 return. Instead, see *Itemizing deductions or claiming credits* in chapter 1 of Pub. 505.

Claiming exemption from withholding. To claim exemption, you must give your employer a Form W-4. Write "Exempt" on the form in the space below Step 4(c) and complete the applicable steps of the form.

If you claim exemption, but later your situation changes so that you will have to pay income tax after all, you must file a new Form W-4 within 10 days after the change. If you claim exemption in 2023, but you expect to owe income tax for 2024, you must file a new Form W-4 by December 1, 2023.

Your claim of exempt status may be reviewed by the IRS.

An exemption is good for only 1 year. You must give your employer a new Form W-4 by February 15 each year to continue your exemption.

Supplemental Wages

Supplemental wages include bonuses, commissions, overtime pay, vacation allowances, certain sick pay, and expense allowances under certain plans. The payer can figure withholding on supplemental wages using the same method used for your regular wages. However, if these payments are identified separately from your regular wages, your employer or other payer of supplemental wages can withhold income tax from these wages at a flat rate.

Expense allowances. Reimbursements or other expense allowances paid by your employer under a nonaccountable plan are treated as supplemental wages.

Reimbursements or other expense allowances paid under an accountable plan that are more than your proven expenses are treated as paid under a nonaccountable plan if you don't return the excess payments within a reasonable period of time.

For more information about accountable and nonaccountable expense allowance plans, see Pub. 505.

Penalties

You may have to pay a penalty of $500 if both of the following apply.

- You make statements or claim withholding on your Form W-4 that reduce the amount of tax withheld.
- You have no reasonable basis for those statements or withholding at the time you prepare your Form W-4.

There is also a criminal penalty for willfully supplying false or fraudulent information on your Form W-4 or for willfully failing to supply information that would increase the amount withheld. The penalty upon conviction can be either a fine of up to $1,000 or imprisonment for up to 1 year, or both.

These penalties will apply if you deliberately and knowingly falsify your Form W-4 in an attempt to reduce or eliminate the proper withholding of taxes. A simple error or an honest mistake won't result in one of these penalties.

Tips

The tips you receive while working on your job are considered part of your pay. You must include your tips on your tax return on the same line as your regular pay. However, tax isn't withheld directly from tip income, as it is from your regular pay. Nevertheless, your employer will take into account the tips you report when figuring how much to withhold from your regular pay.

For more information on reporting your tips to your employer and on the withholding rules for tip income, see Pub. 531, Reporting Tip Income.

How employer figures amount to withhold. The tips you report to your employer are counted as part of your income for the month you report them. Your employer can figure your withholding in either of two ways.

- By withholding at the regular rate on the sum of your pay plus your reported tips.
- By withholding at the regular rate on your pay plus a percentage of your reported tips.

Not enough pay to cover taxes. If your regular pay isn't enough for your employer to withhold all the tax (including income tax and social security and Medicare taxes (or the equivalent railroad retirement tax)) due on your pay plus your tips, you can give your employer money to cover the shortage. See Pub. 531 for more information.

Allocated tips. Your employer shouldn't withhold income tax, Medicare tax, social security tax, or railroad retirement tax on any allocated tips. Withholding is based only on your pay plus your reported tips. Your employer should refund to you any incorrectly withheld tax. See Pub. 531 for more information.

Taxable Fringe Benefits

The value of certain noncash fringe benefits you receive from your employer is considered part of your pay. Your employer must generally withhold income tax on these benefits from your regular pay.

For information on fringe benefits, see Fringe Benefits under *Employee Compensation* in chapter 5.

Although the value of your personal use of an employer-provided car, truck, or other highway motor vehicle is taxable, your employer can choose not to withhold income tax on that amount. Your employer must notify you if this choice is made.

For more information on withholding on taxable fringe benefits, see chapter 1 of Pub. 505.

Sick Pay

Sick pay is a payment to you to replace your regular wages while you are temporarily absent from work due to sickness or personal injury. To qualify as sick pay, it must be paid under a plan to which your employer is a party.

If you receive sick pay from your employer or an agent of your employer, income tax must be withheld. An agent who doesn't pay regular wages to you may choose to withhold income tax at a flat rate.

However, if you receive sick pay from a third party who isn't acting as an agent of your employer, income tax will be withheld only if you choose to have it withheld. See Form W-4S, later.

If you receive payments under a plan in which your employer doesn't participate (such as an accident or health plan where you paid all the premiums), the payments aren't sick pay and usually aren't taxable.

Union agreements. If you receive sick pay under a collective bargaining agreement between your union and your employer, the agreement may determine the amount of income tax withholding. See your union representative or your employer for more information.

Form W-4S. If you choose to have income tax withheld from sick pay paid by a third party, such as an insurance company, you must fill out Form W-4S. Its instructions contain a worksheet you can use to figure the amount you want withheld. They also explain restrictions that may apply.

Give the completed form to the payer of your sick pay. The payer must withhold according to your directions on the form.

Estimated tax. If you don't request withholding on Form W-4S, or if you don't have enough tax withheld, you may have to make estimated tax payments. If you don't pay enough tax, either through estimated tax or withholding, or a combination of both, you may have to pay a penalty. See Underpayment Penalty for 2022 at the end of this chapter.

Pensions and Annuities

Income tax will usually be withheld from your pension or annuity distributions unless you

choose not to have it withheld. This rule applies to distributions from:

- A traditional individual retirement arrangement (IRA);
- A life insurance company under an endowment, annuity, or life insurance contract;
- A pension, annuity, or profit-sharing plan;
- A stock bonus plan; and
- Any other plan that defers the time you receive compensation.

The amount withheld depends on whether you receive payments spread out over more than 1 year (periodic payments), within 1 year (nonperiodic payments), or as an eligible rollover distribution (ERD). Income tax withholding from an ERD is mandatory.

More information. For more information on withholding on pensions and annuities, including a discussion of Form W-4P, see *Pensions and Annuities* in chapter 1 of Pub. 505.

Gambling Winnings

Income tax is withheld at a flat 24% rate from certain kinds of gambling winnings.

Gambling winnings of more than $5,000 from the following sources are subject to income tax withholding.

- Any sweepstakes; wagering pool, including payments made to winners of poker tournaments; or lottery.
- Any other wager, if the proceeds are at least 300 times the amount of the bet.

It doesn't matter whether your winnings are paid in cash, in property, or as an annuity. Winnings not paid in cash are taken into account at their fair market value.

Exception. Gambling winnings from bingo, keno, and slot machines generally aren't subject to income tax withholding. However, you may need to provide the payer with a social security number to avoid withholding. See *Backup withholding on gambling winnings* in chapter 1 of Pub. 505. If you receive gambling winnings not subject to withholding, you may need to pay estimated tax. See Estimated Tax for 2023, later.

If you don't pay enough tax, either through withholding or estimated tax, or a combination of both, you may have to pay a penalty. See Underpayment Penalty for 2022 at the end of this chapter.

Form W-2G. If a payer withholds income tax from your gambling winnings, you should receive a Form W-2G, Certain Gambling Winnings, showing the amount you won and the amount withheld. Report the tax withheld on Form 1040 or 1040-SR, line 25c.

Unemployment Compensation

You can choose to have income tax withheld from unemployment compensation. To make this choice, fill out Form W-4V (or a similar form provided by the payer) and give it to the payer.

All unemployment compensation is taxable. If you don't have income tax withheld, you may have to pay estimated tax. See Estimated Tax for 2023, later.

If you don't pay enough tax, either through withholding or estimated tax, or a combination of both, you may have to pay a penalty. See Underpayment Penalty for 2022 at the end of this chapter.

Federal Payments

You can choose to have income tax withheld from certain federal payments you receive. These payments are the following.

1. Social security benefits.
2. Tier 1 railroad retirement benefits.
3. Commodity credit corporation loans you choose to include in your gross income.
4. Payments under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as amended, or title II of the Disaster Assistance Act of 1988, that are treated as insurance proceeds and that you receive because:
   a. Your crops were destroyed or damaged by drought, flood, or any other natural disaster; or
   b. You were unable to plant crops because of a natural disaster described in (a).
5. Any other payment under federal law as determined by the Secretary.

To make this choice, fill out Form W-4V (or a similar form provided by the payer) and give it to the payer.

If you don't choose to have income tax withheld, you may have to pay estimated tax. See Estimated Tax for 2023, later.

If you don't pay enough tax, either through withholding or estimated tax, or a combination of both, you may have to pay a penalty. See Underpayment Penalty for 2022 at the end of this chapter.

More information. For more information about the tax treatment of social security and railroad retirement benefits, see chapter 7. Get Pub. 225, Farmer's Tax Guide, for information about the tax treatment of commodity credit corporation loans or crop disaster payments.

Backup Withholding

Banks or other businesses that pay you certain kinds of income must file an information return (Form 1099) with the IRS. The information return shows how much you were paid during the year. It also includes your name and taxpayer identification number (TIN). TINs are explained in chapter 1 under Social Security Number (SSN).

These payments generally aren't subject to withholding. However, “backup” withholding is required in certain situations. Backup withholding can apply to most kinds of payments that are reported on Form 1099.

The payer must withhold at a flat 24% rate in the following situations.

- You don't give the payer your TIN in the required manner.
- The IRS notifies the payer that the TIN you gave is incorrect.
- You are required, but fail, to certify that you aren't subject to backup withholding.
- The IRS notifies the payer to start withholding on interest or dividends because you have underreported interest or dividends on your income tax return. The IRS will do this only after it has mailed you four notices.

Go to IRS.gov/Businesses/Small-Businesses-Self-Employed/Backup-Withholding for more information on kinds of payments subject to backup withholding.

Penalties. There are civil and criminal penalties for giving false information to avoid backup withholding. The civil penalty is $500. The criminal penalty, upon conviction, is a fine of up to $1,000 or imprisonment of up to 1 year, or both.

Estimated Tax for 2023

Estimated tax is the method used to pay tax on income that isn't subject to withholding. This includes income from self-employment, interest, dividends, alimony, rent, gains from the sale of assets, prizes, and awards. You may also have to pay estimated tax if the amount of income tax being withheld from your salary, pension, or other income isn't enough.

Estimated tax is used to pay both income tax and self-employment tax, as well as other taxes and amounts reported on your tax return. If you don't pay enough tax, either through withholding or estimated tax, or a combination of both, you may have to pay a penalty. If you don't pay enough by the due date of each payment period (see When To Pay Estimated Tax, later), you may be charged a penalty even if you are due a refund when you file your tax return. For information on when the penalty applies, see Underpayment Penalty for 2022 at the end of this chapter.

Who Doesn't Have To Pay Estimated Tax

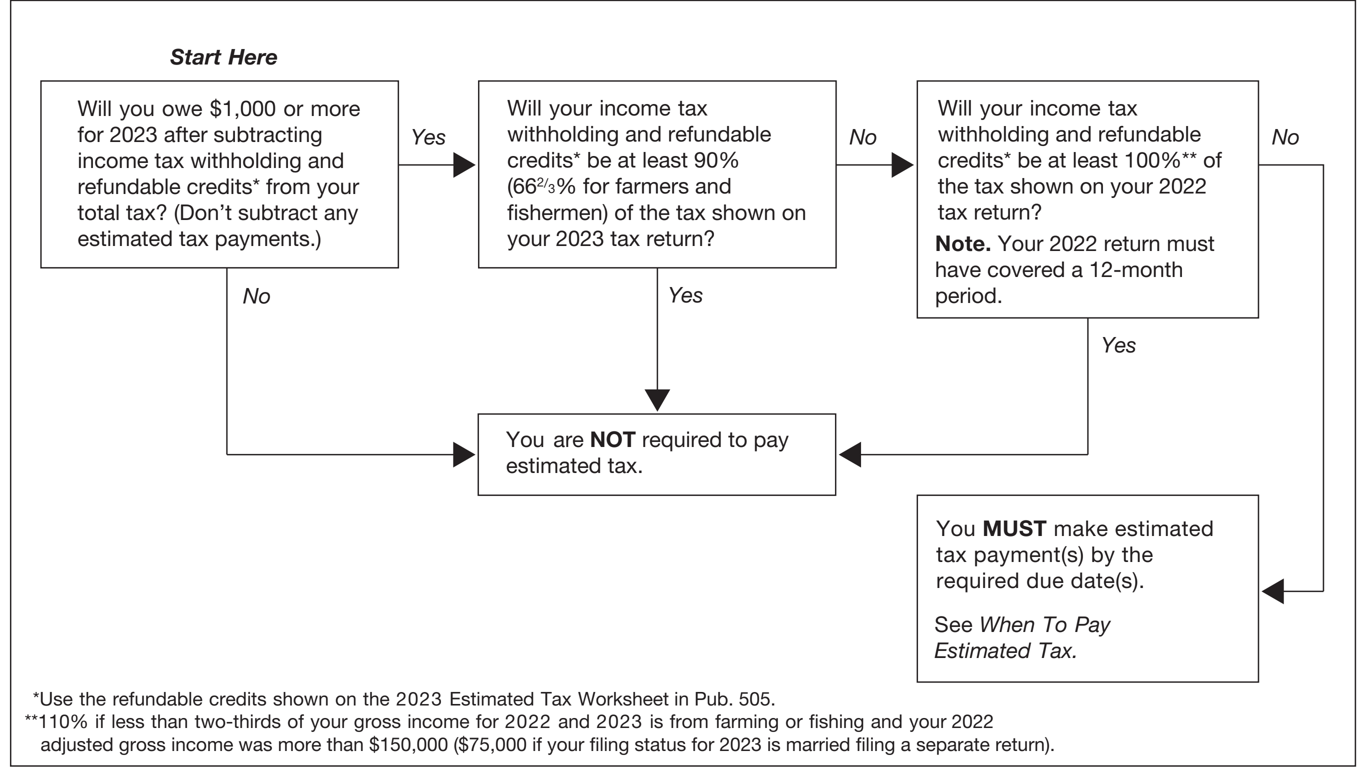
If you receive salaries or wages, you can avoid having to pay estimated tax by asking your employer to take more tax out of your earnings. To do this, give a new Form W-4 to your employer. See chapter 1 of Pub. 505.

Estimated tax not required. You don't have to pay estimated tax for 2023 if you meet all three of the following conditions.

- You had no tax liability for 2022.
- You were a U.S. citizen or resident alien for the whole year.
- Your 2022 tax year covered a 12-month period.

You had no tax liability for 2022 if your total tax was zero or you didn't have to file an income tax return. For the definition of “total tax” for 2022, see Pub. 505, chapter 2.

Figure 4-A. **Do You Have To Pay Estimated Tax?**



Who Must Pay Estimated Tax

If you owe additional tax for 2022, you may have to pay estimated tax for 2023.

You can use the following general rule as a guide during the year to see if you will have enough withholding, or if you should increase your withholding or make estimated tax payments.

General rule. In most cases, you must pay estimated tax for 2023 if both of the following apply.

1. You expect to owe at least $1,000 in tax for 2023, after subtracting your withholding and refundable credits.
2. You expect your withholding plus your refundable credits to be less than the smaller of:
   a. 90% of the tax to be shown on your 2023 tax return, or
   b. 100% of the tax shown on your 2022 tax return (but see *Special rules for farmers, fishermen, and higher income taxpayers*, later). Your 2022 tax return must cover all 12 months.

If the result from using the general rule above suggests that you won't have enough withholding, complete the 2023 Estimated Tax Worksheet in Pub. 505 for a more accurate calculation.

Special rules for farmers, fishermen, and higher income taxpayers. If at least two-thirds of your gross income for tax year 2022 or 2023 is from farming or fishing, substitute 66⅔% for 90% in (2a) under the *General rule*, earlier. If your AGI for 2022 was more than $150,000 ($75,000 if your filing status for 2023 is married filing a separate return), substitute 110% for 100% in (2b) under *General rule*, earlier. See Figure 4-A and Pub. 505, chapter 2, for more information.

Aliens. Resident and nonresident aliens may also have to pay estimated tax. Resident aliens should follow the rules in this chapter unless noted otherwise. Nonresident aliens should get Form 1040-ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals.

You are an alien if you aren't a citizen or national of the United States. You are a resident alien if you either have a green card or meet the substantial presence test. For more information about the substantial presence test, see Pub. 519, U.S. Tax Guide for Aliens.

Married taxpayers. If you qualify to make joint estimated tax payments, apply the rules discussed here to your joint estimated income.

You and your spouse can make joint estimated tax payments even if you aren't living together.

However, you and your spouse can't make joint estimated tax payments if:

- You are legally separated under a decree of divorce or separate maintenance,
- You and your spouse have different tax years, or
- Either spouse is a nonresident alien (unless that spouse elected to be treated as a resident alien for tax purposes (see chapter 1 of Pub. 519)).

If you and your spouse can't make estimated tax payments, apply these rules to your separate estimated income. Making joint or separate estimated tax payments won't affect your choice of filing a joint tax return or separate returns for 2023.

2022 separate returns and 2023 joint return. If you plan to file a joint return with your spouse for 2023 but you filed separate returns for 2022, your 2022 tax is the total of the tax shown on your separate returns. You filed a separate return if you filed as single, head of household, or married filing separately.

2022 joint return and 2023 separate returns. If you plan to file a separate return for 2023 but you filed a joint return for 2022, your 2022 tax is your share of the tax on the joint return. You file a separate return if you file as single, head of household, or married filing separately.

To figure your share of the tax on the joint return, first figure the tax both you and your spouse would have paid had you filed separate returns for 2022 using the same filing status as for 2023. Then, multiply the tax on the joint return by the following fraction.

$$\frac{\text{The tax you would have paid had you filed a separate return}}{\text{The total tax you and your spouse would have paid had you filed separate returns}}$$

Example. Taxpayer A and Taxpayer B filed a joint return for 2022 showing taxable income of $48,500 and tax of $5,412. Of the $48,500

taxable income, $40,100 was Taxpayer A's and the rest was Taxpayer B's. For 2023, they plan to file married filing separately. Taxpayer A figures tax on the 2022 joint return as follows.

Tax on $40,100 based on a separate return	$4,610
Tax on $8,400 based on a separate return	843
Total	$5,453
Taxpayer A's percentage of total ($4,610 ÷ $5,453) . . .	85%
Taxpayer A's share of tax on joint return ($5,412 × 85%)	$4,600

How To Figure Estimated Tax

To figure your estimated tax, you must figure your expected adjusted gross income (AGI), taxable income, taxes, deductions, and credits for the year.

When figuring your 2023 estimated tax, it may be helpful to use your income, deductions, and credits for 2022 as a starting point. Use your 2022 federal tax return as a guide. You can use Form 1040-ES and Pub. 505 to figure your estimated tax. Nonresident aliens use Form 1040-ES (NR) and Pub. 505 to figure estimated tax (see chapter 8 of Pub. 519 for more information).

You must make adjustments both for changes in your own situation and for recent changes in the tax law. For a discussion of these changes, visit *IRS.gov*.

For more complete information on how to figure your estimated tax for 2023, see chapter 2 of Pub. 505.

When To Pay Estimated Tax

For estimated tax purposes, the tax year is divided into four payment periods. Each period has a specific payment due date. If you don't pay enough tax by the due date of each payment period, you may be charged a penalty even if you are due a refund when you file your income tax return. The payment periods and due dates for estimated tax payments are shown next.

For the period:	Due date:*
Jan. 1–March 31	April 18
April 1–May 31	June 15
June 1–August 31	Sept. 15
Sept. 1–Dec. 31	Jan. 16, next year

*See *Saturday, Sunday, holiday rule* and *January payment*.

Saturday, Sunday, holiday rule. If the due date for an estimated tax payment falls on a Saturday, Sunday, or legal holiday, the payment will be on time if you make it on the next day that isn't a Saturday, Sunday, or legal holiday.

January payment. If you file your 2023 Form 1040 or 1040-SR by January 31, 2024, and pay the rest of the tax you owe, you don't need to make the payment due on January 16, 2024.

Fiscal year taxpayers. If your tax year doesn't start on January 1, see the Form 1040-ES instructions for your payment due dates.

When To Start

You don't have to make estimated tax payments until you have income on which you will owe income tax. If you have income subject to estimated tax during the first payment period, you must make your first payment by the due date for the first payment period. You can pay all your estimated tax at that time, or you can pay it in installments. If you choose to pay in installments, make your first payment by the due date for the first payment period. Make your remaining installment payments by the due dates for the later periods.

No income subject to estimated tax during first period. If you don't have income subject to estimated tax until a later payment period, you must make your first payment by the due date for that period. You can pay your entire estimated tax by the due date for that period or you can pay it in installments by the due date for that period and the due dates for the remaining periods.

Table 4-1. **General Due Dates for Estimated Tax Installment Payments**

If you first have income on which you must pay estimated tax:	Make installments by:*	Make later installments by:*
Before April 1	April 15	June 15 Sept. 15 Jan. 15, next year
April 1–May 31	June 15	Sept. 15 Jan. 15, next year
June 1–Aug. 31	Sept. 15	Jan. 15, next year
After Aug. 31	Jan. 15, next year	(None)

*See *Saturday, Sunday, holiday rule* and *January payment*.

How much to pay to avoid a penalty. To determine how much you should pay by each payment due date, see *How To Figure Each Payment* next.

How To Figure Each Payment

You should pay enough estimated tax by the due date of each payment period to avoid a penalty for that period. You can figure your required payment for each period by using either the regular installment method or the annualized income installment method. These methods are described in chapter 2 of Pub. 505. If you don't pay enough during each payment period, you may be charged a penalty even if you are due a refund when you file your tax return.

If the earlier discussion of *No income subject to estimated tax during first period* or the later discussion of *Change in estimated tax* applies to you, you may benefit from reading *Annualized Income Installment Method* in chapter 2 of Pub. 505 for information on how to avoid a penalty.

Underpayment penalty. Under the regular installment method, if your estimated tax payment for any period is less than one-fourth of your estimated tax, you may be charged a penalty for underpayment of estimated tax for that period when you file your tax return. Under the annualized income installment method, your estimated tax payments vary with your income, but the amount required must be paid each period. See *Instructions for Form 2210* for more information.

Change in estimated tax. After you make an estimated tax payment, changes in your income, adjustments, deductions, or credits may make it necessary for you to refigure your estimated tax. Pay the unpaid balance of your amended estimated tax by the next payment due date after the change or in installments by that date and the due dates for the remaining payment periods.

Estimated Tax Payments Not Required

You don't have to pay estimated tax if your withholding in each payment period is at least as much as:

- One-fourth of your required annual payment, or
- Your required annualized income installment for that period.

You also don't have to pay estimated tax if you will pay enough through withholding to keep the amount you owe with your return under $1,000.

How To Pay Estimated Tax

There are several ways to pay estimated tax.

- Credit an overpayment on your 2022 return to your 2023 estimated tax.
- Pay by direct transfer from your bank account, or pay by debit or credit card using a pay-by-phone system or the Internet.
- Send in your payment (check or money order) with a payment voucher from Form 1040-ES.

Credit an Overpayment

If you show an overpayment of tax after completing your Form 1040 or 1040-SR for 2022, you can apply part or all of it to your estimated tax for 2023. On line 36 of Form 1040 or 1040-SR, enter the amount you want credited to your estimated tax rather than refunded. Take the amount you have credited into account when figuring your estimated tax payments.

You can't have any of the amount you credited to your estimated tax refunded to you until you file your tax return for the following year.

You also can't use that overpayment in any other way.

Pay Online

The IRS offers an electronic payment option that is right for you. Paying online is convenient, secure, and helps make sure we get your payments on time. To pay your taxes online or for more information, go to *IRS.gov/Payments*. You can pay using any of the following methods.

- **IRS Direct Pay.** For online transfers directly from your checking or savings account at no cost to you, go to *IRS.gov/Payments*.
- **Pay by Card.** To pay by debit or credit card, go to *IRS.gov/Payments*. A convenience fee is charged by these service providers.
- **Electronic Funds Withdrawal (EFW).** This is an integrated *e-file*/e-pay option offered only when filing your federal taxes electronically using tax preparation software, through a tax professional, or the IRS at *IRS.gov/Payments*.
- **Online Payment Agreement.** If you can't pay in full by the due date of your tax return, you can apply for an online monthly installment agreement at *IRS.gov/Payments*. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved. A user fee is charged.
- **IRS2GO.** This is the mobile application of the IRS. You can access Direct Pay or Pay By Card by downloading the application.

Pay by Phone

Paying by phone is another safe and secure method of paying electronically. Use one of the following methods: **(1)** call one of the debit or credit card providers, or **(2)** use the Electronic Federal Tax Payment System (EFTPS).

Debit or credit card. Call one of our service providers. Each charges a fee that varies by provider, card type, and payment amount.

ACI Payments, Inc. (Formerly Official Payments)
888-272-9829
www.fed.acipayonline.com

Link2Gov Corporation
888-PAY-1040™ (888-729-1040)
www.PAY1040.com

WorldPay US, Inc.
844-PAY-TAX-8™ (844-729-8298)
www.payUSAtax.com

EFTPS. To get more information about EFTPS or to enroll in EFTPS, visit *EFTPS.gov* or call 800-555-4477. To contact EFTPS using Telecommunications Relay Services (TRS) for people who are deaf, hard of hearing, or have a speech disability, dial 711 and then provide the TRS assistant the 800-555-4477 number above or 800-733-4829. Additional information about EFTPS is also available in Pub. 966.

Pay by Mobile Device

To pay through your mobile device, download the IRS2Go application.

Pay by Cash

Cash is an in-person payment option for individuals provided through retail partners with a maximum of $1,000 per day per transaction. To make a cash payment, you must first be registered online at *www.fed.acipayonline.com*, our Official Payment provider.

Pay by Check or Money Order Using the Estimated Tax Payment Voucher

Before submitting a payment through the mail using the estimated tax payment voucher, please consider alternative methods. One of our safe, quick, and easy electronic payment options might be right for you.

If you choose to mail in your payment, each payment of estimated tax by check or money order must be accompanied by a payment voucher from Form 1040-ES.

During 2022, if you:

- Made at least one estimated tax payment but not by electronic means,
- Didn't use software or a paid preparer to prepare or file your return,

then you should receive a copy of the 2023 Form 1040-ES with payment vouchers.

The enclosed payment vouchers will be preprinted with your name, address, and social security number. Using the preprinted vouchers will speed processing, reduce the chance of error, and help save processing costs.

Use the window envelopes that came with your Form 1040-ES package. If you use your own envelopes, make sure you mail your payment vouchers to the address shown in the Form 1040-ES instructions for the place where you live.

No checks of $100 million or more accepted. The IRS can't accept a single check (including a cashier's check) for amounts of $100,000,000 ($100 million) or more. If you are sending $100 million or more by check, you'll need to spread the payment over two or more checks with each check made out for an amount less than $100 million. This limit doesn't apply to other methods of payment (such as electronic payments). Please consider a method of payment other than check if the amount of the payment is over $100 million.

Note. These criteria can change without notice. If you don't receive a Form 1040-ES package and you are required to make an estimated tax payment, you should go to *IRS.gov/Form1040ES* and print a copy of Form 1040-ES that includes four blank payment vouchers. Complete one of these and make your payment timely to avoid penalties for paying late.

Don't use the address shown in the Instructions for Form 1040 for your estimated tax payments.

If you didn't pay estimated tax last year, you can order Form 1040-ES from the IRS (see the inside back cover of this publication) or download it from IRS.gov. Follow the instructions to make sure you use the vouchers correctly.

Joint estimated tax payments. If you file a joint return and are making joint estimated tax payments, enter the names and social security numbers on the payment voucher in the same order as they will appear on the joint return.

Change of address. You must notify the IRS if you are making estimated tax payments and you changed your address during the year. Complete Form 8822, Change of Address, and mail it to the address shown in the instructions for that form.

Credit for Withholding and Estimated Tax for 2022

When you file your 2022 income tax return, take credit for all the income tax and excess social security or railroad retirement tax withheld from your salary, wages, pensions, etc. Also take credit for the estimated tax you paid for 2022. These credits are subtracted from your total tax. Because these credits are refundable, you should file a return and claim these credits, even if you don't owe tax.

Two or more employers. If you had two or more employers in 2022 and were paid wages of more than $147,000, too much social security or tier 1 railroad retirement tax may have been withheld from your pay. You may be able to claim the excess as a credit against your income tax when you file your return. See the Instructions for Form 1040 for more information.

Withholding

If you had income tax withheld during 2022, you should be sent a statement by January 31, 2023, showing your income and the tax withheld. Depending on the source of your income, you should receive:

- Form W-2, Wage and Tax Statement;
- Form W-2G, Certain Gambling Winnings; or
- A form in the 1099 series.

Forms W-2 and W-2G. If you file a paper return, always file Form W-2 with your income tax return. File Form W-2G with your return only if it shows any federal income tax withheld from your winnings.

You should get at least two copies of each form. If you file a paper return, attach one copy to the front of your federal income tax return. Keep one copy for your records. You should also receive copies to file with your state and local returns.

Form W-2

Your employer is required to provide or send Form W-2 to you no later than January 31, 2023. You should receive a separate Form W-2 from each employer you worked for.

If you stopped working before the end of 2022, your employer could have given you your

Form W-2 at any time after you stopped working. However, your employer must provide or send it to you by January 31, 2023.

If you ask for the form, your employer must send it to you within 30 days after receiving your written request or within 30 days after your final wage payment, whichever is later.

If you haven't received your Form W-2 by January 31, you should ask your employer for it. If you don't receive it by early February, call the IRS.

Form W-2 shows your total pay and other compensation and the income tax, social security tax, and Medicare tax that was withheld during the year. Include the federal income tax withheld (as shown in box 2 of Form W-2) on Form 1040 or 1040-SR, line 25a.

In addition, Form W-2 is used to report any taxable sick pay you received and any income tax withheld from your sick pay.

Form W-2G

If you had gambling winnings in 2022, the payer may have withheld income tax. If tax was withheld, the payer will give you a Form W-2G showing the amount you won and the amount of tax withheld.

Report the amounts you won on Schedule 1 (Form 1040). Take credit for the tax withheld on Form 1040 or 1040-SR, line 25c.

The 1099 Series

Most forms in the 1099 series aren't filed with your return. These forms should be furnished to you by January 31, 2023 (or, for Forms 1099-B, 1099-S, and certain Forms 1099-MISC, by February 15, 2023). Unless instructed to file any of these forms with your return, keep them for your records. There are several different forms in this series, which are not listed. See the instructions for the specific Form 1099 for more information.

Form 1099-R. Attach Form 1099-R to your paper return if box 4 shows federal income tax withheld. Include the amount withheld in the total on line 25b of Form 1040 or 1040-SR.

Backup withholding. If you were subject to backup withholding on income you received during 2022, include the amount withheld, as shown on your Form 1099, in the total on line 25b of Form 1040 or 1040-SR.

Form Not Correct

If you receive a form with incorrect information on it, you should ask the payer for a corrected form. Call the telephone number or write to the address given for the payer on the form. The corrected Form W-2G or Form 1099 you receive will have an “X” in the “CORRECTED” box at the top of the form. A special form, Form W-2c, Corrected Wage and Tax Statement, is used to correct a Form W-2.

In certain situations, you will receive two forms in place of the original incorrect form. This will happen when your taxpayer identification number is wrong or missing, your name and address are wrong, or you received the wrong type of form (for example, a Form 1099-DIV, Dividends and Distributions, instead of a Form 1099-INT, Interest Income). One new form you receive will be the same incorrect form or have the same incorrect information, but all money amounts will be zero. This form will have an “X” in the “CORRECTED” box at the top of the form. The second new form should have all the correct information, prepared as though it is the original (the “CORRECTED” box won't be checked).

Form Received After Filing

If you file your return and you later receive a form for income that you didn't include on your return, you should report the income and take credit for any income tax withheld by filing Form 1040-X, Amended U.S. Individual Income Tax Return.

Separate Returns

If you are married but file a separate return, you can take credit only for the tax withheld from your own income. Don't include any amount withheld from your spouse's income. However, different rules may apply if you live in a community property state.

Community property states are listed in chapter 2. For more information on these rules, and some exceptions, see Pub. 555, Community Property.

Estimated Tax

Take credit for all your estimated tax payments for 2022 on Form 1040 or 1040-SR, line 26. Include any overpayment from 2021 that you had credited to your 2022 estimated tax.

Name changed. If you changed your name, and you made estimated tax payments using your old name, attach a brief statement to the front of your paper tax return indicating:

- When you made the payments,
- The amount of each payment,
- Your name when you made the payments, and
- Your social security number.

The statement should cover payments you made jointly with your spouse as well as any you made separately.

Be sure to report the change to the Social Security Administration. This prevents delays in processing your return and issuing any refunds.

Separate Returns

If you and your spouse made separate estimated tax payments for 2022 and you file separate returns, you can take credit only for your own payments.

If you made joint estimated tax payments, you must decide how to divide the payments between your returns. One of you can claim all of the estimated tax paid and the other none, or you can divide it in any other way you agree on. If you can't agree, you must divide the payments in proportion to each spouse's individual tax as shown on your separate returns for 2022.

Divorced Taxpayers

If you made joint estimated tax payments for 2022, and you were divorced during the year, either you or your former spouse can claim all of the joint payments, or you each can claim part of them. If you can't agree on how to divide the payments, you must divide them in proportion to each spouse's individual tax as shown on your separate returns for 2022.

If you claim any of the joint payments on your tax return, enter your former spouse's social security number (SSN) in the space provided on the front of Form 1040 or 1040-SR. If you divorced and remarried in 2022, enter your present spouse's SSN in the space provided on the front of Form 1040 or 1040-SR. Also, on the dotted line next to line 26, enter your former spouse's SSN, followed by “DIV.”

Underpayment Penalty for 2022

If you didn't pay enough tax, either through withholding or by making timely estimated tax payments, you will have an underpayment of estimated tax and you may have to pay a penalty.

Generally, you won't have to pay a penalty for 2022 if any of the following apply.

- The total of your withholding and estimated tax payments was at least as much as your 2021 tax (or 110% of your 2021 tax if your AGI was more than $150,000, $75,000 if your 2022 filing status is married filing separately) and you paid all required estimated tax payments on time;
- The tax balance due on your 2022 return is no more than 10% of your total 2022 tax, and you paid all required estimated tax payments on time;
- Your total 2022 tax minus your withholding and refundable credits is less than $1,000;
- You didn't have a tax liability for 2021 and your 2021 tax year was 12 months; or
- You didn't have any withholding taxes and your current year tax less any household employment taxes is less than $1,000.

Farmers and fishermen. Special rules apply if you are a farmer or fisherman. See the *Instructions for Form 2210-F* for more information.

IRS can figure the penalty for you. If you think you owe the penalty but you don't want to figure it yourself when you file your tax return, you may not have to. Generally, the IRS will figure the penalty for you and send you a bill. However, if you think you are able to lower or eliminate your penalty, you must complete Form 2210 or Form 2210-F and attach it to your paper return. See *Instructions for Form 2210* for more information.

Part Two.

Income and Adjustments to Income

The five chapters in this part discuss many kinds of income and adjustments to income. They explain which income is and isn't taxed and discuss some of the adjustments to income that you can make in figuring your adjusted gross income.

The Form 1040 and 1040-SR schedules that are discussed in these chapters are:

- *Schedule 1, Additional Income and Adjustments to Income;*
- *Schedule 2 (Part II), Other Taxes; and*
- *Schedule 3 (Part II), Other Payments and Refundable Credits.*

Table V. **Other Adjustments to Income**

Use this table to find information about other adjustments to income not covered in this part of the publication.

IF you are looking for more information about the deduction for...	**THEN see...**
contributions to a health savings account	*Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans.*
moving expenses	*Pub. 3, Armed Forces' Tax Guide.*
part of your self-employment tax	*chapter 11.*
self-employed health insurance	*Pub. 502, Medical and Dental Expenses.*
payments to self-employed SEP, SIMPLE, and qualified plans	*Pub. 560, Retirement Plans for Small Business.*
penalty on the early withdrawal of savings	*chapter 6.*
contributions to an Archer MSA	*Pub. 969.*
reforestation amortization or expense	*chapters 7 and 8 of Pub. 535, Business Expenses.*
contributions to Internal Revenue Code section 501(c)(18)(D) pension plans	*Pub. 525, Taxable and Nontaxable Income.*
expenses from the rental of personal property	*chapter 8.*
certain required repayments of supplemental unemployment benefits (sub-pay)	*chapter 8.*
foreign housing costs	*chapter 4 of Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.*
jury duty pay given to your employer	*chapter 8.*
contributions by certain ministers or chaplains to Internal Revenue Code section 403(b) plans	*Pub. 517, Social Security and Other Information for Members of the Clergy and Religious Workers.*
attorney fees and certain costs for actions involving IRS awards to whistleblowers	*Pub. 525.*

5. Wages, Salaries, and Other Earnings

Reminders

Deferred compensation contribution limit. If you participate in a 401(k) plan, 403(b) plan, or the federal government's Thrift Savings Plan, the total annual amount you can contribute is increased to $20,500 for 2022. This also applies to most 457 plans.

Introduction

This chapter discusses compensation received for services as an employee, such as wages, salaries, and fringe benefits. The following topics are included.

- Bonuses and awards.
- Special rules for certain employees.
- Sickness and injury benefits.

The chapter explains what income is included and isn't included in the employee's gross income and what's not included.

Useful Items

You may want to see:

Publication

- ❏ **463** Travel, Gift, and Car Expenses
- ❏ **502** Medical and Dental Expenses
- ❏ **524** Credit for the Elderly or the Disabled
- ❏ **525** Taxable and Nontaxable Income
- ❏ **526** Charitable Contributions
- ❏ **550** Investment Income and Expenses
- ❏ **554** Tax Guide for Seniors
- ❏ **575** Pension and Annuity Income
- ❏ **907** Tax Highlights for Persons With Disabilities
- ❏ **926** Household Employer's Tax Guide
- ❏ **3920** Tax Relief for Victims of Terrorist Attacks

For these and other useful items, go to *IRS.gov/Forms*.

Employee Compensation

This section discusses various types of employee compensation, including fringe benefits, retirement plan contributions, stock options, and restricted property.

Form W-2. If you're an employee, you should receive a Form W-2 from your employer showing the pay you received for your services. Include your pay on line 1 of Form 1040 or 1040-SR, even if you don't receive a Form W-2.

In some instances, your employer isn't required to give you a Form W-2. Your employer isn't required to give you a Form W-2 if you perform household work in your employer's home for less than $2,400 in cash wages during the calendar year and you have no federal income taxes withheld from your wages. Household work is work done in or around an employer's home. Some examples of workers who do household work are:

- Babysitters,
- Caretakers,
- House cleaning workers,
- Domestic workers,
- Drivers,
- Health aides,
- Housekeepers,
- Maids,
- Nannies,
- Private nurses, and
- Yard workers.

See Schedule H (Form 1040), Household Employment Taxes, and its instructions, and Pub. 926 for more information.

If you performed services, other than as an independent contractor, and your employer didn't withhold social security and Medicare taxes from your pay, you must file Form 8919, Uncollected Social Security and Medicare Tax on Wages, with your Form 1040 or 1040-SR. See Form 8919 and its instructions for more information on how to figure unreported wages and taxes and how to include them on your income tax return.

Childcare providers. If you provide childcare, either in the child's home or in your home or other place of business, the pay you receive must be included in your income. If you aren't an employee, you're probably self-employed and must include payments for your services on Schedule C (Form 1040), Profit or Loss From Business. You generally aren't an employee unless you're subject to the will and control of the person who employs you as to what you're to do and how you're to do it.

Babysitting. If you're paid to babysit, even for relatives or neighborhood children, whether on a regular basis or only periodically, the rules for childcare providers apply to you.

Employment tax. Whether you're an employee or self-employed person, your income could be subject to self-employment tax. See the instructions for Schedules C and SE (Form 1040) if you're self-employed. Also, see Pub. 926 for more information.

Miscellaneous Compensation

This section discusses different types of employee compensation.

Advance commissions and other earnings. If you receive advance commissions or other amounts for services to be performed in the future and you're a cash-method taxpayer, you must include these amounts in your income in the year you receive them.

If you repay unearned commissions or other amounts in the same year you receive them, reduce the amount included in your income by the repayment. If you repay them in a later tax year, you can deduct the repayment as an itemized deduction on your Schedule A (Form 1040), line 16, or you may be able to take a credit for that year. See *Repayments* in chapter 8.

Allowances and reimbursements. If you receive travel, transportation, or other business expense allowances or reimbursements from your employer, see Pub. 463, Travel, Gift, and Car Expenses. If you're reimbursed for moving expenses, see Pub. 521, Moving Expenses.

Back pay awards. If you receive an amount in payment of a settlement or judgment for back pay, you must include the amount of the payment in your income. This includes payments made to you for damages, unpaid life insurance premiums, and unpaid health insurance premiums. They should be reported to you by your employer on Form W-2.

Bonuses and awards. If you receive a bonus or award (cash, goods, services, etc.) from your employer, you must include its value in your income. However, if your employer merely promises to pay you a bonus or award at some future time, it isn't taxable until you receive it or it's made available to you.

Employee achievement award. If you receive tangible personal property (other than cash, a gift certificate, or an equivalent item) as an award for length of service or safety achievement, you can generally exclude its value from your income. The amount you can exclude is limited to your employer's cost and can't be more than $1,600 for qualified plan awards or $400 for nonqualified plan awards for all such awards you receive during the year. Your employer can tell you whether your award is a qualified plan award. Your employer must make the award as part of a meaningful presentation, under conditions and circumstances that don't create a significant likelihood of it being disguised pay.

However, the exclusion doesn't apply to the following awards.

- A length-of-service award if you received it for less than 5 years of service or if you received another length-of-service award during the year or the previous 4 years.
- A safety achievement award if you're a manager, administrator, clerical employee, or other professional employee or if more than 10% of eligible employees previously received safety achievement awards during the year.

Example. Ben Green received three employee achievement awards during the year: a nonqualified plan award of a watch valued at $250, two qualified plan awards of a stereo valued at $1,000, and a set of golf clubs valued at $500. Assuming that the requirements for qualified plan awards are otherwise satisfied, each

award by itself would be excluded from income. However, because the $1,750 total value of the awards is more than $1,600, Ben must include $150 ($1,750 – $1,600) in his income.

Differential wage payments. This is any payment made to you by an employer for any period during which you are, for a period of more than 30 days, an active duty member of the uniformed services and represents all or a portion of the wages you would have received from the employer during that period. These payments are treated as wages and are subject to income tax withholding, but not FICA or FUTA taxes. The payments are reported as wages on Form W-2.

Government cost-of-living allowances. Most payments received by U.S. Government civilian employees for working abroad are taxable. However, certain cost-of-living allowances are tax free. Pub. 516, U.S. Government Civilian Employees Stationed Abroad, explains the tax treatment of allowances, differentials, and other special pay you receive for employment abroad.

Nonqualified deferred compensation plans. Your employer may report to you the total amount of deferrals for the year under a nonqualified deferred compensation plan on Form W-2, box 12, using code Y. This amount isn't included in your income.

However, if at any time during the tax year, the plan fails to meet certain requirements, or isn't operated under those requirements, all amounts deferred under the plan for the tax year and all preceding tax years to the extent vested and not previously included in income are included in your income for the current year. This amount is included in your wages shown on Form W-2, box 1. It's also shown on Form W-2, box 12, using code Z.

Note received for services. If your employer gives you a secured note as payment for your services, you must include the fair market value (usually the discount value) of the note in your income for the year you receive it. When you later receive payments on the note, a proportionate part of each payment is the recovery of the fair market value that you previously included in your income. Don't include that part again in your income. Include the rest of the payment in your income in the year of payment.

If your employer gives you a nonnegotiable unsecured note as payment for your services, payments on the note that are credited toward the principal amount of the note are compensation income when you receive them.

Severance pay. If you receive a severance payment when your employment with your employer ends or is terminated, you must include this amount in your income.

Accrued leave payment. If you're a federal employee and receive a lump-sum payment for accrued annual leave when you retire or resign, this amount will be included as wages on your Form W-2.

If you resign from one agency and are reemployed by another agency, you may have to repay part of your lump-sum annual leave payment to the second agency. You can reduce gross wages by the amount you repaid in the same tax year in which you received it. Attach to your tax return a copy of the receipt or statement given to you by the agency you repaid to explain the difference between the wages on the return and the wages on your Forms W-2.

Outplacement services. If you choose to accept a reduced amount of severance pay so that you can receive outplacement services (such as training in résumé writing and interview techniques), you must include the unreduced amount of the severance pay in income.

Sick pay. Pay you receive from your employer while you're sick or injured is part of your salary or wages. In addition, you must include in your income sick pay benefits received from any of the following payers.

- A welfare fund.
- A state sickness or disability fund.
- An association of employers or employees.
- An insurance company, if your employer paid for the plan.

However, if you paid the premiums on an accident or health insurance policy yourself, the benefits you receive under the policy aren't taxable. For more information, see Pub. 525, Taxable and Nontaxable Income.

Social security and Medicare taxes paid by employer. If you and your employer have an agreement that your employer pays your social security and Medicare taxes without deducting them from your gross wages, you must report the amount of tax paid for you as taxable wages on your tax return. The payment is also treated as wages for figuring your social security and Medicare taxes and your social security and Medicare benefits. However, these payments aren't treated as social security and Medicare wages if you're a household worker or a farm worker.

Stock appreciation rights. Don't include a stock appreciation right granted by your employer in income until you exercise (use) the right. When you use the right, you're entitled to a cash payment equal to the fair market value of the corporation's stock on the date of use minus the fair market value on the date the right was granted. You include the cash payment in your income in the year you use the right.

Fringe Benefits

Fringe benefits received in connection with the performance of your services are included in your income as compensation unless you pay fair market value for them or they're specifically excluded by law. Refraining from the performance of services (for example, under a covenant not to compete) is treated as the performance of services for purposes of these rules.

Accounting period. You must use the same accounting period your employer uses to report your taxable noncash fringe benefits. Your employer has the option to report taxable noncash fringe benefits by using either of the following rules.

- The general rule: benefits are reported for a full calendar year (January 1–December 31).
- The special accounting period rule: benefits provided during the last 2 months of the calendar year (or any shorter period) are treated as paid during the following calendar year. For example, each year your employer reports the value of benefits provided during the last 2 months of the prior year and the first 10 months of the current year.

Your employer doesn't have to use the same accounting period for each fringe benefit, but must use the same period for all employees who receive a particular benefit.

You must use the same accounting period that you use to report the benefit to claim an employee business deduction (for use of a car, for example).

Form W-2. Your employer must include all taxable fringe benefits in box 1 of Form W-2 as wages, tips, and other compensation and, if applicable, in boxes 3 and 5 as social security and Medicare wages. Although not required, your employer may include the total value of fringe benefits in box 14 (or on a separate statement). However, if your employer provided you with a vehicle and included 100% of its annual lease value in your income, the employer must separately report this value to you in box 14 (or on a separate statement).

Accident or Health Plan

In most cases, the value of accident or health plan coverage provided to you by your employer isn't included in your income. Benefits you receive from the plan may be taxable, as explained later under *Sickness and Injury Benefits*.

For information on the items covered in this section, other than long-term care coverage, see Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans.

Long-term care coverage. Contributions by your employer to provide coverage for long-term care services generally aren't included in your income. However, contributions made through a flexible spending or similar arrangement offered by your employer must be included in your income. This amount will be reported as wages in box 1 of your Form W-2.

Contributions you make to the plan are discussed in Pub. 502, Medical and Dental Expenses.

Archer MSA contributions. Contributions by your employer to your Archer MSA generally aren't included in your income. Their total will be reported in box 12 of Form W-2 with code R. You must report this amount on Form 8853, Archer MSAs and Long-Term Care Insurance Contracts. File the form with your return.

Health flexible spending arrangement (health FSA). If your employer provides a health FSA that qualifies as an accident or health plan, the amount of your salary reduction, and reimbursements of your medical care expenses, in most cases, aren't included in your income.

Note. Health FSAs are subject to a limit on salary reduction contributions for plan years beginning after 2012. For tax years beginning in

2022, the dollar limitation (as indexed for inflation) on voluntary employee salary reductions for contributions to health FSAs is $2,850.

Health reimbursement arrangement (HRA). If your employer provides an HRA that qualifies as an accident or health plan, coverage and reimbursements of your medical care expenses generally aren't included in your income.

Health savings account (HSA). If you're an eligible individual, you and any other person, including your employer or a family member, can make contributions to your HSA. Contributions, other than employer contributions, are deductible on your return whether or not you itemize deductions. Contributions made by your employer aren't included in your income. Distributions from your HSA that are used to pay qualified medical expenses aren't included in your income. Distributions not used for qualified medical expenses are included in your income. See Pub. 969 for the requirements of an HSA.

Contributions by a partnership to a bona fide partner's HSA aren't contributions by an employer. The contributions are treated as a distribution of money and aren't included in the partner's gross income. Contributions by a partnership to a partner's HSA for services rendered are treated as guaranteed payments that are includible in the partner's gross income. In both situations, the partner can deduct the contribution made to the partner's HSA.

Contributions by an S corporation to a 2% shareholder-employee's HSA for services rendered are treated as guaranteed payments and are includible in the shareholder-employee's gross income. The shareholder-employee can deduct the contribution made to the shareholder-employee's HSA.

Qualified HSA funding distribution. You can make a one-time distribution from your individual retirement account (IRA) to an HSA and you generally won't include any of the distribution in your income.

Adoption Assistance

You may be able to exclude from your income amounts paid or expenses incurred by your employer for qualified adoption expenses in connection with your adoption of an eligible child. See the Instructions for Form 8839, Qualified Adoption Expenses, for more information.

Adoption benefits are reported by your employer in box 12 of Form W-2 with code T. They are also included as social security and Medicare wages in boxes 3 and 5. However, they aren't included as wages in box 1. To determine the taxable and nontaxable amounts, you must complete Part III of Form 8839. File the form with your return.

De Minimis (Minimal) Benefits

If your employer provides you with a product or service and the cost of it is so small that it would be unreasonable for the employer to account for it, you generally don't include its value in your income. In most cases, don't include in your income the value of discounts at company cafeterias, cab fares home when working overtime, and company picnics.

Holiday gifts. If your employer gives you a turkey, ham, or other item of nominal value at Christmas or other holidays, don't include the value of the gift in your income. However, if your employer gives you cash or a cash equivalent, you must include it in your income.

Educational Assistance

You can exclude from your income up to $5,250 of qualified employer-provided educational assistance. For more information, see Pub. 970, Tax Benefits for Education.

Group-Term Life Insurance

In most cases, the cost of up to $50,000 of group-term life insurance coverage provided to you by your employer (or former employer) isn't included in your income. However, you must include in income the cost of employer-provided insurance that is more than the cost of $50,000 of coverage reduced by any amount you pay toward the purchase of the insurance.

For exceptions, see Entire cost excluded and Entire cost taxed, later.

If your employer provided more than $50,000 of coverage, the amount included in your income is reported as part of your wages in box 1 of your Form W-2. Also, it's shown separately in box 12 with code C.

Group-term life insurance. This insurance is term life insurance protection (insurance for a fixed period of time) that:

- Provides a general death benefit,
- Is provided to a group of employees,
- Is provided under a policy carried by the employer, and
- Provides an amount of insurance to each employee based on a formula that prevents individual selection.

Permanent benefits. If your group-term life insurance policy includes permanent benefits, such as a paid-up or cash surrender value, you must include in your income, as wages, the cost of the permanent benefits minus the amount you pay for them. Your employer should be able to tell you the amount to include in your income.

Accidental death benefits. Insurance that provides accidental or other death benefits but doesn't provide general death benefits (travel insurance, for example) isn't group-term life insurance.

Former employer. If your former employer provided more than $50,000 of group-term life insurance coverage during the year, the amount included in your income is reported as wages in box 1 of Form W-2. Also, it's shown separately in box 12 with code C. Box 12 will also show the amount of uncollected social security and Medicare taxes on the excess coverage, with codes M and N. You must pay these taxes with your income tax return. Include them on Schedule 2 (Form 1040), line 13.

Two or more employers. Your exclusion for employer-provided group-term life insurance coverage can't exceed the cost of $50,000 of coverage, whether the insurance is provided by a single employer or multiple employers. If two or more employers provide insurance coverage that totals more than $50,000, the amounts reported as wages on your Forms W-2 won't be correct. You must figure how much to include in your income. Reduce the amount you figure by any amount reported with code C in box 12 of your Forms W-2, add the result to the wages reported in box 1, and report the total on your return.

Figuring the taxable cost. Use Worksheet 5-1 to figure the amount to include in your income.

Worksheet 5-1. **Figuring the Cost of Group-Term Life Insurance To Include in Income**

Keep for Your Records

1.	Enter the total amount of your insurance coverage from your employer(s)		**1.**
2.	Limit on exclusion for employer-provided group-term life insurance coverage		**2.** *50,000*
3.	Subtract line 2 from line 1		**3.**
4.	Divide line 3 by $1,000. Figure to the nearest tenth		**4.**
5.	Go to Table 5-1. Using your age on the last day of the tax year, find your age group in the left column, and enter the cost from the column on the right for your age group		**5.**
6.	Multiply line 4 by line 5		**6.**
7.	Enter the number of full months of coverage at this cost		**7.**
8.	Multiply line 6 by line 7		**8.**
9.	Enter the premiums you paid per month	**9.**	
10.	Enter the number of months you paid the premiums	**10.**	
11.	Multiply line 9 by line 10		**11.**
12.	Subtract line 11 from line 8. **Include this amount in your income as wages**		**12.**

Table 5-1. **Cost of $1,000 of Group-Term Life Insurance for 1 Month**

Age	Cost
Under 25	$ 0.05
25 through 29	0.06
30 through 34	0.08
35 through 39	0.09
40 through 44	0.10
45 through 49	0.15
50 through 54	0.23
55 through 59	0.43
60 through 64	0.66
65 through 69	1.27
70 and above	2.06

Example. You are 51 years old and work for employers A and B. Both employers provide group-term life insurance coverage for you for the entire year. Your coverage is $35,000 with employer A and $45,000 with employer B. You pay premiums of $4.15 a month under the employer B group plan. You figure the amount to include in your income as shown in Worksheet 5-1. Figuring the Cost of Group-Term Life Insurance To Include in Income—Illustrated next.

Worksheet 5-1. **Figuring the Cost of Group-Term Life Insurance To Include in Income—Illustrated**
Keep for Your Records

1.	Enter the total amount of your insurance coverage from your employer(s)	**1.**	*80,000*
2.	Limit on exclusion for employer-provided group-term life insurance coverage	**2.**	***50,000***
3.	Subtract line 2 from line 1	**3.**	*30,000*
4.	Divide line 3 by $1,000. Figure to the nearest tenth	**4.**	*30.0*
5.	Go to Table 5-1. Using your age on the last day of the tax year, find your age group in the left column, and enter the cost from the column on the right for your age group	**5.**	*0.23*
6.	Multiply line 4 by line 5	**6.**	*6.90*
7.	Enter the number of full months of coverage at this cost	**7.**	*12*
8.	Multiply line 6 by line 7	**8.**	*82.80*
9.	Enter the premiums you paid per month	**9.** *4.15*	
10.	Enter the number of months you paid the premiums	**10.** *12*	
11.	Multiply line 9 by line 10	**11.**	*49.80*
12.	Subtract line 11 from line 8. **Include this amount in your income as wages**	**12.**	*33.00*

Entire cost excluded. You aren't taxed on the cost of group-term life insurance if any of the following circumstances apply.

1. You're permanently and totally disabled and have ended your employment.
2. Your employer is the beneficiary of the policy for the entire period the insurance is in force during the tax year.
3. A charitable organization (defined in Pub. 526, Charitable Contributions) to which contributions are deductible is the only beneficiary of the policy for the entire period the insurance is in force during the tax year. (You aren't entitled to a deduction for a charitable contribution for naming a charitable organization as the beneficiary of your policy.)
4. The plan existed on January 1, 1984, and:
   a. You retired before January 2, 1984, and were covered by the plan when you retired, or
   b. You reached age 55 before January 2, 1984, and were employed by the employer or its predecessor in 1983.

Entire cost taxed. You're taxed on the entire cost of group-term life insurance if either of the following circumstances apply.

- The insurance is provided by your employer through a qualified employees' trust, such as a pension trust or a qualified annuity plan.
- You're a key employee and your employer's plan discriminates in favor of key employees.

Retirement Planning Services

Generally, don't include the value of qualified retirement planning services provided to you and your spouse by your employer's qualified retirement plan. Qualified services include retirement planning advice, information about your employer's retirement plan, and information about how the plan may fit into your overall individual retirement income plan. You can't exclude the value of any tax preparation, accounting, legal, or brokerage services provided by your employer.

Transportation

If your employer provides you with a qualified transportation fringe benefit, it can be excluded from your income, up to certain limits. A qualified transportation fringe benefit is:

- Transportation in a commuter highway vehicle (such as a van) between your home and work place,
- A transit pass, or
- Qualified parking.

Cash reimbursement by your employer for these expenses under a bona fide reimbursement arrangement is also excludable. However, cash reimbursement for a transit pass is excludable only if a voucher or similar item that can be exchanged only for a transit pass isn't readily available for direct distribution to you.

Exclusion limit. The exclusion for commuter vehicle transportation and transit pass fringe benefits can't be more than $280 a month.

The exclusion for the qualified parking fringe benefit can't be more than $280 a month.

If the benefits have a value that is more than these limits, the excess must be included in your income.

Commuter highway vehicle. This is a highway vehicle that seats at least six adults (not including the driver). At least 80% of the vehicle's mileage must reasonably be expected to be:

- For transporting employees between their homes and workplace, and
- On trips during which employees occupy at least half of the vehicle's adult seating capacity (not including the driver).

Transit pass. This is any pass, token, farecard, voucher, or similar item entitling a person to ride mass transit (whether public or private) free or at a reduced rate or to ride in a commuter highway vehicle operated by a person in the business of transporting persons for compensation.

Qualified parking. This is parking provided to an employee at or near the employer's place of business. It also includes parking provided on or near a location from which the employee commutes to work by mass transit, in a commuter highway vehicle, or by carpool. It doesn't include parking at or near the employee's home.

Retirement Plan Contributions

Your employer's contributions to a qualified retirement plan for you aren't included in income at the time contributed. (Your employer can tell you whether your retirement plan is qualified.) However, the cost of life insurance coverage included in the plan may have to be included. See *Group-Term Life Insurance*, earlier, under *Fringe Benefits*.

If your employer pays into a nonqualified plan for you, you must generally include the contributions in your income as wages for the tax year in which the contributions are made. However, if your interest in the plan isn't transferable or is subject to a substantial risk of forfeiture (you have a good chance of losing it) at the time of the contribution, you don't have to include the value of your interest in your income until it's transferable or is no longer subject to a substantial risk of forfeiture.

For information on distributions from retirement plans, see Pub. 575, Pension and Annuity Income (or Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits, if you're a federal employee or retiree).

Elective deferrals. If you're covered by certain kinds of retirement plans, you can choose to have part of your compensation contributed by your employer to a retirement fund, rather than have it paid to you. The amount you set aside (called an "elective deferral") is treated as an employer contribution to a qualified plan. An elective deferral, other than a designated Roth

contribution (discussed later), isn't included in wages subject to income tax at the time contributed. Rather, it's subject to income tax when distributed from the plan. However, it's included in wages subject to social security and Medicare taxes at the time contributed.

Elective deferrals include elective contributions to the following retirement plans.

1. Cash or deferred arrangements (section 401(k) plans).
2. The Thrift Savings Plan for federal employees.
3. Salary reduction simplified employee pension plans (SARSEP).
4. Savings incentive match plans for employees (SIMPLE plans).
5. Tax-sheltered annuity plans (section 403(b) plans).
6. Section 501(c)(18)(D) plans.
7. Section 457 plans.

Qualified automatic contribution arrangements. Under a qualified automatic contribution arrangement, your employer can treat you as having elected to have a part of your compensation contributed to a section 401(k) plan. You are to receive written notice of your rights and obligations under the qualified automatic contribution arrangement. The notice must explain:

- Your rights to elect not to have elective contributions made, or to have contributions made at a different percentage; and
- How contributions made will be invested in the absence of any investment decision by you.

You must be given a reasonable period of time after receipt of the notice and before the first elective contribution is made to make an election with respect to the contributions.

Overall limit on deferrals. For 2022, in most cases, you shouldn't have deferred more than a total of $20,500 of contributions to the plans listed in (1) through (3) and (5) above. The limit for SIMPLE plans is $14,000. The limit for section 501(c)(18)(D) plans is the lesser of $7,000 or 25% of your compensation. The limit for section 457 plans is the lesser of your includible compensation or $20,500. Amounts deferred under specific plan limits are part of the overall limit on deferrals.

Designated Roth contributions. Employers with section 401(k) and section 403(b) plans can create qualified Roth contribution programs so that you may elect to have part or all of your elective deferrals to the plan designated as after-tax Roth contributions. Designated Roth contributions are treated as elective deferrals, except that they're included in income at the time contributed.

Excess deferrals. Your employer or plan administrator should apply the proper annual limit when figuring your plan contributions. However, you're responsible for monitoring the total you defer to ensure that the deferrals aren't more than the overall limit.

If you set aside more than the limit, the excess must generally be included in your income for that year, unless you have an excess deferral of a designated Roth contribution. See Pub. 525 for a discussion of the tax treatment of excess deferrals.

Catch-up contributions. You may be allowed catch-up contributions (additional elective deferral) if you're age 50 or older by the end of the tax year.

Stock Options

If you receive a nonstatutory option to buy or sell stock or other property as payment for your services, you will usually have income when you receive the option, when you exercise the option (use it to buy or sell the stock or other property), or when you sell or otherwise dispose of the option. However, if your option is a statutory stock option, you won't have any income until you sell or exchange your stock. Your employer can tell you which kind of option you hold. For more information, see Pub. 525.

Restricted Property

In most cases, if you receive property for your services, you must include its fair market value in your income in the year you receive the property. However, if you receive stock or other property that has certain restrictions that affect its value, you don't include the value of the property in your income until it has substantially vested. (Although you can elect to include the value of the property in your income in the year it's transferred to you.) For more information, see *Restricted Property* in Pub. 525.

Dividends received on restricted stock. Dividends you receive on restricted stock are treated as compensation and not as dividend income. Your employer should include these payments on your Form W-2.

Stock you elected to include in income. Dividends you receive on restricted stock you elected to include in your income in the year transferred are treated the same as any other dividends. Report them on your return as dividends. For a discussion of dividends, see Pub. 550, Investment Income and Expenses.

For information on how to treat dividends reported on both your Form W-2 and Form 1099-DIV, see *Dividends received on restricted stock* in Pub. 525.

Special Rules for Certain Employees

This section deals with special rules for people in certain types of employment: members of the clergy, members of religious orders, people working for foreign employers, military personnel, and volunteers.

Clergy

Generally, if you're a member of the clergy, you must include in your income offerings and fees you receive for marriages, baptisms, funerals, masses, etc., in addition to your salary. If the offering is made to the religious institution, it isn't taxable to you.

If you're a member of a religious organization and you give your outside earnings to the religious organization, you must still include the earnings in your income. However, you may be entitled to a charitable contribution deduction for the amount paid to the organization. See Pub. 526.

Pension. A pension or retirement pay for a member of the clergy is usually treated as any other pension or annuity. It must be reported on lines 5a and 5b of Form 1040 or 1040-SR.

Housing. Special rules for housing apply to members of the clergy. Under these rules, you don't include in your income the rental value of a home (including utilities) or a designated housing allowance provided to you as part of your pay. However, the exclusion can't be more than the reasonable pay for your services. If you pay for the utilities, you can exclude any allowance designated for utility cost, up to your actual cost. The home or allowance must be provided as compensation for your services as an ordained, licensed, or commissioned minister. However, you must include the rental value of the home or the housing allowance as earnings from self-employment on Schedule SE (Form 1040) if you're subject to the self-employment tax. For more information, see Pub. 517, Social Security and Other Information for Members of the Clergy and Religious Workers.

Members of Religious Orders

If you're a member of a religious order who has taken a vow of poverty, how you treat earnings that you renounce and turn over to the order depends on whether your services are performed for the order.

Services performed for the order. If you're performing the services as an agent of the order in the exercise of duties required by the order, don't include in your income the amounts turned over to the order.

If your order directs you to perform services for another agency of the supervising church or an associated institution, you're considered to be performing the services as an agent of the order. Any wages you earn as an agent of an order that you turn over to the order aren't included in your income.

Example. You're a member of a church order and have taken a vow of poverty. You renounce any claims to your earnings and turn over to the order any salaries or wages you earn. You're a registered nurse, so your order assigns you to work in a hospital that is an associated institution of the church. However, you remain under the general direction and control of the order. You're considered to be an agent of the order and any wages you earn at the hospital that you turn over to your order aren't included in your income.

Services performed outside the order. If you're directed to work outside the order, your services aren't an exercise of duties required by the order unless they meet both of the following requirements.

- They're the kind of services that are ordinarily the duties of members of the order.

- They're part of the duties that you must exercise for, or on behalf of, the religious order as its agent.

If you're an employee of a third party, the services you perform for the third party won't be considered directed or required of you by the order. Amounts you receive for these services are included in your income, even if you have taken a vow of poverty.

Example. Mark Brown is a member of a religious order and has taken a vow of poverty. He renounces all claims to his earnings and turns over his earnings to the order.

Mark is a schoolteacher. He was instructed by the superiors of the order to get a job with a private tax-exempt school. Mark became an employee of the school, and, at his request, the school made the salary payments directly to the order.

Because Mark is an employee of the school, he is performing services for the school rather than as an agent of the order. The wages Mark earns working for the school are included in his income.

Foreign Employer

Special rules apply if you work for a foreign employer.

U.S. citizen. If you're a U.S. citizen who works in the United States for a foreign government, an international organization, a foreign embassy, or any foreign employer, you must include your salary in your income.

Social security and Medicare taxes. You're exempt from social security and Medicare employee taxes if you're employed in the United States by an international organization or a foreign government. However, you must pay self-employment tax on your earnings from services performed in the United States, even though you aren't self-employed. This rule also applies if you're an employee of a qualifying wholly owned instrumentality of a foreign government.

Employees of international organizations or foreign governments. Your compensation for official services to an international organization is exempt from federal income tax if you aren't a citizen of the United States or you're a citizen of the Philippines (whether or not you're a citizen of the United States).

Your compensation for official services to a foreign government is exempt from federal income tax if all of the following are true.

- You aren't a citizen of the United States or you're a citizen of the Philippines (whether or not you're a citizen of the United States).
- Your work is like the work done by employees of the United States in foreign countries.
- The foreign government gives an equal exemption to employees of the United States in its country.

Waiver of alien status. If you're an alien who works for a foreign government or international organization and you file a waiver under section 247(b) of the Immigration and Nationality Act to keep your immigrant status, different rules may apply. See *Foreign Employer* in Pub. 525.

Employment abroad. For information on the tax treatment of income earned abroad, see Pub. 54.

Military

Payments you receive as a member of a military service are generally taxed as wages except for retirement pay, which is taxed as a pension. Allowances generally aren't taxed. For more information on the tax treatment of military allowances and benefits, see Pub. 3, Armed Forces' Tax Guide.

Differential wage payments. Any payments made to you by an employer during the time you're performing service in the uniformed services are treated as compensation. These wages are subject to income tax withholding and are reported on a Form W-2. See the discussion under *Miscellaneous Compensation*, earlier.

Military retirement pay. If your retirement pay is based on age or length of service, it's taxable and must be included in your income as a pension on lines 5a and 5b of Form 1040 or 1040-SR. Don't include in your income the amount of any reduction in retirement or retainer pay to provide a survivor annuity for your spouse or children under the Retired Serviceman's Family Protection Plan or the Survivor Benefit Plan.

For more detailed discussion of survivor annuities, see Pub. 575, Pension and Annuity Income.

Disability. If you're retired on disability, see *Military and Government Disability Pensions* under *Sickness and Injury Benefits*, later.

Veterans' benefits. Don't include in your income any veterans' benefits paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). The following amounts paid to veterans or their families aren't taxable.

- Education, training, and subsistence allowances.
- Disability compensation and pension payments for disabilities paid either to veterans or their families.
- Grants for homes designed for wheelchair living.
- Grants for motor vehicles for veterans who lost their sight or the use of their limbs.
- Veterans' insurance proceeds and dividends paid either to veterans or their beneficiaries, including the proceeds of a veteran's endowment policy paid before death.
- Interest on insurance dividends you leave on deposit with the VA.
- Benefits under a dependent-care assistance program.
- The death gratuity paid to a survivor of a member of the Armed Forces who died after September 10, 2001.
- Payments made under the compensated work therapy program.
- Any bonus payment by a state or political subdivision because of service in a combat zone.

Volunteers

The tax treatment of amounts you receive as a volunteer worker for the Peace Corps or similar agency is covered in the following discussions.

Peace Corps. Living allowances you receive as a Peace Corps volunteer or volunteer leader for housing, utilities, household supplies, food, and clothing are generally exempt from tax.

Taxable allowances. The following allowances, however, must be included in your income and reported as wages.

- Allowances paid to your spouse and minor children while you're a volunteer leader training in the United States.
- Living allowances designated by the Director of the Peace Corps as basic compensation. These are allowances for personal items such as domestic help, laundry and clothing maintenance, entertainment and recreation, transportation, and other miscellaneous expenses.
- Leave allowances.
- Readjustment allowances or termination payments. These are considered received by you when credited to your account.

Example. Gary Carpenter, a Peace Corps volunteer, gets $175 a month as a readjustment allowance during his period of service, to be paid to him in a lump sum at the end of his tour of duty. Although the allowance isn't available to him until the end of his service, Gary must include it in his income on a monthly basis as it's credited to his account.

Volunteers in Service to America (VISTA). If you're a VISTA volunteer, you must include meal and lodging allowances paid to you in your income as wages.

National Senior Services Corps programs. Don't include in your income amounts you receive for supportive services or reimbursements for out-of-pocket expenses from the following programs.

- Retired Senior Volunteer Program (RSVP).
- Foster Grandparent Program.
- Senior Companion Program.

Service Corps of Retired Executives (SCORE). If you receive amounts for supportive services or reimbursements for out-of-pocket expenses from SCORE, don't include these amounts in gross income.

Volunteer tax counseling. Don't include in your income any reimbursements you receive for transportation, meals, and other expenses you have in training for, or actually providing, volunteer federal income tax counseling for the elderly (TCE).

You can deduct as a charitable contribution your unreimbursed out-of-pocket expenses in taking part in the volunteer income tax assistance (VITA) program. See Pub. 526.

Volunteer firefighters and emergency medical responders. If you are a volunteer firefighter or emergency medical responder, don't include in your income the following benefits you receive from a state or local government.

- Rebates or reductions of property or income taxes you receive because of services you performed as a volunteer firefighter or emergency medical responder.
- Payments you receive because of services you performed as a volunteer firefighter or emergency medical responder, up to $50 for each month you provided services.

The excluded income reduces any related tax or contribution deduction.

Sickness and Injury Benefits

This section discusses sickness and injury benefits, including disability pensions, long-term care insurance contracts, workers' compensation, and other benefits.

In most cases, you must report as income any amount you receive for personal injury or sickness through an accident or health plan that is paid for by your employer. If both you and your employer pay for the plan, only the amount you receive that is due to your employer's payments is reported as income. However, certain payments may not be taxable to you. For information on nontaxable payments, see *Military and Government Disability Pensions* and *Other Sickness and Injury Benefits*, later in this discussion.

Don't report as income any amounts paid to reimburse you for medical expenses you incurred after the plan was established.

Cost paid by you. If you pay the entire cost of a health or accident insurance plan, don't include any amounts you receive from the plan for personal injury or sickness as income on your tax return. If your plan reimbursed you for medical expenses you deducted in an earlier year, you may have to include some, or all, of the reimbursement in your income. See *What if You Receive Insurance Reimbursement in a Later Year?* in Pub. 502, Medical and Dental Expenses.

Cafeteria plans. In most cases, if you're covered by an accident or health insurance plan through a cafeteria plan, and the amount of the insurance premiums wasn't included in your income, you aren't considered to have paid the premiums and you must include any benefits you receive in your income. If the amount of the premiums was included in your income, you're considered to have paid the premiums, and any benefits you receive aren't taxable.

Disability Pensions

If you retired on disability, you must include in income any disability pension you receive under a plan that is paid for by your employer. You must report your taxable disability payments as wages on line 1a of Form 1040 or 1040-SR until you reach minimum retirement age. Minimum retirement age is generally the age at which you can first receive a pension or annuity if you're not disabled.

You may be entitled to a tax credit if you were permanently and totally disabled when you retired. For information on this credit and the definition of permanent and total disability, see Pub. 524, Credit for the Elderly or the Disabled.

Beginning on the day after you reach minimum retirement age, payments you receive are taxable as a pension or annuity. Report the payments on lines 5a and 5b of Form 1040 or 1040-SR. The rules for reporting pensions are explained in Disability Pensions in Pub. 575.

For information on disability payments from a governmental program provided as a substitute for unemployment compensation, see *Unemployment Benefits* in chapter 8.

Retirement and profit-sharing plans. If you receive payments from a retirement or profit-sharing plan that doesn't provide for disability retirement, don't treat the payments as a disability pension. The payments must be reported as a pension or annuity. For more information on pensions, see Pub. 575.

Accrued leave payment. If you retire on disability, any lump-sum payment you receive for accrued annual leave is a salary payment. The payment is not a disability payment. Include it in your income in the tax year you receive it.

Military and Government Disability Pensions

Certain military and government disability pensions aren't taxable.

Service-connected disability. You may be able to exclude from income amounts you receive as a pension, annuity, or similar allowance for personal injury or sickness resulting from active service in one of the following government services.

- The armed forces of any country.
- The National Oceanic and Atmospheric Administration.
- The Public Health Service.
- The Foreign Service.

Conditions for exclusion. Don't include the disability payments in your income if any of the following conditions apply.

1. You were entitled to receive a disability payment before September 25, 1975.
2. You were a member of a listed government service or its reserve component, or were under a binding written commitment to become a member, on September 24, 1975.
3. You receive the disability payments for a combat-related injury. This is a personal injury or sickness that:
   a. Results directly from armed conflict;
   b. Takes place while you're engaged in extra-hazardous service;
   c. Takes place under conditions simulating war, including training exercises such as maneuvers; or
   d. Is caused by an instrumentality of war.
4. You would be entitled to receive disability compensation from the Department of Veterans Affairs (VA) if you filed an application for it. Your exclusion under this condition is equal to the amount you would be entitled to receive from the VA.

Pension based on years of service. If you receive a disability pension based on years of service, in most cases you must include it in your income. However, if the pension qualifies for the exclusion for a service-connected disability (discussed earlier), don't include in income the part of your pension that you would have received if the pension had been based on a percentage of disability. You must include the rest of your pension in your income.

Retroactive VA determination. If you retire from the armed services based on years of service and are later given a retroactive service-connected disability rating by the VA, your retirement pay for the retroactive period is excluded from income up to the amount of VA disability benefits you would have been entitled to receive. You can claim a refund of any tax paid on the excludable amount (subject to the statute of limitations) by filing an amended return on Form 1040-X for each previous year during the retroactive period. You must include with each Form 1040-X a copy of the official VA Determination letter granting the retroactive benefit. The letter must show the amount withheld and the effective date of the benefit.

If you receive a lump-sum disability severance payment and are later awarded VA disability benefits, exclude 100% of the severance benefit from your income. However, you must include in your income any lump-sum readjustment or other nondisability severance payment you received on release from active duty, even if you're later given a retroactive disability rating by the VA.

Special period of limitation. In most cases, under the period of limitation, a claim for credit or refund must be filed within 3 years from the time a return was filed or 2 years from the time the tax was paid. However, if you receive a retroactive service-connected disability rating determination, the period of limitation is extended by a 1-year period beginning on the date of the determination. This 1-year extended period applies to claims for credit or refund filed after June 17, 2008, and doesn't apply to any tax year that began more than 5 years before the date of the determination.

Terrorist attack or military action. Don't include in your income disability payments you receive for injuries incurred as a direct result of a terrorist attack directed against the United States (or its allies), whether outside or within the United States or from military action. See Pub. 3920 and Pub. 907 for more information.

Long-Term Care Insurance Contracts

Long-term care insurance contracts in most cases are treated as accident and health insurance contracts. Amounts you receive from them (other than policyholder dividends or premium

refunds) in most cases are excludable from income as amounts received for personal injury or sickness. To claim an exclusion for payments made on a per diem or other periodic basis under a long-term care insurance contract, you must file Form 8853 with your return.

A long-term care insurance contract is an insurance contract that only provides coverage for qualified long-term care services. The contract must:

- Be guaranteed renewable;
- Not provide for a cash surrender value or other money that can be paid, assigned, pledged, or borrowed;
- Provide that refunds, other than refunds on the death of the insured or complete surrender or cancellation of the contract, and dividends under the contract, may only be used to reduce future premiums or increase future benefits; and
- In most cases, not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare, except where Medicare is a secondary payer or the contract makes per diem or other periodic payments without regard to expenses.

Qualified long-term care services. Qualified long-term care services are:

- Necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance and personal care services; and
- Required by a chronically ill individual and provided pursuant to a plan of care prescribed by a licensed health care practitioner.

Chronically ill individual. A chronically ill individual is one who has been certified by a licensed health care practitioner within the previous 12 months as one of the following.

- An individual who, for at least 90 days, is unable to perform at least two activities of daily living without substantial assistance due to loss of functional capacity. Activities of daily living are eating, toileting, transferring, bathing, dressing, and continence.
- An individual who requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

Limit on exclusion. You can generally exclude from gross income up to $390 a day for 2022. See *Limit on exclusion*, under *Long-Term Care Insurance Contracts*, under *Sickness and Injury Benefits* in Pub. 525 for more information.

Workers' Compensation

Amounts you receive as workers' compensation for an occupational sickness or injury are fully exempt from tax if they're paid under a workers' compensation act or a statute in the nature of a workers' compensation act. The exemption also applies to your survivors. The exemption, however, doesn't apply to retirement plan benefits you receive based on your age, length of service, or prior contributions to the plan, even if you retired because of an occupational sickness or injury.

If part of your workers' compensation reduces your social security or equivalent railroad retirement benefits received, that part is considered social security (or equivalent railroad retirement) benefits and may be taxable. For more information, see Pub. 915, Social Security and Equivalent Railroad Retirement Benefits.

Return to work. If you return to work after qualifying for workers' compensation, salary payments you receive for performing light duties are taxable as wages.

Other Sickness and Injury Benefits

In addition to disability pensions and annuities, you may receive other payments for sickness or injury.

Railroad sick pay. Payments you receive as sick pay under the Railroad Unemployment Insurance Act are taxable and you must include them in your income. However, don't include them in your income if they're for an on-the-job injury.

If you received income because of a disability, see *Disability Pensions*, earlier.

Federal Employees' Compensation Act (FECA). Payments received under this Act for personal injury or sickness, including payments to beneficiaries in case of death, aren't taxable. However, you're taxed on amounts you receive under this Act as continuation of pay for up to 45 days while a claim is being decided. Report this income as wages. Also, pay for sick leave while a claim is being processed is taxable and must be included in your income as wages.

If part of the payments you receive under FECA reduces your social security or equivalent railroad retirement benefits received, that part is considered social security (or equivalent railroad retirement) benefits and may be taxable. See Pub. 554 for more information.

Other compensation. Many other amounts you receive as compensation for sickness or injury aren't taxable. These include the following amounts.

- Compensatory damages you receive for physical injury or physical sickness, whether paid in a lump sum or in periodic payments.
- Benefits you receive under an accident or health insurance policy on which either you paid the premiums or your employer paid the premiums but you had to include them in your income.
- Disability benefits you receive for loss of income or earning capacity as a result of injuries under a no-fault car insurance policy.
- Compensation you receive for permanent loss or loss of use of a part or function of your body, or for your permanent disfigurement. This compensation must be based only on the injury and not on the period of your absence from work. These benefits aren't taxable even if your employer pays for the accident and health plan that provides these benefits.

Reimbursement for medical care. A reimbursement for medical care is generally not taxable. However, it may reduce your medical expense deduction. For more information, see Pub. 502.

6. Interest Income

Reminders

Foreign-source income. If you are a U.S. citizen with interest income from sources outside the United States (foreign income), you must report that income on your tax return unless it is exempt by U.S. law. This is true whether you reside inside or outside the United States and whether or not you receive a Form 1099 from the foreign payer.

Automatic 6-month extension. If you receive your Form 1099 reporting your interest income late and you need more time to file your tax return, you can request a 6-month extension of time to file. See *Automatic Extension* in chapter 1.

Children who have unearned income. See Form 8615 and its instructions for the rules and rates that apply to certain children with unearned income.

Introduction

This chapter discusses the following topics.

- Different types of interest income.
- What interest is taxable and what interest is nontaxable.
- When to report interest income.
- How to report interest income on your tax return.

In general, any interest you receive or that is credited to your account and can be withdrawn is taxable income. Exceptions to this rule are discussed later in this chapter.

You may be able to deduct expenses you have in earning this income on Schedule A (Form 1040) if you itemize your deductions. See *Money borrowed to invest in certificate of deposit*, later, and chapter 12.

Useful Items

You may want to see:

Publication

- ❏ **537** Installment Sales
- ❏ **550** Investment Income and Expenses

❏ **1212** Guide to Original Issue Discount (OID) Instruments

Form (and Instructions)

❏ **Schedule A (Form 1040)** Itemized Deductions

❏ **Schedule B (Form 1040)** Interest and Ordinary Dividends

❏ **8615** Tax for Certain Children Who Have Unearned Income

❏ **8814** Parents' Election To Report Child's Interest and Dividends

❏ **8815** Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989

❏ **8818** Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989

For these and other useful items, go to *IRS.gov/Forms*.

General Information

A few items of general interest are covered here.

Recordkeeping. You should keep a list showing sources of interest income and interest amounts received during the year. Also, keep the forms you receive showing your interest income (Forms 1099-INT, for example) as an important part of your records.

Tax on unearned income of certain children. Part of a child's 2022 unearned income may be taxed at the parent's tax rate. If so, Form 8615 must be completed and attached to the child's tax return. If not, Form 8615 isn't required and the child's income is taxed at his or her own tax rate.

Some parents can choose to include the child's interest and dividends on the parent's return. If you can, use Form 8814 for this purpose.

For more information about the tax on unearned income of children and the parents' election, go to *Form 8615*.

Beneficiary of an estate or trust. Interest you receive as a beneficiary of an estate or trust is generally taxable income. You should receive a Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credits, etc., from the fiduciary. Your copy of Schedule K-1 (Form 1041) and its instructions will tell you where to report the income on your Form 1040 or 1040-SR.

Taxpayer identification number (TIN). You must give your name and TIN (either a social security number (SSN), an employer identification number (EIN), an adoption taxpayer identification number (ATIN), or an individual tax identification number (ITIN)) to any person required by federal tax law to make a return, statement, or other document that relates to you. This includes payers of interest. If you don't give your TIN to the payer of interest, the payer will generally be required to backup withhold on the interest payments at a rate of 24%, and you may also be subject to a penalty.

TIN for joint account. If the funds in a joint account belong to one person, list that person's name first on the account and give that person's TIN to the payer. (For information on who owns the funds in a joint account, see *Joint accounts*, later.) If the joint account contains combined funds, give the TIN of the person whose name is listed first on the account. This is because only one name and TIN can be shown on Form 1099.

These rules apply to both joint ownership by a married couple and to joint ownership by other individuals. For example, if you open a joint savings account with your child using funds belonging to the child, list the child's name first on the account and give the child's TIN.

Custodian account for your child. If your child is the actual owner of an account that is recorded in your name as custodian for the child, give the child's TIN to the payer. For example, you must give your child's SSN to the payer of interest on an account owned by your child, even though the interest is paid to you as custodian.

Penalty for failure to supply TIN. If you don't give your TIN to the payer of interest, you may have to pay a penalty. See *Failure to supply SSN* under *Penalties* in chapter 1. Backup withholding may also apply.

Backup withholding. Your interest income is generally not subject to regular withholding. However, it may be subject to backup withholding to ensure that income tax is collected on the income. Under backup withholding, the payer of interest must withhold, as income tax, on the amount you are paid, by applying the appropriate withholding rate. The current rate is 24%. Withholding is required only if there is a condition for backup withholding, such as failing to provide your TIN to the payer or failing to certify your TIN under penalties of perjury, if required.

Backup withholding may also be required if the IRS has determined that you underreported your interest or dividend income. For more information, see *Backup Withholding* in chapter 4.

Reporting backup withholding. If backup withholding is deducted from your interest income, the amount withheld will be reported on your Form 1099-INT. The Form 1099-INT will show any backup withholding as "Federal income tax withheld."

Joint accounts. If two or more persons hold property (such as a savings account or bond) as joint tenants, tenants by the entirety, or tenants in common, each person's share of any interest from the property is determined by local law.

Income from property given to a child. Property you give as a parent to your child under the Model Gifts of Securities to Minors Act, the Uniform Gifts to Minors Act, or any similar law becomes the child's property.

Income from the property is taxable to the child, except that any part used to satisfy a legal obligation to support the child is taxable to the parent or guardian having that legal obligation.

Savings account with parent as trustee. Interest income from a savings account opened for a minor child, but placed in the name and subject to the order of the parents as trustees, is taxable to the child if, under the law of the state in which the child resides, both of the following are true.

- The savings account legally belongs to the child.
- The parents aren't legally permitted to use any of the funds to support the child.

Form 1099-INT. Interest income is generally reported to you on Form 1099-INT, or a similar statement, by banks, savings and loans, and other payers of interest. This form shows you the interest income you received during the year. Keep this form for your records. You don't have to attach it to your tax return.

Report on your tax return the total interest income you receive for the tax year. See the Form 1099-INT Instructions for Recipient to see whether you need to adjust any of the amounts reported to you.

Interest not reported on Form 1099-INT. Even if you don't receive a Form 1099-INT, you must still report all of your interest income. For example, you may receive distributive shares of interest from partnerships or S corporations. This interest is reported to you on Schedule K-1 (Form 1065), Partner's Share of Income, Deduction, Credits, etc.; or Schedule K-1 (Form 1120-S), Shareholder's Share of Income, Deductions, Credits, etc.

Nominees. Generally, if someone receives interest as a nominee for you, that person must give you a Form 1099-INT showing the interest received on your behalf.

If you receive a Form 1099-INT that includes amounts belonging to another person, see the discussion on nominee distributions under *How To Report Interest Income* in chapter 1 of *IRS.gov/Pub550*, or the Schedule B (Form 1040) instructions.

Incorrect amount. If you receive a Form 1099-INT that shows an incorrect amount or other incorrect information, you should ask the issuer for a corrected form. The new Form 1099-INT you receive will have the "CORRECTED" box checked.

Form 1099-OID. Reportable interest income may also be shown on Form 1099-OID, Original Issue Discount. For more information about amounts shown on this form, see *Original Issue Discount (OID)*, later in this chapter.

The box references discussed below are from the January 2022 revisions of Form 1099-INT and Form 1099-DIV. Later revisions may have different box references.

Exempt-interest dividends. Exempt-interest dividends you receive from a mutual fund or other regulated investment company (RIC) aren't included in your taxable income. (However, see *Information reporting requirement* next.) Exempt-interest dividends should be shown on Form 1099-DIV, box 12. You don't reduce your basis for distributions that are exempt-interest dividends.

Information reporting requirement. Although exempt-interest dividends aren't

taxable, you must show them on your tax return if you have to file. This is an information reporting requirement and doesn't change the exempt-interest dividends into taxable income.

Note. Exempt-interest dividends paid by a mutual fund or other RIC on specified private activity bonds may be subject to the alternative minimum tax. This amount is generally reported in box 13 of Form 1099-DIV. See Alternative Minimum Tax (AMT) in chapter 13 for more information. Chapter 1 of IRS.gov/Pub550 contains a discussion on private activity bonds under *State or Local Government Obligations*.

Interest on VA dividends. Interest on insurance dividends left on deposit with the Department of Veterans Affairs (VA) isn't taxable. This includes interest paid on dividends on converted United States Government Life Insurance and on National Service Life Insurance policies.

Individual retirement arrangements (IRAs). Interest on a Roth IRA generally isn't taxable. Interest on a traditional IRA is tax deferred. You generally don't include interest earned in an IRA in your income until you make withdrawals from the IRA. See chapter 9.

Taxable Interest

Taxable interest includes interest you receive from bank accounts, loans you make to others, and other sources. The following are some sources of taxable interest.

Dividends that are actually interest. Certain distributions commonly called dividends are actually interest. You must report as interest so-called dividends on deposits or on share accounts in:

- Cooperative banks,
- Credit unions,
- Domestic building and loan associations,
- Domestic savings and loan associations,
- Federal savings and loan associations, and
- Mutual savings banks.

The "dividends" will be shown as interest income on Form 1099-INT.

Money market funds. Money market funds pay dividends and are offered by nonbank financial institutions, such as mutual funds and stock brokerage houses. Generally, amounts you receive from money market funds should be reported as dividends, not as interest.

Certificates of deposit and other deferred interest accounts. If you open any of these accounts, interest may be paid at fixed intervals of 1 year or less during the term of the account. You must generally include this interest in your income when you actually receive it or are entitled to receive it without paying a substantial penalty. The same is true for accounts that mature in 1 year or less and pay interest in a single payment at maturity. If interest is deferred for more than 1 year, see Original Issue Discount (OID), later.

Interest subject to penalty for early withdrawal. If you withdraw funds from a deferred interest account before maturity, you may have to pay a penalty. You must report the total amount of interest paid or credited to your account during the year, without subtracting the penalty. See *Penalty on early withdrawal of savings* in chapter 1 of IRS.gov/Pub550 for more information on how to report the interest and deduct the penalty.

Money borrowed to invest in certificate of deposit. The interest you pay on money borrowed from a bank or savings institution to meet the minimum deposit required for a certificate of deposit from the institution and the interest you earn on the certificate are two separate items. You must report the total interest income you earn on the certificate in your income. If you itemize deductions, you can deduct the interest you pay as investment interest, up to the amount of your net investment income. See *Interest Expenses* in chapter 3 of IRS.gov/Pub550.

Example. You deposited $5,000 with a bank and borrowed $5,000 from the bank to make up the $10,000 minimum deposit required to buy a 6-month certificate of deposit. The certificate earned $575 at maturity in 2022, but you received only $265, which represented the $575 you earned minus $310 interest charged on your $5,000 loan. The bank gives you a Form 1099-INT for 2022 showing the $575 interest you earned. The bank also gives you a statement showing that you paid $310 of interest for 2022. You must include the $575 in your income. If you itemize your deductions on Schedule A (Form 1040), you can deduct $310, subject to the net investment income limit.

Gift for opening account. If you receive noncash gifts or services for making deposits or for opening an account in a savings institution, you may have to report the value as interest.

For deposits of less than $5,000, gifts or services valued at more than $10 must be reported as interest. For deposits of $5,000 or more, gifts or services valued at more than $20 must be reported as interest. The value is determined by the cost to the financial institution.

Example. You open a savings account at your local bank and deposit $800. The account earns $20 interest. You also receive a $15 calculator. If no other interest is credited to your account during the year, the Form 1099-INT you receive will show $35 interest for the year. You must report $35 interest income on your tax return.

Interest on insurance dividends. Interest on insurance dividends left on deposit with an insurance company that can be withdrawn annually is taxable to you in the year it is credited to your account. However, if you can withdraw it only on the anniversary date of the policy (or other specified date), the interest is taxable in the year that date occurs.

Prepaid insurance premiums. Any increase in the value of prepaid insurance premiums, advance premiums, or premium deposit funds is interest if it is applied to the payment of premiums due on insurance policies or made available for you to withdraw.

U.S. obligations. Interest on U.S. obligations issued by any agency or instrumentality of the United States, such as U.S. Treasury bills, notes, and bonds, is taxable for federal income tax purposes.

Interest on tax refunds. Interest you receive on tax refunds is taxable income.

Interest on condemnation award. If the condemning authority pays you interest to compensate you for a delay in payment of an award, the interest is taxable.

Installment sale payments. If a contract for the sale or exchange of property provides for deferred payments, it also usually provides for interest payable with the deferred payments. Generally, that interest is taxable when you receive it. If little or no interest is provided for in a deferred payment contract, part of each payment may be treated as interest. See *Unstated Interest and Original Issue Discount* in Pub. 537, Installment Sales.

Interest on annuity contract. Accumulated interest on an annuity contract you sell before its maturity date is taxable.

Usurious interest. Usurious interest is interest charged at an illegal rate. This is taxable as interest unless state law automatically changes it to a payment on the principal.

Interest income on frozen deposits. Exclude from your gross income interest on frozen deposits. A deposit is frozen if, at the end of the year, you can't withdraw any part of the deposit because:

- The financial institution is bankrupt or insolvent, or
- The state where the institution is located has placed limits on withdrawals because other financial institutions in the state are bankrupt or insolvent.

The amount of interest you must exclude is the interest that was credited on the frozen deposits minus the sum of:

- The net amount you withdrew from these deposits during the year, and
- The amount you could have withdrawn as of the end of the year (not reduced by any penalty for premature withdrawals of a time deposit).

If you receive a Form 1099-INT for interest income on deposits that were frozen at the end of 2022, see *Frozen deposits* under *How To Report Interest Income* in chapter 1 of IRS.gov/Pub550 for information about reporting this interest income exclusion on your tax return.

The interest you exclude is treated as credited to your account in the following year. You must include it in income in the year you can withdraw it.

Example. $100 of interest was credited on your frozen deposit during the year. You withdrew $80 but couldn't withdraw any more as of the end of the year. You must include $80 in your income and exclude $20 from your income for the year. You must include the $20 in your income for the year you can withdraw it.

Bonds traded flat. If you buy a bond at a discount when interest has been defaulted or when the interest has accrued but hasn't been paid, the transaction is described as trading a

bond flat. The defaulted or unpaid interest isn't income and isn't taxable as interest if paid later. When you receive a payment of that interest, it is a return of capital that reduces the remaining cost basis of your bond. Interest that accrues after the date of purchase, however, is taxable interest income for the year it is received or accrued. See *Bonds Sold Between Interest Dates*, later, for more information.

Below-market loans. In general, a below-market loan is a loan on which no interest is charged or on which interest is charged at a rate below the applicable federal rate. If you are the lender of a below-market loan, you may have additional interest income. See *Below-Market Loans* in chapter 1 of *IRS.gov/Pub550* for more information.

U.S. Savings Bonds

This section provides tax information on U.S. savings bonds. It explains how to report the interest income on these bonds and how to treat transfers of these bonds.

For other information on U.S. savings bonds, write to:

Treasury Retail Securities Services
P.O. Box 9150
Minneapolis, MN 55480-9150

Or, on the Internet, visit *TreasuryDirect.gov/savings-bonds/*.

Accrual method taxpayers. If you use an accrual method of accounting, you must report interest on U.S. savings bonds each year as it accrues. You can't postpone reporting interest until you receive it or until the bonds mature. Accrual methods of accounting are explained in chapter 1 under *Accounting Methods*.

Cash method taxpayers. If you use the cash method of accounting, as most individual taxpayers do, you generally report the interest on U.S. savings bonds when you receive it. The cash method of accounting is explained in chapter 1 under *Accounting Methods*. But see *Reporting options for cash method taxpayers*, later.

Series H and HH bonds. These bonds were issued at face value in exchange for other savings bonds. Series HH bonds were issued between 1980 and 2004. They mature 20 years after issue. Series HH bonds that have not matured pay interest twice a year (usually by direct deposit to your bank account). If you are a cash method taxpayer, you must report this interest as income in the year you receive it.

Most H/HH bonds have a deferred interest component. The reporting of this as income is addressed later in this chapter.

Series H bonds were issued before 1980. All Series H bonds have matured and are no longer earning interest.

Series EE and Series I bonds. Interest on these bonds is payable when you redeem the bonds. The difference between the purchase price and the redemption value is taxable interest.

Series E and EE bonds. Series E bonds were issued before July of 1980. All Series E bonds have matured and are no longer earning interest. Series EE bonds were first offered in January 1980 and have a maturity period of 30 years; they were offered in paper (definitive) form until 2012. Paper Series EE and Series E bonds were issued at a discount and increase in value as they earn interest. Electronic (book-entry) Series EE bonds were first offered in 2003; they are issued at face value and increase in value as they earn interest. For all Series E and Series EE bonds, the purchase price plus all accrued interest is payable to you at redemption.

Series I bonds. Series I bonds were first offered in 1998. These are inflation-indexed bonds issued at face value with a maturity period of 30 years. Series I bonds increase in value as they earn interest. The face value plus all accrued interest is payable to you at redemption.

Reporting options for cash method taxpayers. If you use the cash method of reporting income, you can report the interest on Series EE and Series I bonds in either of the following ways.

1. ***Method 1.*** Postpone reporting the interest until the earlier of the year you cash or dispose of the bonds or the year they mature. (However, see *Savings bonds traded*, later.)
   Note. Series EE bonds issued in 1992 matured in 2022. If you used method 1, you must generally report the interest on these bonds on your 2022 return.
2. ***Method 2.*** Choose to report the increase in redemption value as interest each year.

You must use the same method for all Series EE, Series E, and Series I bonds you own. If you don't choose method 2 by reporting the increase in redemption value as interest each year, you must use method 1.

If you plan to cash your bonds in the same year you will pay for higher education expenses, you may want to use method 1 because you may be able to exclude the interest from your income. To learn how, see Education Savings Bond Program, later.

Change from method 1. If you want to change your method of reporting the interest from method 1 to method 2, you can do so without permission from the IRS. In the year of change, you must report all interest accrued to date and not previously reported for all your bonds.

Once you choose to report the interest each year, you must continue to do so for all Series EE and Series I bonds you own and for any you get later, unless you request permission to change, as explained next.

Change from method 2. To change from method 2 to method 1, you must request permission from the IRS. Permission for the change is automatically granted if you send the IRS a statement that meets all the following requirements.

1. You have typed or printed the following number at the top: “131.”
2. It includes your name and social security number under “131.”
3. It includes the year of change (both the beginning and ending dates).
4. It identifies the savings bonds for which you are requesting this change.
5. It includes your agreement to:
   a. Report all interest on any bonds acquired during or after the year of change when the interest is realized upon disposition, redemption, or final maturity, whichever is earliest; and
   b. Report all interest on the bonds acquired before the year of change when the interest is realized upon disposition, redemption, or final maturity, whichever is earliest, with the exception of the interest reported in prior tax years.

You must attach this statement to your tax return for the year of change, which you must file by the due date (including extensions).

You can have an automatic extension of 6 months from the due date of your return for the year of change (excluding extensions) to file the statement with an amended return. On the statement, type or print “Filed pursuant to section 301.9100-2.” To get this extension, you must have filed your original return for the year of the change by the due date (including extensions).

Instead of filing this statement, you can request permission to change from method 2 to method 1 by filing Form 3115, Application for Change in Accounting Method. In that case, follow the form instructions for an automatic change. No user fee is required.

Co-owners. If a U.S. savings bond is issued in the names of co-owners, such as you and your child or you and your spouse, interest on the bond is generally taxable to the co-owner who bought the bond.

One co-owner's funds used. If you used your funds to buy the bond, you must pay the tax on the interest. This is true even if you let the other co-owner redeem the bond and keep all the proceeds. Under these circumstances, the co-owner who redeemed the bond will receive a Form 1099-INT at the time of redemption and must provide you with another Form 1099-INT showing the amount of interest from the bond taxable to you. The co-owner who redeemed the bond is a “nominee.” See *Nominee distributions* under *How To Report Interest Income* in chapter 1 of *IRS.gov/Pub550* for more information about how a person who is a nominee reports interest income belonging to another person.

Both co-owners' funds used. If you and the other co-owner each contribute part of the bond's purchase price, the interest is generally taxable to each of you, in proportion to the amount each of you paid.

Community property. If you and your spouse live in a community property state and hold bonds as community property, one-half of the interest is considered received by each of you. If you file separate returns, each of you must generally report one-half of the bond

Table 6-1. **Who Pays the Tax on U.S. Savings Bond Interest**

IF...	THEN the interest must be reported by...
you buy a bond in your name and the name of another person as co-owners, using only your own funds	you.
you buy a bond in the name of another person, who is the sole owner of the bond	the person for whom you bought the bond.
you and another person buy a bond as co-owners, each contributing part of the purchase price	both you and the other co-owner, in proportion to the amount each paid for the bond.
you and your spouse, who live in a community property state, buy a bond that is community property	you and your spouse. If you file separate returns, both you and your spouse generally report one-half of the interest.

interest. For more information about community property, see Pub. 555.

Table 6-1. These rules are also shown in Table 6-1.

Ownership transferred. If you bought Series EE or Series I bonds entirely with your own funds and had them reissued in your co-owner's name or beneficiary's name alone, you must include in your gross income for the year of reissue all interest that you earned on these bonds and have not previously reported. But, if the bonds were reissued in your name alone, you don't have to report the interest accrued at that time.

This same rule applies when bonds (other than bonds held as community property) are transferred between spouses or incident to divorce.

Purchased jointly. If you and a co-owner each contributed funds to buy Series EE or Series I bonds jointly and later have the bonds reissued in the co-owner's name alone, you must include in your gross income for the year of reissue your share of all the interest earned on the bonds that you have not previously reported. The former co-owner doesn't have to include in gross income at the time of reissue his or her share of the interest earned that was not reported before the transfer. This interest, however, as well as all interest earned after the reissue, is income to the former co-owner.

This income-reporting rule also applies when a new co-owner purchases your share of the bond and the bonds are reissued in the name of your former co-owner and a new co-owner. But the new co-owner will report only his or her share of the interest earned after the transfer.

If bonds that you and a co-owner bought jointly are reissued to each of you separately in the same proportion as your contribution to the purchase price, neither you nor your co-owner has to report at that time the interest earned before the bonds were reissued.

Example 1. You and your spouse each spent an equal amount to buy a $1,000 Series EE savings bond. The bond was issued to you and your spouse as co-owners. You both postpone reporting interest on the bond. You later have the bond reissued as two $500 bonds, one in your name and one in your spouse's name. At that time, neither you nor your spouse has to report the interest earned to the date of reissue.

Example 2. You bought a $1,000 Series EE savings bond entirely with your own funds. The bond was issued to you and your spouse as co-owners. You both postpone reporting interest on the bond. You later have the bond reissued as two $500 bonds, one in your name and one in your spouse's name. You must report half the interest earned to the date of reissue.

Transfer to a trust. If you own Series EE or Series I bonds and transfer them to a trust, giving up all rights of ownership, you must include in your income for that year the interest earned to the date of transfer if you have not already reported it. However, if you are considered the owner of the trust and if the increase in value both before and after the transfer continues to be taxable to you, you can continue to defer reporting the interest earned each year. You must include the total interest in your income in the year you cash or dispose of the bonds or the year the bonds finally mature, whichever is earlier.

The same rules apply to previously unreported interest on Series EE or Series E bonds if the transfer to a trust consisted of Series HH bonds you acquired in a trade for the Series EE or Series E bonds. See Savings bonds traded, later.

Decedents. The manner of reporting interest income on Series EE or Series I bonds, after the death of the owner (decedent), depends on the accounting and income-reporting methods previously used by the decedent. This is explained in chapter 1 of IRS.gov/Pub550.

Savings bonds traded. Prior to September 2004, you could trade (exchange) Series E or EE bonds for Series H or HH bonds. At the time of the trade, you had the choice to postpone (defer) reporting the interest earned on your Series E or EE bonds until the Series H or HH bonds received in the trade were redeemed or matured. Any cash you received in the transaction was income up to the amount of the interest that had accrued on the Series E or EE bonds. The amount of income that you chose to postpone reporting was recorded on the face of the Series H or HH bonds as "Deferred Interest"; this amount is also equal to the difference between the redemption value of the Series H or HH bonds and your cost. Your cost is the sum of the amount you paid for the exchanged Series E or EE bonds plus any amount you had to pay at the time of the transaction.

Example. You traded Series EE bonds (on which you postponed reporting the interest) for $2,500 in Series HH bonds and $223 in cash. You reported the $223 as taxable income on your tax return. At the time of the trade, the Series EE bonds had accrued interest of $523 and a redemption value of $2,723. You hold the Series HH bonds until maturity, when you receive $2,500. You must report $300 as interest income in the year of maturity. This is the difference between their redemption value, $2,500, and your cost, $2,200 (the amount you paid for the Series EE bonds). It is also the difference between the accrued interest of $523 on the Series EE bonds and the $223 cash received on the trade.

Note. The $300 amount that is reportable upon redemption or maturity may be found recorded on the face of the Series HH bond as "Deferred Interest." If more than one Series HH bond is received in the exchange, the total amount of interest postponed/deferred in the transaction is divided proportionately among the Series HH bonds.

Choice to report interest in year of trade. You can choose to treat all of the previously unreported accrued interest on the Series E or EE bonds traded for Series H or HH bonds as income in the year of the trade. If you choose to report the interest, then the "Deferred Interest" notation on the face of the Series H or HH bonds received in the trade will be $0 or blank.

Form 1099-INT for U.S. savings bonds interest. When you cash a bond, the bank or other payer that redeems it must give you a Form 1099-INT if the interest part of the payment you receive is $10 or more. Box 3 of your Form 1099-INT should show the interest as the difference between the amount you received and the amount paid for the bond. However, your Form 1099-INT may show more interest than you have to include on your income tax return. For example, this may happen if any of the following are true.

- You chose to report the increase in the redemption value of the bond each year. The interest shown on your Form 1099-INT won't be reduced by amounts previously included in income.
- You received the bond from a decedent. The interest shown on your Form 1099-INT won't be reduced by any interest reported by the decedent before death, or on the decedent's final return, or by the estate on the estate's income tax return.
- Ownership of the bond was transferred. The interest shown on your Form 1099-INT won't be reduced by interest that accrued before the transfer.

  Note. This is true for paper bonds, but the Treasury reporting process for electronic bonds is more refined—if Treasury is aware that the transfer of an electronic savings bond is a reportable event, then the transferor will receive a Form 1099-INT for the year of the transfer for the interest accrued up to the time of the transfer; when the transferee later disposes of the bond (redemption, maturity, or further transfer), the transferee will receive a Form 1099-INT reduced by the amount reported to the transferor at the time of the original transfer.
- You were named as a co-owner, and the other co-owner contributed funds to buy the bond. The interest shown on your Form 1099-INT won't be reduced by the amount you received as nominee for the other co-owner. (See Co-owners, earlier in this chapter, for more information about the reporting requirements.)

- You received the bond in a taxable distribution from a retirement or profit-sharing plan. The interest shown on your Form 1099-INT won't be reduced by the interest portion of the amount taxable as a distribution from the plan and not taxable as interest. (This amount is generally shown on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., for the year of distribution.)

For more information on including the correct amount of interest on your return, see *How To Report Interest Income*, later. Pub. 550 includes examples showing how to report these amounts.

Interest on U.S. savings bonds is exempt from state and local taxes. The Form 1099-INT you receive will indicate the amount that is for U.S. savings bond interest in box 3.

Education Savings Bond Program

You may be able to exclude from income all or part of the interest you receive on the redemption of qualified U.S. savings bonds during the year if you pay qualified higher educational expenses during the same year. This exclusion is known as the Education Savings Bond Program.

You don't qualify for this exclusion if your filing status is married filing separately.

Form 8815. Use Form 8815 to figure your exclusion. Attach the form to your Form 1040 or 1040-SR.

Qualified U.S. savings bonds. A qualified U.S. savings bond is a Series EE bond issued after 1989 or a Series I bond. The bond must be issued either in your name (sole owner) or in your and your spouse's names (co-owners). You must be at least 24 years old before the bond's issue date. For example, a bond bought by a parent and issued in the name of his or her child under age 24 doesn't qualify for the exclusion by the parent or child.

The issue date of a bond may be earlier than the date the bond is purchased because the issue date assigned to a bond is the first day of the month in which it is purchased.

Beneficiary. You can designate any individual (including a child) as a beneficiary of the bond.

Verification by IRS. If you claim the exclusion, the IRS will check it by using bond redemption information from the Department of the Treasury.

Qualified expenses. Qualified higher education expenses are tuition and fees required for you, your spouse, or your dependent (for whom you claim an exemption) to attend an eligible educational institution.

Qualified expenses include any contribution you make to a qualified tuition program or to a Coverdell education savings account (ESA).

Qualified expenses don't include expenses for room and board or for courses involving sports, games, or hobbies that aren't part of a degree- or certificate-granting program.

Eligible educational institutions. These institutions include most public, private, and nonprofit universities, colleges, and vocational schools that are accredited and eligible to participate in student aid programs run by the U.S. Department of Education.

Reduction for certain benefits. You must reduce your qualified higher education expenses by all of the following tax-free benefits.

1. Tax-free part of scholarships and fellowships (see *Scholarships and fellowships* in chapter 8).
2. Expenses used to figure the tax-free portion of distributions from a Coverdell ESA.
3. Expenses used to figure the tax-free portion of distributions from a qualified tuition program.
4. Any tax-free payments (other than gifts or inheritances) received for educational expenses, such as:
    a. Veterans' educational assistance benefits,
    b. Qualified tuition reductions, or
    c. Employer-provided educational assistance.
5. Any expense used in figuring the American opportunity and lifetime learning credits.

Amount excludable. If the total proceeds (interest and principal) from the qualified U.S. savings bonds you redeem during the year aren't more than your adjusted qualified higher education expenses for the year, you may be able to exclude all of the interest. If the proceeds are more than the expenses, you may be able to exclude only part of the interest.

To determine the excludable amount, multiply the interest part of the proceeds by a fraction. The numerator of the fraction is the qualified higher education expenses you paid during the year. The denominator of the fraction is the total proceeds you received during the year.

Example. In February 2022, Mark and Joan, a married couple, cashed qualified Series EE U.S. savings bonds with a total denomination of $10,000 that they bought in April 2006 for $5,000. They received proceeds of $8,264, representing principal of $5,000 and interest of $3,264. In 2022, they paid $4,000 of their daughter's college tuition. They aren't claiming an education credit for that amount, and their daughter doesn't have any tax-free educational assistance. They can exclude $1,580 ($3,264 × ($4,000 ÷ $8,264)) of interest in 2022. They must include the remaining $1,684 ($3,264 − $1,580) interest in gross income.

Modified adjusted gross income limit. The interest exclusion is limited if your modified adjusted gross income (modified AGI) is:

- $128,650 to $158,650 for married taxpayers filing jointly, and
- $85,800 to $100,800 for all other taxpayers.

You don't qualify for the interest exclusion if your modified AGI is equal to or more than the upper limit for your filing status.

Modified AGI, for purposes of this exclusion, is adjusted gross income (Form 1040 or 1040-SR, line 11) figured before the interest exclusion, and modified by adding back any:

1. Foreign earned income exclusion,
2. Foreign housing exclusion and deduction,
3. Exclusion of income for bona fide residents of American Samoa,
4. Exclusion for income from Puerto Rico,
5. Exclusion for adoption benefits received under an employer's adoption assistance program, and
6. Deduction for student loan interest.

Use the Line 9 Worksheet in the Form 8815 instructions to figure your modified AGI.

If you have investment interest expense incurred to earn royalties and other investment income, see *Education Savings Bond Program* in chapter 1 of *IRS.gov/Pub550*.

Recordkeeping. If you claim the interest exclusion, you must keep a written record of the qualified U.S. savings bonds you redeem. Your record must include the serial number, issue date, face value, and total redemption proceeds (principal and interest) of each bond. You can use Form 8818 to record this information. You should also keep bills, receipts, canceled checks, or other documentation that shows you paid qualified higher education expenses during the year.

U.S. Treasury Bills, Notes, and Bonds

Treasury bills, notes, and bonds are direct debts (obligations) of the U.S. Government.

Taxation of interest. Interest income from Treasury bills, notes, and bonds is subject to federal income tax but is exempt from all state and local income taxes. You should receive a Form 1099-INT showing the interest paid to you for the year in box 3.

Treasury bills. These bills generally have a 4-week, 8-week, 13-week, 26-week, or 52-week maturity period. They are generally issued at a discount in the amount of $100 and multiples of $100. The difference between the discounted price you pay for the bills and the face value you receive at maturity is interest income. Generally, you report this interest income when the bill is paid at maturity. If you paid a premium for a bill (more than the face value), you generally report the premium as a section 171 deduction when the bill is paid at maturity.

Treasury notes and bonds. Treasury notes generally have maturity periods of more than 1 year, ranging up to 10 years. Maturity periods for Treasury bonds are generally longer than 10 years. Both are generally issued in denominations of $100 to $1,000,000 and generally pay interest every 6 months. Generally, you report this interest for the year paid. For more information, see *U.S. Treasury Bills, Notes, and Bonds* in chapter 1 of *IRS.gov/Pub550*.

For other information on paper Treasury notes or bonds, write to:

Treasury Retail Securities Services
P.O. Box 9150
Minneapolis, MN 55480-9150

Or, click on the link to the Treasury website at: TreasuryDirect.gov/marketable-securities/.

For information on Series EE, Series I, and Series HH savings bonds, see U.S. Savings Bonds, earlier.

Treasury inflation-protected securities (TIPS). These securities pay interest twice a year at a fixed rate, based on a principal amount adjusted to take into account inflation and deflation. For the tax treatment of these securities, see *Inflation-Indexed Debt Instruments* under *Original Issue Discount (OID)* in IRS.gov/Pub550.

Bonds Sold Between Interest Dates

If you sell a bond between interest payment dates, part of the sales price represents interest accrued to the date of sale. You must report that part of the sales price as interest income for the year of sale.

If you buy a bond between interest payment dates, part of the purchase price represents interest accrued before the date of purchase. When that interest is paid to you, treat it as a nontaxable return of your capital investment, rather than as interest income. See *Accrued interest on bonds* under *How To Report Interest Income* in chapter 1 of IRS.gov/Pub550 for information on reporting the payment.

Insurance

Life insurance proceeds paid to you as beneficiary of the insured person are usually not taxable. But if you receive the proceeds in installments, you must usually report a part of each installment payment as interest income.

For more information about insurance proceeds received in installments, see Pub. 525, Taxable and Nontaxable Income.

Annuity. If you buy an annuity with life insurance proceeds, the annuity payments you receive are taxed as pension and annuity income from a nonqualified plan, not as interest income. See chapter 5 for information on pension and annuity income from nonqualified plans.

State or Local Government Obligations

Interest on a bond used to finance government operations generally isn't taxable if the bond is issued by a state, the District of Columbia, a possession of the United States, or any of their political subdivisions.

Bonds issued after 1982 by an Indian tribal government (including tribal economic development bonds issued after February 17, 2009) are treated as issued by a state. Interest on these bonds is generally tax exempt if the bonds are part of an issue of which substantially all proceeds are to be used in the exercise of any essential government function. However, the essential government function requirement does not apply to tribal economic development bonds issued after February 17, 2009. See section 7871(f).

For information on federally guaranteed bonds, mortgage revenue bonds, arbitrage bonds, private activity bonds, qualified tax credit bonds, and Build America bonds, including whether interest on some of these bonds is taxable, see *State or Local Government Obligations* in chapter 1 of IRS.gov/Pub550.

Information reporting requirement. If you file a tax return, you are required to show any tax-exempt interest you received on your return. Tax-exempt interest paid to you will be reported to you on Form 1099-INT, box 8. This is an information reporting requirement only. It doesn't change tax-exempt interest to taxable interest.

Original Issue Discount (OID)

Original issue discount (OID) is a form of interest. You generally include OID in your income as it accrues over the term of the debt instrument, whether or not you receive any payments from the issuer.

A debt instrument generally has OID when the instrument is issued for a price that is less than its stated redemption price at maturity. OID is the difference between the stated redemption price at maturity and the issue price.

All debt instruments that pay no interest before maturity are presumed to be issued at a discount. Zero coupon bonds are one example of these instruments.

The OID accrual rules generally don't apply to short-term obligations (those with a fixed maturity date of 1 year or less from date of issue). See *Discount on Short-Term Obligations* in chapter 1 of IRS.gov/Pub550.

De minimis OID. You can treat the discount as zero if it is less than one-fourth of 1% (0.0025) of the stated redemption price at maturity multiplied by the number of full years from the date of original issue to maturity. This small discount is known as de minimis OID.

Example 1. You bought a 10-year bond with a stated redemption price at maturity of $1,000, issued at $980 with OID of $20. One-fourth of 1% of $1,000 (stated redemption price) times 10 (the number of full years from the date of original issue to maturity) equals $25. Because the $20 discount is less than $25, the OID is treated as zero. (If you hold the bond at maturity, you will recognize $20 ($1,000 − $980) of capital gain.)

Example 2. The facts are the same as in *Example 1*, except that the bond was issued at $950. The OID is $50. Because the $50 discount is more than the $25 figured in *Example 1*, you must include the OID in income as it accrues over the term of the bond.

Debt instrument bought after original issue. If you buy a debt instrument with de minimis OID at a premium, the de minimis OID isn't includible in income. If you buy a debt instrument with de minimis OID at a discount, the discount is reported under the market discount rules. See *Market Discount Bonds* in chapter 1 of IRS.gov/Pub550.

Exceptions to reporting OID as current income. The OID rules discussed in this chapter don't apply to the following debt instruments.

1. Tax-exempt obligations. (However, see *Stripped tax-exempt obligations* under *Stripped Bonds and Coupons* in chapter 1 of IRS.gov/Pub550.)
2. U.S. savings bonds.
3. Short-term debt instruments (those with a fixed maturity date of not more than 1 year from the date of issue).
4. Loans between individuals if all the following are true.
   a. The loan is not made in the course of a trade or business of the lender.
   b. The amount of the loan, plus the amount of any outstanding prior loans between the same individuals, is $10,000 or less.
   c. Avoiding any federal tax isn't one of the principal purposes of the loan.
5. A debt instrument purchased at a premium.

Form 1099-OID. The issuer of the debt instrument (or your broker if you held the instrument through a broker) should give you Form 1099-OID, or a similar statement, if the total OID for the calendar year is $10 or more. Form 1099-OID will show, in box 1, the amount of OID for the part of the year that you held the bond. It will also show, in box 2, the stated interest you must include in your income. Box 8 shows OID on a U.S. Treasury obligation for the part of the year you owned it and isn't included in box 1. A copy of Form 1099-OID will be sent to the IRS. Don't file your copy with your return. Keep it for your records.

In most cases, you must report the entire amount in boxes 1, 2, and 8 of Form 1099-OID as interest income. But see *Refiguring OID shown on Form 1099-OID*, later in this discussion, for more information.

Form 1099-OID not received. If you had OID for the year but didn't receive a Form 1099-OID, you may have to figure the correct amount of OID to report on your return. See Pub. 1212 for details on how to figure the correct OID.

Nominee. If someone else is the holder of record (the registered owner) of an OID instrument belonging to you and receives a Form 1099-OID on your behalf, that person must give you a Form 1099-OID.

Refiguring OID shown on Form 1099-OID. You may need to refigure the OID shown in box 1 or box 8 of Form 1099-OID if either of the following applies.

- You bought the debt instrument after its original issue and paid a premium or an acquisition premium.

- The debt instrument is a stripped bond or a stripped coupon (including certain zero coupon instruments).

If you acquired your debt instrument before 2014, your payer is only required to report a gross amount of OID in box 1 or box 8 of Form 1099-OID.

For information about figuring the correct amount of OID to include in your income, see *Figuring OID on Long-Term Debt Instruments* in Pub. 1212 and the Form 1099-OID Instructions for Recipient.

If you acquired your debt instrument after 2013, unless you have informed your payer that you do not want to amortize bond premium, your payer must generally report either (1) a net amount of OID that reflects the offset of OID by the amount of bond premium or acquisition premium amortization for the year, or (2) a gross amount for both the OID and the bond premium or acquisition premium amortization for the year.

Refiguring periodic interest shown on Form 1099-OID. If you disposed of a debt instrument or acquired it from another holder during the year, see Bonds Sold Between Interest Dates, earlier, for information about the treatment of periodic interest that may be shown in box 2 of Form 1099-OID for that instrument.

Certificates of deposit (CDs). If you buy a CD with a maturity of more than 1 year, you must include in income each year a part of the total interest due and report it in the same manner as other OID.

This also applies to similar deposit arrangements with banks, building and loan associations, etc., including:

- Time deposits,
- Bonus plans,
- Savings certificates,
- Deferred income certificates,
- Bonus savings certificates, and
- Growth savings certificates.

Bearer CDs. CDs issued after 1982 must generally be in registered form. Bearer CDs are CDs not in registered form. They aren't issued in the depositor's name and are transferable from one individual to another.

Banks must provide the IRS and the person redeeming a bearer CD with a Form 1099-INT.

More information. See chapter 1 of IRS.gov/Pub550 for more information about OID and related topics, such as market discount bonds.

When To Report Interest Income

When to report your interest income depends on whether you use the cash method or an accrual method to report income.

Cash method. Most individual taxpayers use the cash method. If you use this method, you generally report your interest income in the year in which you actually or constructively receive it. However, there are special rules for reporting the discount on certain debt instruments. See U.S. Savings Bonds and Original Issue Discount (OID), earlier.

Example. On September 1, 2020, you loaned another individual $2,000 at 4% interest, compounded annually. You aren't in the business of lending money. The note stated that principal and interest would be due on August 31, 2022. In 2022, you received $2,163.20 ($2,000 principal and $163.20 interest). If you use the cash method, you must include in income on your 2022 return the $163.20 interest you received in that year.

Constructive receipt. You constructively receive income when it is credited to your account or made available to you. You don't need to have physical possession of it. For example, you are considered to receive interest, dividends, or other earnings on any deposit or account in a bank, savings and loan, or similar financial institution, or interest on life insurance policy dividends left to accumulate, when they are credited to your account and subject to your withdrawal.

You constructively receive income on the deposit or account even if you must:

- Make withdrawals in multiples of even amounts;
- Give a notice to withdraw before making the withdrawal;
- Withdraw all or part of the account to withdraw the earnings; or
- Pay a penalty on early withdrawals, unless the interest you are to receive on an early withdrawal or redemption is substantially less than the interest payable at maturity.

Accrual method. If you use an accrual method, you report your interest income when you earn it, whether or not you have received it. Interest is earned over the term of the debt instrument.

Example. If, in the previous example, you use an accrual method, you must include the interest in your income as you earn it. You would report the interest as follows: 2020, $26.67; 2021, $81.06; and 2022, $55.47.

Coupon bonds. Interest on bearer bonds with detachable coupons is generally taxable in the year the coupon becomes due and payable. It doesn't matter when you mail the coupon for payment.

How To Report Interest Income

Generally, you report all your taxable interest income on Form 1040 or 1040-SR, line 2b.

Schedule B (Form 1040). You must also complete Schedule B (Form 1040), Part I, if you file Form 1040 or 1040-SR and any of the following apply.

1. Your taxable interest income is more than $1,500.
2. You are claiming the interest exclusion under the Education Savings Bond Program (discussed earlier).
3. You received interest from a seller-financed mortgage, and the buyer used the property as a home.
4. You received a Form 1099-INT for U.S. savings bond interest that includes amounts you reported in a previous tax year.
5. You received, as a nominee, interest that actually belongs to someone else.
6. You received a Form 1099-INT for interest on frozen deposits.
7. You received a Form 1099-INT for interest on a bond you bought between interest payment dates.
8. You are reporting OID in an amount less than the amount shown on Form 1099-OID.
9. You reduce interest income from bonds by amortizable bond premium.

In Part I, line 1, list each payer's name and the amount received from each. If you received a Form 1099-INT or Form 1099-OID from a brokerage firm, list the brokerage firm as the payer.

The box references discussed below are from the January 2022 revisions of Form 1099-INT and Form 1099-DIV. Later revisions may have different box references.

Reporting tax-exempt interest. Total your tax-exempt interest (such as interest or accrued OID on certain state and municipal bonds, including zero coupon municipal bonds) reported on Form 1099-INT, box 8, Form 1099-OID, box 11, and exempt-interest dividends from a mutual fund or other regulated investment company reported on Form 1099-DIV, box 12. Add these amounts to any other tax-exempt interest you received. Report the total on line 2a of Form 1040 or 1040-SR.

Form 1099-INT, box 9, and Form 1099-DIV, box 13, show the tax-exempt interest subject to the alternative minimum tax on Form 6251. These amounts are already included in the amounts on Form 1099-INT, box 8, and Form 1099-DIV, box 12. Don't add the amounts in Form 1099-INT, box 9, and Form 1099-DIV, box 13, to, or subtract them from, the amounts on Form 1099-INT, box 8, and Form 1099-DIV, box 12.

Don't report interest from an IRA as tax-exempt interest.

Form 1099-INT. Your taxable interest income, except for interest from U.S. savings bonds and Treasury obligations, is shown in box 1 of Form 1099-INT. Add this amount to any other taxable interest income you received. See the Form 1099-INT Instructions for Recipient if you have interest from a security acquired at a premium. You must report all of your taxable interest income even if you don't receive a Form 1099-INT. Contact your financial institution if you don't receive a Form 1099-INT by February 15. Your identifying number may be truncated on any Form 1099-INT you receive.

If you forfeited interest income because of the early withdrawal of a time deposit, the deductible amount will be shown on Form

1099-INT in box 2. See *Penalty on early withdrawal of savings* in chapter 1 of IRS.gov/Pub550.

Box 3 of Form 1099-INT shows the interest income you received from U.S. savings bonds, Treasury bills, Treasury notes, and Treasury bonds. Generally, add the amount shown in box 3 to any other taxable interest income you received. If part of the amount shown in box 3 was previously included in your interest income, see *U.S. savings bond interest previously reported*, later. If you acquired the security at a premium, see the Form 1099-INT Instructions for Recipient.

Box 4 of Form 1099-INT will contain an amount if you were subject to backup withholding. Include the amount from box 4 on Form 1040 or 1040-SR, line 25b (federal income tax withheld).

Box 5 of Form 1099-INT shows investment expenses. This amount is not deductible. See chapter 12 for more information about investment expenses.

Box 6 of Form 1099-INT shows foreign tax paid. You may be able to claim this tax as a deduction or a credit on your Form 1040 or 1040-SR. See your tax return instructions.

Box 7 of Form 1099-INT shows the country or U.S. possession to which the foreign tax was paid.

U.S. savings bond interest previously reported. If you received a Form 1099-INT for U.S. savings bond interest, the form may show interest you don't have to report. See *Form 1099-INT for U.S. savings bonds interest*, earlier.

On Schedule B (Form 1040), Part I, line 1, report all the interest shown on your Form 1099-INT. Then follow these steps.

1. Several rows above line 2, enter a subtotal of all interest listed on line 1.
2. Below the subtotal, enter “U.S. Savings Bond Interest Previously Reported” and enter amounts previously reported or interest accrued before you received the bond.
3. Subtract these amounts from the subtotal and enter the result on line 2.

More information. For more information about how to report interest income, see chapter 1 of IRS.gov/Pub550 or the instructions for the form you must file.

7. Social Security and Equivalent Railroad Retirement Benefits

What’s New

New lines 1a through 1z on Forms 1040 and 1040-SR. This year, line 1 is expanded and there are new lines 1a through 1z. Some amounts that in prior years were reported on Form 1040, and some amounts reported on Form 1040-SR, are now reported on Schedule 1.

- Scholarships and fellowship grants are now reported on Schedule 1, line 8r.
- Pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan is now reported on Schedule 1, line 8t.
- Wages earned while incarcerated are now reported on Schedule 1, line 8u.

New line 6c on Forms 1040 and 1040-SR. A checkbox was added on line 6c. Taxpayers who elect to use the lump-sum election method for their benefits will check this box. See *Lump-Sum Election* in Pub. 915, Social Security and Equivalent Railroad Retirement Benefits, for details.

Introduction

This chapter explains the federal income tax rules for social security benefits and equivalent tier 1 railroad retirement benefits. It explains the following topics.

- How to figure whether your benefits are taxable.
- How to report your taxable benefits.
- How to use the Social Security Benefits Worksheet (with examples).
- Deductions related to your benefits and how to treat repayments that are more than the benefits you received during the year.

Social security benefits include monthly retirement, survivor, and disability benefits. They don’t include Supplemental Security Income (SSI) payments, which aren’t taxable.

Equivalent tier 1 railroad retirement benefits are the part of tier 1 benefits that a railroad employee or beneficiary would have been entitled to receive under the social security system. They are commonly called the social security equivalent benefit (SSEB) portion of tier 1 benefits.

If you received these benefits during 2022, you should have received a Form SSA-1099, Social Security Benefit Statement; or Form RRB-1099, Payments by the Railroad Retirement Board. These forms show the amounts received and repaid, and taxes withheld for the year. You may receive more than one of these forms for the same year. You should add the amounts shown on all the Forms SSA-1099 and Forms RRB-1099 you receive for the year to determine the total amounts received and repaid, and taxes withheld for that year. See the Appendix at the end of Pub. 915 for more information.

Note. When the term “benefits” is used in this chapter, it applies to both social security benefits and the SSEB portion of tier 1 railroad retirement benefits.

my Social Security **account.** Social security beneficiaries may quickly and easily obtain information from the SSA's website with a *my Social Security* account to:

- Keep track of your earnings and verify them every year,
- Get an estimate of your future benefits if you are still working,
- Get a letter with proof of your benefits if you currently receive them,
- Change your address,
- Start or change your direct deposit,
- Get a replacement Medicare card, and
- Get a replacement Form SSA-1099 for the tax season.

For more information and to set up an account, go to SSA.gov/myaccount.

What isn’t covered in this chapter. This chapter doesn’t cover the tax rules for the following railroad retirement benefits.

- Non-social security equivalent benefit (NSSEB) portion of tier 1 benefits.
- Tier 2 benefits.
- Vested dual benefits.
- Supplemental annuity benefits.

For information on these benefits, see Pub. 575, Pension and Annuity Income.

This chapter doesn’t cover the tax rules for social security benefits reported on Form SSA-1042S, Social Security Benefit Statement; or Form RRB-1042S, Statement for Nonresident Alien Recipients of Payments by the Railroad Retirement Board. For information about these benefits, see Pub. 519, U.S. Tax Guide for Aliens; and Pub. 915.

This chapter also doesn’t cover the tax rules for foreign social security benefits. These benefits are taxable as annuities, unless they are exempt from U.S. tax or treated as a U.S. social security benefit under a tax treaty.

Useful Items

You may want to see:

Publication

- ❏ **501** Dependents, Standard Deduction, and Filing Information
- ❏ **505** Tax Withholding and Estimated Tax
- ❏ **519** U.S. Tax Guide for Aliens
- ❏ **575** Pension and Annuity Income
- ❏ **590-A** Contributions to Individual Retirement Arrangements (IRAs)
- ❏ **915** Social Security and Equivalent Railroad Retirement Benefits

Form (and Instructions)

- ❏ **1040-ES** Estimated Tax for Individuals
- ❏ **SSA-1099** Social Security Benefit Statement
- ❏ **RRB-1099** Payments by the Railroad Retirement Board
- ❏ **W-4V** Voluntary Withholding Request

For these and other useful items, go to *IRS.gov/Forms*.

Are Any of Your Benefits Taxable?

To find out whether any of your benefits may be taxable, compare the base amount (explained later) for your filing status with the total of:

1. One-half of your benefits; plus
2. All your other income, including tax-exempt interest.

Exclusions. When making this comparison, don't reduce your other income by any exclusions for:

- Interest from qualified U.S. savings bonds,
- Employer-provided adoption benefits,
- Interest on education loans,
- Foreign earned income or foreign housing, or
- Income earned by bona fide residents of American Samoa or Puerto Rico.

Children's benefits. The rules in this chapter apply to benefits received by children. See *Who is taxed*, later.

Figuring total income. To figure the total of one-half of your benefits plus your other income, use Worksheet 7-1, discussed later. If the total is more than your base amount, part of your benefits may be taxable.

If you are married and file a joint return for 2022, you and your spouse must combine your incomes and your benefits to figure whether any of your combined benefits are taxable. Even if your spouse didn't receive any benefits, you must add your spouse's income to yours to figure whether any of your benefits are taxable.

If the only income you received during 2022 was your social security or the SSEB portion of tier 1 railroad retirement benefits, your benefits generally aren't taxable and you probably don't have to file a return. If you have income in addition to your benefits, you may have to file a return even if none of your benefits are taxable. See Do I Have To File a Return? in chapter 1, earlier; Pub. 501; or your tax return instructions to find out if you have to file a return.

Base amount. Your base amount is:

- $25,000 if you are single, head of household, or qualifying surviving spouse;
- $25,000 if you are married filing separately and lived apart from your spouse for all of 2022;
- $32,000 if you are married filing jointly; or
- $0 if you are married filing separately and lived with your spouse at any time during 2022.

Worksheet 7-1. You can use Worksheet 7-1 to figure the amount of income to compare with your base amount. This is a quick way to check whether some of your benefits may be taxable.

Worksheet 7-1. **A Quick Way To Check if Your Benefits May Be Taxable**

Note. If you plan to file a joint income tax return, include your spouse's amounts, if any, on lines A, C, and D.

A.	Enter the total amount from ***box 5*** of **all** your **Forms SSA-1099** and **RRB-1099**. Include the full amount of any lump-sum benefit payments received in 2022, for 2022 and earlier years. (If you received more than one form, combine the amounts from box 5 and enter the total.)	A.	______

Note. If the amount on line A is zero or less, stop here; none of your benefits are taxable this year.

B.	Multiply line A by 50% (0.50)	B.	______
C.	Enter your total income that is taxable (excluding line A), such as pensions, wages, interest, ordinary dividends, and capital gain distributions. Don't reduce your income by any deductions, exclusions (listed earlier), or exemptions	C.	______
D.	Enter any tax-exempt interest income, such as interest on municipal bonds	D.	______
E.	Add lines B, C, and D . . .	E.	______

Note. Compare the amount on line E to your **base amount** for your filing status. If the amount on line E equals or is less than the **base amount** for your filing status, none of your benefits are taxable this year. If the amount on line E is more than your **base amount,** some of your benefits may be taxable and you will need to complete Worksheet 1 in Pub. 915 (or the Social Security Benefits Worksheet in your tax form instructions). If none of your benefits are taxable, but you must otherwise file a tax return, see *Benefits not taxable*, later, under *How To Report Your Benefits*.

Example. You and your spouse (both over 65) are filing a joint return for 2022 and you both received social security benefits during the year. In January 2023, you received a Form SSA-1099 showing net benefits of $3,500 in box 5. Your spouse received a Form SSA-1099 showing net benefits of $2,500 in box 5. You also received a taxable pension of $28,100 and interest income of $700. You didn't have any tax-exempt interest income. Your benefits aren't taxable for 2022 because your income, as figured in Worksheet 7-1, isn't more than your base amount ($32,000) for married filing jointly.

Even though none of your benefits are taxable, you must file a return for 2022 because your taxable gross income ($28,800) exceeds the minimum filing requirement amount for your filing status.

Filled-in Worksheet 7-1. **A Quick Way To Check if Your Benefits May Be Taxable**

Note. If you plan to file a joint income tax return, include your spouse's amounts, if any, on lines A, C, and D.

A. Enter the total amount from ***box 5*** of **all** your **Forms SSA-1099** and **RRB-1099**. Include the full amount of any lump-sum benefit payments received in 2022, for 2022 and earlier years. (If you received more than one form, combine the amounts from box 5 and enter the total.)	A.	$6,000

Note. If the amount on line A is zero or less, stop here; none of your benefits are taxable this year.

B. Multiply line A by 50% (0.50)	B.	3,000
C. Enter your total income that is taxable (excluding line A), such as pensions, wages, interest, ordinary dividends, and capital gain distributions. Don't reduce your income by any deductions, exclusions (listed earlier), or exemptions	C.	28,800
D. Enter any tax-exempt interest income, such as interest on municipal bonds	D.	-0-
E. Add lines B, C, and D . . .	E.	$31,800

Note. Compare the amount on line E to your **base amount** for your filing status. If the amount on line E equals or is less than the **base amount** for your filing status, none of your benefits are taxable this year. If the amount on line E is more than your **base amount,** some of your benefits may be taxable and you will need to complete Worksheet 1 in Pub. 915 (or the Social Security Benefits Worksheet in your tax form instructions). If none of your benefits are taxable, but you otherwise must file a tax return, see *Benefits not taxable*, later, under *How To Report Your Benefits*.

Who is taxed. Benefits are included in the taxable income (to the extent they are taxable) of the person who has the legal right to receive the benefits. For example, if you and your child receive benefits, but the check for your child is made out in your name, you must use only your part of the benefits to see whether any benefits are taxable to you. One-half of the part that belongs to your child must be added to your child's other income to see whether any of those benefits are taxable to your child.

Repayment of benefits. Any repayment of benefits you made during 2022 must be subtracted from the gross benefits you received in 2022. It doesn't matter whether the repayment was for a benefit you received in 2022 or in an earlier year. If you repaid more than the gross benefits you received in 2022, see *Repayments More Than Gross Benefits*, later.

Your gross benefits are shown in box 3 of Form SSA-1099 or RRB-1099. Your repayments are shown in box 4. The amount in box 5 shows your net benefits for 2022 (box 3 minus box 4). Use the amount in box 5 to figure whether any of your benefits are taxable.

Tax withholding and estimated tax. You can choose to have federal income tax withheld from your social security benefits and/or the SSEB portion of your tier 1 railroad retirement benefits. If you choose to do this, you must complete a Form W-4V.

If you don't choose to have income tax withheld, you may have to request additional withholding from other income or pay estimated tax during the year. For details, see chapter 4, earlier; Pub. 505; or the Instructions for Form 1040-ES.

How To Report Your Benefits

If part of your benefits are taxable, you must use Form 1040 or 1040-SR.

Reporting on Form 1040 or 1040-SR. Report your net benefits (the total amount from box 5 of all your Forms SSA-1099 and Forms RRB-1099) on line 6a and the taxable part on line 6b. If you are married filing separately and you lived apart from your spouse for all of 2022, also enter "D" to the right of the word "benefits" on line 6a.

Benefits not taxable. Report your net benefits (the total amount from box 5 of all your Forms SSA-1099 and Forms RRB-1099) on Form 1040 or 1040-SR, line 6a. Enter -0- on Form 1040 or 1040-SR, line 6b. If you are married filing separately and you lived apart from your spouse for all of 2022, also enter "D" to the right of the word "benefits" on Form 1040 or 1040-SR, line 6a.

How Much Is Taxable?

If part of your benefits are taxable, how much is taxable depends on the total amount of your benefits and other income. Generally, the higher that total amount, the greater the taxable part of your benefits.

Maximum taxable part. Generally, up to 50% of your benefits will be taxable. However, up to 85% of your benefits can be taxable if either of the following situations applies to you.

- The total of one-half of your benefits and all your other income is more than $34,000 ($44,000 if you are married filing jointly).
- You are married filing separately and lived with your spouse at any time during 2022.

Which worksheet to use. A worksheet you can use to figure your taxable benefits is in the Instructions for Form 1040. You can use either that worksheet or Worksheet 1 in Pub. 915, unless any of the following situations applies to you.

1. You contributed to a traditional individual retirement arrangement (IRA) and you or your spouse is covered by a retirement plan at work. In this situation, you must use the special worksheets in Appendix B of Pub. 590-A to figure both your IRA deduction and your taxable benefits.
2. Situation 1 doesn't apply and you take an exclusion for interest from qualified U.S. savings bonds (Form 8815), for adoption benefits (Form 8839), for foreign earned income or housing (Form 2555), or for income earned in American Samoa (Form 4563) or Puerto Rico by bona fide residents. In this situation, you must use Worksheet 1 in Pub. 915 to figure your taxable benefits.
3. You received a lump-sum payment for an earlier year. In this situation, also complete Worksheet 2 or 3 and Worksheet 4 in Pub. 915. See *Lump-sum election* next.

Lump-sum election. You must include the taxable part of a lump-sum (retroactive) payment of benefits received in 2022 in your 2022 income, even if the payment includes benefits for an earlier year.

Line 6c: Check the box on line 6c if you elect to use the lump-sum election method for your benefits. If any of your benefits are taxable for 2022 and they include a lump-sum benefit payment that was for an earlier year, you may be able to reduce the taxable amount with the lump-sum election. See Lump-Sum Election *in Pub. 915 for details.*

This type of lump-sum benefit payment shouldn't be confused with the lump-sum death benefit that both the SSA and RRB pay to many of their beneficiaries. No part of the lump-sum death benefit is subject to tax.

Generally, you use your 2022 income to figure the taxable part of the total benefits received in 2022. However, you may be able to figure the taxable part of a lump-sum payment for an earlier year separately, using your income for the earlier year. You can elect this method if it lowers your taxable benefits.

Making the election. If you received a lump-sum benefit payment in 2022 that includes benefits for one or more earlier years, follow the instructions in Pub. 915 under *Lump-Sum Election* to see whether making the election will lower your taxable benefits. That discussion also explains how to make the election.

Because the earlier year's taxable benefits are included in your 2022 income, no adjustment is made to the earlier year's return. Don't file an amended return for the earlier year.

Examples

The following are a few examples you can use as a guide to figure the taxable part of your benefits.

Example 1. George White is single and files Form 1040 for 2022. He received the following income in 2022.

Fully taxable pension	$18,600
Wages from part-time job	9,400
Taxable interest income	990
Total	$28,990

George also received social security benefits during 2022. The Form SSA-1099 he received in January 2023 shows $5,980 in box 5. To figure his taxable benefits, George completes the worksheet shown here.

Filled-in Worksheet 1. **Figuring Your Taxable Benefits**

1. Enter the total amount from ***box 5*** of **all** your **Forms SSA-1099** and **RRB-1099**. Also enter this amount on Form 1040 or 1040-SR, line 6a $5,980
2. Multiply line 1 by 50% (0.50) 2,990
3. Combine the amounts from Form 1040 or 1040-SR, lines 1z, 2b, 3b, 4b, 5b, 7, and 8 28,990
4. Enter the amount, if any, from Form 1040 or 1040-SR, line 2a . . . . -0-
5. Enter the total of any exclusions/adjustments for:
   - Adoption benefits (Form 8839, line 28),
   - Foreign earned income or housing (Form 2555, lines 45 and 50), and
   - Certain income of bona fide residents of American Samoa (Form 4563, line 15) or Puerto Rico . . . . -0-
6. Combine lines 2, 3, 4, and 5 above . . . 31,980
7. Enter the total of the amounts from Schedule 1 (Form 1040), lines 11 through 20, and 23 and 25 . . . . -0-
8. Is the amount on line 7 less than the amount on line 6?

   No. STOP None of your social security benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b.

   Yes. Subtract line 7 from line 6 31,980
9. If you are:
   - Married filing jointly, enter $32,000; or
   - Single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2022, enter $25,000 25,000

   Note. If you are married filing separately and you lived with your spouse at any time in 2022, skip lines 9 through 16, multiply line 8 by 85% (0.85), and enter the result on line 17. Then, go to line 18.
10. Is the amount on line 9 less than the amount on line 8?

    No. STOP None of your benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b. If you are married filing separately and you **lived apart** from your spouse for all of 2022, be sure you entered “D” to the right of the word “benefits” on Form 1040 or 1040-SR, line 6a.

    Yes. Subtract line 9 from line 8 6,980
11. Enter $12,000 if married filing jointly; or $9,000 if single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2022 9,000
12. Subtract line 11 from line 10. If zero or less, enter -0- . . . . -0-
13. Enter the **smaller** of line 10 or line 11 6,980
14. Multiply line 13 by 50% (0.50) 3,490
15. Enter the **smaller** of line 2 or line 14 . . 2,990
16. Multiply line 12 by 85% (0.85). If line 12 is zero, enter -0- . . . . -0-
17. Add lines 15 and 16 2,990
18. Multiply line 1 by 85% (0.85) 5,083
19. **Taxable benefits.** Enter the **smaller** of line 17 or line 18. Also enter this amount on Form 1040 or 1040-SR, line 6b . . . $2,990

The amount on line 19 of George's worksheet shows that $2,990 of his social security benefits is taxable. On line 6a of his Form 1040, George enters his net benefits of $5,980. On line 6b, he enters his taxable benefits of $2,990.

Example 2. Ray and Alice Hopkins file a joint return on Form 1040 for 2022. Ray is retired and received a fully taxable pension of $15,500. He also received social security benefits, and his Form SSA-1099 for 2022 shows net benefits of $5,600 in box 5. Alice worked during the year and had wages of $14,000. She made a deductible payment to her IRA account of $1,000 and isn’t covered by a retirement plan at work. Ray and Alice have two savings accounts with a total of $250 in taxable interest income. They complete Worksheet 1, shown below, entering $29,750 ($15,500 + $14,000 + $250) on line 3. They find none of Ray's social security benefits are taxable. On Form 1040, they enter $5,600 on line 6a and -0- on line 6b.

Filled-in Worksheet 1. **Figuring Your Taxable Benefits**

1. Enter the total amount from ***box 5*** of **all** your **Forms SSA-1099** and **RRB-1099**. Also enter this amount on Form 1040 or 1040-SR, line 6a $5,600
2. Multiply line 1 by 50% (0.50) . . . 2,800
3. Combine the amounts from Form 1040 or 1040-SR, lines 1z, 2b, 3b, 4b, 5b, 7, and 8 29,750
4. Enter the amount, if any, from Form 1040 or 1040-SR, line 2a . . . . -0-
5. Enter the total of any exclusions/adjustments for:
   - Adoption benefits (Form 8839, line 28),
   - Foreign earned income or housing (Form 2555, lines 45 and 50), and
   - Certain income of bona fide residents of American Samoa (Form 4563, line 15) or Puerto Rico . . . . -0-
6. Combine lines 2, 3, 4, and 5 above 32,550
7. Enter the total of the amounts from Schedule 1 (Form 1040), lines 11 through 20, and 23 and 25 1,000
8. Is the amount on line 7 less than the amount on line 6?

   No. STOP None of your social security benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b.

   Yes. Subtract line 7 from line 6 31,550
9. If you are:
   - Married filing jointly, enter $32,000; or
   - Single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2022, enter $25,000 32,000

   Note. If you are married filing separately and you lived with your spouse at any time in 2022, skip lines 9 through 16, multiply line 8 by 85% (0.85), and enter the result on line 17. Then, go to line 18.
10. Is the amount on line 9 less than the amount on line 8?

    No. STOP None of your benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b. If you are married filing separately and you **lived apart** from your spouse for all of 2022, be sure you entered “D” to the right of the word “benefits” on Form 1040 or 1040-SR, line 6a.

    Yes. Subtract line 9 from line 8 . . . . ____

11. Enter $12,000 if married filing jointly; or $9,000 if single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2022 . . . . . ______

12. Subtract line 11 from line 10. If zero or less, enter -0- . . . . . ______

13. Enter the **smaller** of line 10 or line 11 . . . . . ______

14. Multiply line 13 by 50% (0.50) . . . . . ______

15. Enter the **smaller** of line 2 or line 14 . . ______

16. Multiply line 12 by 85% (0.85). If line 12 is zero, enter -0- . . . . . ______

17. Add lines 15 and 16 . . . . . ______

18. Multiply line 1 by 85% (0.85) . . . . . ______

19. **Taxable benefits.** Enter the **smaller** of line 17 or line 18. Also enter this amount on Form 1040 or 1040-SR, line 6b . . . ______

Example 3. Joe and Betty Johnson file a joint return on Form 1040 for 2022. Joe is a retired railroad worker and in 2022 received the SSEB portion of tier 1 railroad retirement benefits. Joe's Form RRB-1099 shows $10,000 in box 5. Betty is a retired government worker and received a fully taxable pension of $38,000. They had $2,300 in taxable interest income plus interest of $200 on a qualified U.S. savings bond. The savings bond interest qualified for the exclusion. They figure their taxable benefits by completing Worksheet 1, shown below. Because they have qualified U.S. savings bond interest, they follow the note at the beginning of the worksheet and use the amount from line 2 of their Schedule B (Form 1040) on line 3 of the worksheet instead of the amount from line 2b of their Form 1040. On line 3 of the worksheet, they enter $40,500 ($38,000 + $2,500).

Filled-in Worksheet 1.
Figuring Your Taxable Benefits

Before you begin:

- If you are married filing separately and you lived apart from your spouse for all of 2022, enter "D" to the right of the word "benefits" on Form 1040 or 1040-SR, line 6a.
- Don't use this worksheet if you repaid benefits in 2022 and your total repayments (box 4 of Forms SSA-1099 and RRB-1099) were more than your gross benefits for 2022 (box 3 of Forms SSA-1099 and RRB-1099). None of your benefits are taxable for 2022. For more information, see *Repayments More Than Gross Benefits*, later.
- If you are filing Form 8815, Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989, don't include the amount from line 2b of Form 1040 or 1040-SR on line 3 of this worksheet. Instead, include the amount from Schedule B (Form 1040), line 2.

1. Enter the total amount from ***box 5*** of **all** your **Forms SSA-1099** and **RRB-1099**. Also enter this amount on Form 1040 or 1040-SR, line 6a $10,000

2. Multiply line 1 by 50% (0.50) 5,000

3. Combine the amounts from Form 1040 or 1040-SR, lines 1z, 2b, 3b, 4b, 5b, 7, and 8 40,500

4. Enter the amount, if any, from Form 1040 or 1040-SR, line 2a . . . . . -0-

5. Enter the total of any exclusions/adjustments for:

- Adoption benefits (Form 8839, line 28),
- Foreign earned income or housing (Form 2555, lines 45 and 50), and
- Certain income of bona fide residents of American Samoa (Form 4563, line 15) or Puerto Rico . . . . . -0-

6. Combine lines 2, 3, 4, and 5 above . . . 45,500

7. Enter the total of the amounts from Schedule 1 (Form 1040), lines 11 through 20, and 23 and 25 . . . . . -0-

8. Is the amount on line 7 less than the amount on line 6?

No. STOP None of your social security benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b.

Yes. Subtract line 7 from line 6 45,500

9. If you are:

- Married filing jointly, enter $32,000; or
- Single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2022, enter $25,000 32,000

Note. If you are married filing separately and you lived with your spouse at any time in 2022, skip lines 9 through 16, multiply line 8 by 85% (0.85), and enter the result on line 17. Then, go to line 18.

10. Is the amount on line 9 less than the amount on line 8?

No. STOP None of your benefits are taxable. Enter -0- on Form 1040 or 1040-SR, line 6b. If you are married filing separately and you **lived apart** from your spouse for all of 2022, be sure you entered "D" to the right of the word "benefits" on Form 1040 or 1040-SR, line 6a.

Yes. Subtract line 9 from line 8 13,500

11. Enter $12,000 if married filing jointly; or $9,000 if single, head of household, qualifying surviving spouse, or married filing separately and you **lived apart** from your spouse for all of 2022 12,000

12. Subtract line 11 from line 10. If zero or less, enter -0- 1,500

13. Enter the **smaller** of line 10 or line 11 12,000

14. Multiply line 13 by 50% (0.50) 6,000

15. Enter the **smaller** of line 2 or line 14 . . 5,000

16. Multiply line 12 by 85% (0.85). If line 12 is zero, enter -0- 1,275

17. Add lines 15 and 16 6,275

18. Multiply line 1 by 85% (0.85) 8,500

19. **Taxable benefits.** Enter the **smaller** of line 17 or line 18. Also enter this amount on Form 1040 or 1040-SR, line 6b . . . $6,275

More than 50% of Joe's net benefits are taxable because the income on line 8 of the worksheet ($45,500) is more than $44,000. (See *Maximum taxable part* under *How Much Is Taxable*, earlier.) Joe and Betty enter $10,000 on Form 1040, line 6a; and $6,275 on Form 1040, line 6b.

Deductions Related to Your Benefits

You may be entitled to deduct certain amounts related to the benefits you receive.

Disability payments. You may have received disability payments from your employer or an insurance company that you included as income on your tax return in an earlier year. If you received a lump-sum payment from the SSA or RRB, and you had to repay the employer or insurance company for the disability payments, you can take an itemized deduction for the part of the payments you included in gross income in the earlier year. If the amount you repay is more than $3,000, you may be able to claim a tax credit instead. Claim the deduction or credit in the same way explained under *Repayment of benefits received in an earlier year* under *Repayments More Than Gross Benefits* next.

Repayments More Than Gross Benefits

In some situations, your Form SSA-1099 or Form RRB-1099 will show that the total benefits you repaid (box 4) are more than the gross benefits (box 3) you received. If this occurred, your

net benefits in box 5 will be a negative figure (a figure in parentheses) and none of your benefits will be taxable. Don't use a worksheet in this case. If you receive more than one form, a negative figure in box 5 of one form is used to offset a positive figure in box 5 of another form for that same year.

If you have any questions about this negative figure, contact your local SSA office or your local RRB field office.

Joint return. If you and your spouse file a joint return, and your Form SSA-1099 or RRB-1099 has a negative figure in box 5, but your spouse's doesn't, subtract the amount in box 5 of your form from the amount in box 5 of your spouse's form. You do this to get your net benefits when figuring if your combined benefits are taxable.

Example. John and Mary file a joint return for 2022. John received Form SSA-1099 showing $3,000 in box 5. Mary also received Form SSA-1099 and the amount in box 5 was ($500). John and Mary will use $2,500 ($3,000 minus $500) as the amount of their net benefits when figuring if any of their combined benefits are taxable.

Repayment of benefits received in an earlier year. If the total amount shown in box 5 of all of your Forms SSA-1099 and RRB-1099 is a negative figure, you may be able to deduct part of this negative figure that represents benefits you included in gross income in an earlier year if the figure is more than $3,000. If the figure is $3,000 or less, it is a miscellaneous itemized deduction and can no longer be deducted.

Deduction more than $3,000. If this deduction is more than $3,000, you should figure your tax two ways.

1. Figure your tax for 2022 with the itemized deduction included on Schedule A (Form 1040), line 16.
2. Figure your tax for 2022 in the following steps.
   a. Figure the tax without the itemized deduction included on Schedule A (Form 1040), line 16.
   b. For each year after 1983 for which part of the negative figure represents a repayment of benefits, refigure your taxable benefits as if your total benefits for the year were reduced by that part of the negative figure. Then refigure the tax for that year.
   c. Subtract the total of the refigured tax amounts in (b) from the total of your actual tax amounts.
   d. Subtract the result in (c) from the result in (a).

Compare the tax figured in methods 1 and 2. Your tax for 2022 is the smaller of the two amounts. If method 1 results in less tax, take the itemized deduction on Schedule A (Form 1040), line 16. If method 2 results in less tax, claim a credit for the amount from step 2c above on Schedule 3 (Form 1040), line 13z. Enter "I.R.C. 1341" on the entry line. If both methods produce the same tax, deduct the repayment on Schedule A (Form 1040), line 16.

8. Other Income

Reminders

Business meals. Section 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides for the temporary allowance of a 100% business meal deduction for food or beverages provided by a restaurant and paid or incurred after December 31, 2020, and before January 1, 2023.

Unemployment compensation. If you received unemployment compensation but did not receive Form 1099-G, Certain Government Payments, through the mail, you may need to access your information through your state's website to get your electronic Form 1099-G.

Introduction

You must include on your return all items of income you receive in the form of money, property, and services unless the tax law states that you don't include them. Some items, however, are only partly excluded from income. This chapter discusses many kinds of income and explains whether they're taxable or nontaxable.

- Income that's taxable must be reported on your tax return and is subject to tax.
- Income that's nontaxable may have to be shown on your tax return but isn't taxable.

This chapter begins with discussions of the following income items.

- Bartering.
- Canceled debts.
- Sales parties at which you're the host or hostess.
- Life insurance proceeds.
- Partnership income.
- S corporation income.
- Recoveries (including state income tax refunds).
- Rents from personal property.
- Repayments.
- Royalties.
- Unemployment benefits.
- Welfare and other public assistance benefits.

These discussions are followed by brief discussions of other income items.

Useful Items

You may want to see:

Publication

- ❑ **502** Medical and Dental Expenses
- ❑ **504** Divorced or Separated Individuals
- ❑ **523** Selling Your Home
- ❑ **525** Taxable and Nontaxable Income
- ❑ **544** Sales and Other Dispositions of Assets
- ❑ **547** Casualties, Disasters, and Thefts
- ❑ **550** Investment Income and Expenses
- ❑ **4681** Canceled Debts, Foreclosures, Repossessions, and Abandonments

For these and other useful items, go to IRS.gov/Forms.

Bartering

Bartering is an exchange of property or services. You must include in your income, at the time received, the fair market value of property or services you receive in bartering. If you exchange services with another person and you both have agreed ahead of time on the value of the services, that value will be accepted as fair market value unless the value can be shown to be otherwise.

Generally, you report this income on Schedule C (Form 1040), Profit or Loss From Business. However, if the barter involves an exchange of something other than services, such as in Example 3 below, you may have to use another form or schedule instead.

Example 1. You're a self-employed attorney who performs legal services for a client, a small corporation. The corporation gives you shares of its stock as payment for your services. You must include the fair market value of the shares in your income on Schedule C (Form 1040) in the year you receive them.

Example 2. You're self-employed and a member of a barter club. The club uses "credit units" as a means of exchange. It adds credit units to your account for goods or services you provide to members, which you can use to purchase goods or services offered by other members of the barter club. The club subtracts credit units from your account when you receive goods or services from other members. You must include in your income the value of the credit units that are added to your account, even though you may not actually receive goods or services from other members until a later tax year.

Example 3. You own a small apartment building. In return for 6 months rent-free use of an apartment, an artist gives you a work of art she created. You must report as rental income on Schedule E (Form 1040), Supplemental Income and Loss, the fair market value of the artwork, and the artist must report as income on Schedule C (Form 1040) the fair rental value of the apartment.

Form 1099-B from barter exchange. If you exchanged property or services through a barter exchange, Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, or a similar statement from the barter exchange should be sent to you by February 15, 2023. It should show the value of cash, property,

services, credits, or scrip you received from exchanges during 2022. The IRS will also receive a copy of Form 1099-B.

Canceled Debts

In most cases, if a debt you owe is canceled or forgiven, other than as a gift or bequest, you must include the canceled amount in your income. You have no income from the canceled debt if it's intended as a gift to you. A debt includes any indebtedness for which you're liable or which attaches to property you hold.

If the debt is a nonbusiness debt, report the canceled amount on Schedule 1 (Form 1040), line 8c. If it's a business debt, report the amount on Schedule C (Form 1040) (or on Schedule F (Form 1040), Profit or Loss From Farming, if the debt is farm debt and you're a farmer).

Form 1099-C. If a federal government agency, financial institution, or credit union cancels or forgives a debt you owe of $600 or more, you will receive a Form 1099-C, Cancellation of Debt. The amount of the canceled debt is shown in box 2.

Interest included in canceled debt. If any interest is forgiven and included in the amount of canceled debt in box 2, the amount of interest will also be shown in box 3. Whether or not you must include the interest portion of the canceled debt in your income depends on whether the interest would be deductible when you paid it. See *Deductible debt* under *Exceptions*, later.

If the interest wouldn't be deductible (such as interest on a personal loan), include in your income the amount from box 2 of Form 1099-C. If the interest would be deductible (such as on a business loan), include in your income the net amount of the canceled debt (the amount shown in box 2 less the interest amount shown in box 3).

Discounted mortgage loan. If your financial institution offers a discount for the early payment of your mortgage loan, the amount of the discount is canceled debt. You must include the canceled amount in your income.

Mortgage relief upon sale or other disposition. If you're personally liable for a mortgage (recourse debt), and you're relieved of the mortgage when you dispose of the property, you may realize gain or loss up to the fair market value of the property. Also, to the extent the mortgage discharge exceeds the fair market value of the property, it's income from discharge of indebtedness unless it qualifies for exclusion under *Excluded debt*, later. Report any income from discharge of indebtedness on nonbusiness debt that doesn't qualify for exclusion as other income on Schedule 1 (Form 1040), line 8c.

If you aren't personally liable for a mortgage (nonrecourse debt), and you're relieved of the mortgage when you dispose of the property (such as through foreclosure), that relief is included in the amount you realize. You may have a taxable gain if the amount you realize exceeds your adjusted basis in the property. Report any gain on nonbusiness property as a capital gain.

See Pub. 4681 for more information.

Stockholder debt. If you're a stockholder in a corporation and the corporation cancels or forgives your debt to it, the canceled debt is a constructive distribution that's generally dividend income to you. For more information, see Pub. 542, Corporations.

If you're a stockholder in a corporation and you cancel a debt owed to you by the corporation, you generally don't realize income. This is because the canceled debt is considered as a contribution to the capital of the corporation equal to the amount of debt principal that you canceled.

Repayment of canceled debt. If you included a canceled amount in your income and later pay the debt, you may be able to file a claim for refund for the year the amount was included in income. You can file a claim on Form 1040-X, Amended U.S. Individual Income Tax Return, if the statute of limitations for filing a claim is still open. The statute of limitations generally doesn't end until 3 years after the due date of your original return.

Exceptions

There are several exceptions to the inclusion of canceled debt in income. These are explained next.

Student loans. Certain student loans contain a provision that all or part of the debt incurred to attend the qualified educational institution will be canceled if you work for a certain period of time in certain professions for any of a broad class of employers.

You don't have income if your student loan is canceled after you agreed to this provision and then performed the services required. To qualify, the loan must have been made by:

1. The federal government, a state or local government, or an instrumentality, agency, or subdivision thereof;
2. A tax-exempt public benefit corporation that has assumed control of a state, county, or municipal hospital, and whose employees are considered public employees under state law; or
3. An educational institution:
    a. Under an agreement with an entity described in (1) or (2) that provided the funds to the institution to make the loan, or
    b. As part of a program of the institution designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or a tax-exempt organization described in section 501(c)(3).

A loan to refinance a qualified student loan will also qualify if it was made by an educational institution or a qualified tax-exempt organization under its program designed as described in item 3b above.

Special rule for student loan discharges for 2021 through 2025. The American Rescue Plan Act of 2021 modified the treatment of student loan forgiveness for discharges in 2021 through 2025. Generally, if you are responsible for making loan payments, and the loan is canceled or repaid by someone else, you must include the amount that was canceled or paid on your behalf in your gross income for tax purposes. However, in certain circumstances you may be able to exclude this amount from gross income if the loan was one of the following.

- A loan for postsecondary educational expenses.
- A private education loan.
- A loan from an educational organization described in section 170(b)(1)(A)(ii).
- A loan from an organization exempt from tax under section 501(a) to refinance a student loan.

See Pub. 4681 and Pub. 970 for more information.

Education loan repayment assistance. Education loan repayments made to you by the National Health Service Corps Loan Repayment Program (NHSC Loan Repayment Program), a state education loan repayment program eligible for funds under the Public Health Service Act, or any other state loan repayment or loan forgiveness program that's intended to provide for the increased availability of health services in underserved or health professional shortage areas aren't taxable.

Deductible debt. You don't have income from the cancellation of a debt if your payment of the debt would be deductible. This exception applies only if you use the cash method of accounting. For more information, see chapter 5 of Pub. 334, Tax Guide for Small Business.

Price reduced after purchase. In most cases, if the seller reduces the amount of debt you owe for property you purchased, you don't have income from the reduction. The reduction of the debt is treated as a purchase price adjustment and reduces your basis in the property.

Excluded debt. Don't include a canceled debt in your gross income in the following situations.

- The debt is canceled in a bankruptcy case under title 11 of the U.S. Code. See Pub. 908, Bankruptcy Tax Guide.
- The debt is canceled when you're insolvent. However, you can't exclude any amount of canceled debt that's more than the amount by which you're insolvent. See Pub. 908.
- The debt is qualified farm debt and is canceled by a qualified person. See chapter 3 of Pub. 225, Farmer's Tax Guide.
- The debt is qualified real property business debt. See chapter 5 of Pub. 334.
- The cancellation is intended as a gift.
- The debt is qualified principal residence indebtedness.

Host

If you host a party or event at which sales are made, any gift or gratuity you receive for giving the event is a payment for helping a direct seller

make sales. You must report this item as income at its fair market value.

Your out-of-pocket party expenses are subject to the 50% limit for meal expenses. For tax years 2018 and after, no deduction is allowed for any expenses related to activities generally considered entertainment, amusement, or recreation. Taxpayers may continue to deduct 50% of the cost of business meals if the taxpayer (or an employee of the taxpayer) is present and the food or beverages are not considered lavish or extravagant. The meals may be provided to a current or potential business customer, client, consultant, or similar business contact. Food and beverages that are provided during entertainment events will not be considered entertainment if purchased separately from the event.

Section 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides for the temporary allowance of a 100% business meal deduction for food or beverages provided by a restaurant and paid or incurred after December 31, 2020, and before January 1, 2023.

For more information about the limit for meal expenses, see Pub. 463, Travel, Gift, and Car Expenses.

Life Insurance Proceeds

Life insurance proceeds paid to you because of the death of the insured person aren't taxable unless the policy was turned over to you for a price. This is true even if the proceeds were paid under an accident or health insurance policy or an endowment contract. However, interest income received as a result of life insurance proceeds may be taxable.

Proceeds not received in installments. If death benefits are paid to you in a lump sum or other than at regular intervals, include in your income only the benefits that are more than the amount payable to you at the time of the insured person's death. If the benefit payable at death isn't specified, you include in your income the benefit payments that are more than the present value of the payments at the time of death.

Proceeds received in installments. If you receive life insurance proceeds in installments, you can exclude part of each installment from your income.

To determine the excluded part, divide the amount held by the insurance company (generally, the total lump sum payable at the death of the insured person) by the number of installments to be paid. Include anything over this excluded part in your income as interest.

Surviving spouse. If your spouse died before October 23, 1986, and insurance proceeds paid to you because of the death of your spouse are received in installments, you can exclude up to $1,000 a year of the interest included in the installments. If you remarry, you can continue to take the exclusion.

Surrender of policy for cash. If you surrender a life insurance policy for cash, you must include in income any proceeds that are more than the cost of the life insurance policy. In most cases, your cost (or investment in the contract) is the total of premiums that you paid for the life insurance policy, less any refunded premiums, rebates, dividends, or unrepaid loans that weren't included in your income.

You should receive a Form 1099-R showing the total proceeds and the taxable part. Report these amounts on lines 5a and 5b of Form 1040 or 1040-SR.

More information. For more information, see *Life Insurance Proceeds* in Pub. 525.

Endowment Contract Proceeds

An endowment contract is a policy under which you're paid a specified amount of money on a certain date unless you die before that date, in which case the money is paid to your designated beneficiary. Endowment proceeds paid in a lump sum to you at maturity are taxable only if the proceeds are more than the cost of the policy. To determine your cost, subtract any amount that you previously received under the contract and excluded from your income from the total premiums (or other consideration) paid for the contract. Include in your income the part of the lump-sum payment that's more than your cost.

Accelerated Death Benefits

Certain amounts paid as accelerated death benefits under a life insurance contract or viatical settlement before the insured's death are excluded from income if the insured is terminally or chronically ill.

Viatical settlement. This is the sale or assignment of any part of the death benefit under a life insurance contract to a viatical settlement provider. A viatical settlement provider is a person who regularly engages in the business of buying or taking assignment of life insurance contracts on the lives of insured individuals who are terminally or chronically ill and who meets the requirements of section 101(g)(2)(B) of the Internal Revenue Code.

Exclusion for terminal illness. Accelerated death benefits are fully excludable if the insured is a terminally ill individual. This is a person who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death within 24 months from the date of the certification.

Exclusion for chronic illness. If the insured is a chronically ill individual who's not terminally ill, accelerated death benefits paid on the basis of costs incurred for qualified long-term care services are fully excludable. Accelerated death benefits paid on a per diem or other periodic basis are excludable up to a limit. For 2022, this limit is $390. It applies to the total of the accelerated death benefits and any periodic payments received from long-term care insurance contracts. For information on the limit and the definitions of chronically ill individual, qualified long-term care services, and long-term care insurance contracts, see *Long-Term Care Insurance Contracts* under *Sickness and Injury Benefits* in Pub. 525.

Exception. The exclusion doesn't apply to any amount paid to a person (other than the insured) who has an insurable interest in the life of the insured because the insured:

- Is a director, officer, or employee of the person; or
- Has a financial interest in the person's business.

Form 8853. To claim an exclusion for accelerated death benefits made on a per diem or other periodic basis, you must file Form 8853, Archer MSAs and Long-Term Care Insurance Contracts, with your return. You don't have to file Form 8853 to exclude accelerated death benefits paid on the basis of actual expenses incurred.

Public Safety Officer Killed or Injured in the Line of Duty

A spouse, former spouse, and child of a public safety officer killed in the line of duty can exclude from gross income survivor benefits received from a governmental section 401(a) plan attributable to the officer's service. See section 101(h).

A public safety officer who's permanently and totally disabled or killed in the line of duty and a surviving spouse or child can exclude from income death or disability benefits received from the federal Bureau of Justice Assistance or death benefits paid by a state program. See section 104(a)(6).

For this purpose, the term “public safety officer” includes law enforcement officers, firefighters, chaplains, and rescue squad and ambulance crew members. For more information, see Pub. 559, Survivors, Executors, and Administrators.

Partnership Income

A partnership generally isn't a taxable entity. The income, gains, losses, deductions, and credits of a partnership are passed through to the partners based on each partner's distributive share of these items.

Schedule K-1 (Form 1065). Although a partnership generally pays no tax, it must file an information return on Form 1065, U.S. Return of Partnership Income, and send Schedule K-1 (Form 1065) to each partner. In addition, the partnership will send each partner a copy of the Partner's Instructions for Schedule K-1 (Form 1065) to help each partner report his or her share of the partnership's income, deductions, credits, and tax preference items.

Keep Schedule K-1 (Form 1065) for your records. Don't attach it to your Form 1040 or 1040-SR, unless you're specifically required to do so.

For more information on partnerships, see Pub. 541, Partnerships.

Qualified joint venture. If you and your spouse each materially participate as the only

members of a jointly owned and operated business, and you file a joint return for the tax year, you can make a joint election to be treated as a qualified joint venture instead of a partnership. To make this election, you must divide all items of income, gain, loss, deduction, and credit attributable to the business between you and your spouse in accordance with your respective interests in the venture. For further information on how to make the election and which schedule(s) to file, see the instructions for your individual tax return.

S Corporation Income

In most cases, an S corporation doesn't pay tax on its income. Instead, the income, losses, deductions, and credits of the corporation are passed through to the shareholders based on each shareholder's pro rata share.

Schedule K-1 (Form 1120-S). An S corporation must file a return on Form 1120-S, U.S. Income Tax Return for an S Corporation, and send Schedule K-1 (Form 1120-S) to each shareholder. In addition, the S corporation will send each shareholder a copy of the Shareholder's Instructions for Schedule K-1 (Form 1120-S) to help each shareholder report her or his share of the S corporation's income, losses, credits, and deductions.

Keep Schedule K-1 (Form 1120-S) for your records. Don't attach it to your Form 1040 or 1040-SR, unless you're specifically required to do so.

For more information on S corporations and their shareholders, see the Instructions for Form 1120-S.

Recoveries

A recovery is a return of an amount you deducted or took a credit for in an earlier year. The most common recoveries are refunds, reimbursements, and rebates of deductions itemized on Schedule A (Form 1040). You may also have recoveries of nonitemized deductions (such as payments on previously deducted bad debts) and recoveries of items for which you previously claimed a tax credit.

Tax benefit rule. You must include a recovery in your income in the year you receive it up to the amount by which the deduction or credit you took for the recovered amount reduced your tax in the earlier year. For this purpose, any increase to an amount carried over to the current year that resulted from the deduction or credit is considered to have reduced your tax in the earlier year. For more information, see Pub. 525.

Federal income tax refund. Refunds of federal income taxes aren't included in your income because they're never allowed as a deduction from income.

State tax refund. If you received a state or local income tax refund (or credit or offset) in 2022, you must generally include it in income if you deducted the tax in an earlier year. The payer should send Form 1099-G to you by January 31, 2023. The IRS will also receive a copy of the Form 1099-G. If you file Form 1040 or 1040-SR, use the State and Local Income Tax Refund Worksheet in the 2022 instructions for Schedule 1 (Form 1040) to figure the amount (if any) to include in your income. See Pub. 525 for when you must use another worksheet.

If you could choose to deduct for a tax year either:

- State and local income taxes, or
- State and local general sales taxes, then

the maximum refund that you may have to include in income is limited to the excess of the tax you chose to deduct for that year over the tax you didn't choose to deduct for that year. For examples, see Pub. 525.

Mortgage interest refund. If you received a refund or credit in 2022 of mortgage interest paid in an earlier year, the amount should be shown in box 4 of your Form 1098, Mortgage Interest Statement. Don't subtract the refund amount from the interest you paid in 2022. You may have to include it in your income under the rules explained in the following discussions.

Interest on recovery. Interest on any of the amounts you recover must be reported as interest income in the year received. For example, report any interest you received on state or local income tax refunds on Form 1040, 1040-SR, or 1040-NR, line 2b.

Recovery and expense in same year. If the refund or other recovery and the expense occur in the same year, the recovery reduces the deduction or credit and isn't reported as income.

Recovery for 2 or more years. If you receive a refund or other recovery that's for amounts you paid in 2 or more separate years, you must allocate, on a pro rata basis, the recovered amount between the years in which you paid it. This allocation is necessary to determine the amount of recovery from any earlier years and to determine the amount, if any, of your allowable deduction for this item for the current year. For information on how to figure the allocation, see *Recoveries* in Pub. 525.

Itemized Deduction Recoveries

If you recover any amount that you deducted in an earlier year on Schedule A (Form 1040), you must generally include the full amount of the recovery in your income in the year you receive it.

Where to report. Enter your state or local income tax refund on Schedule 1 (Form 1040), line 1, and the total of all other recoveries as other income on Schedule 1 (Form 1040), line 8z.

Standard deduction limit. You are generally allowed to claim the standard deduction if you don't itemize your deductions. Only your itemized deductions that are more than your standard deduction are subject to the recovery rule (unless you're required to itemize your deductions). If your total deductions on the earlier year return weren't more than your income for that year, include in your income this year the lesser of:

- Your recoveries, or
- The amount by which your itemized deductions exceeded the standard deduction.

Example. For 2021, you filed a joint return. Your taxable income was $60,000 and you weren't entitled to any tax credits. Your standard deduction was $25,100, and you had itemized deductions of $26,600. In 2022, you received the following recoveries for amounts deducted on your 2021 return.

Medical expenses	$200
State and local income tax refund	400
Refund of mortgage interest	325
Total recoveries	$925

None of the recoveries were more than the deductions taken for 2021. The difference between the state and local income tax you deducted and your local general sales tax was more than $400.

Your total recoveries are less than the amount by which your itemized deductions exceeded the standard deduction ($26,600 − $25,100 = $1,500), so you must include your total recoveries in your income for 2022. Report the state and local income tax refund of $400 on Schedule 1 (Form 1040), line 1, and the balance of your recoveries, $525, on Schedule 1 (Form 1040), line 8z.

Standard deduction for earlier years. To determine if amounts recovered in the current year must be included in your income, you must know the standard deduction for your filing status for the year the deduction was claimed. Look in the instructions for your tax return from prior years to locate the standard deduction for the filing status for that prior year.

Example. You filed a joint return on Form 1040 for 2021 with taxable income of $45,000. Your itemized deductions were $25,350. The standard deduction that you could have claimed was $25,100. In 2022, you recovered $2,100 of your 2021 itemized deductions. None of the recoveries were more than the actual deductions for 2021. Include $250 of the recoveries in your 2022 income. This is the smaller of your recoveries ($2,100) or the amount by which your itemized deductions were more than the standard deduction ($25,350 − $25,100 = $250).

Recovery limited to deduction. You don't include in your income any amount of your recovery that's more than the amount you deducted in the earlier year. The amount you include in your income is limited to the smaller of:

- The amount deducted on Schedule A (Form 1040), or
- The amount recovered.

Example. During 2021, you paid $1,700 for medical expenses. Of this amount, you deducted $200 on your 2021 Schedule A (Form 1040). In 2022, you received a $500 reimbursement from your medical insurance for your 2021 expenses. The only amount of the $500 reimbursement that must be included in your income for 2022 is $200—the amount actually deducted.

Other recoveries. See *Recoveries* in Pub. 525 if:

- You have recoveries of items other than itemized deductions, or

- You received a recovery for an item for which you claimed a tax credit (other than investment credit or foreign tax credit) in a prior year.

Rents From Personal Property

If you rent out personal property, such as equipment or vehicles, how you report your income and expenses is in most cases determined by:

- Whether or not the rental activity is a business, and
- Whether or not the rental activity is conducted for profit.

In most cases, if your primary purpose is income or profit and you're involved in the rental activity with continuity and regularity, your rental activity is a business. See Pub. 535, Business Expenses, for details on deducting expenses for both business and not-for-profit activities.

Reporting business income and expenses. If you're in the business of renting personal property, report your income and expenses on Schedule C (Form 1040). The form instructions have information on how to complete them.

Reporting nonbusiness income. If you aren't in the business of renting personal property, report your rental income on Schedule 1 (Form 1040), line 8l.

Reporting nonbusiness expenses. If you rent personal property for profit, include your rental expenses in the total amount you enter on Schedule 1 (Form 1040), line 24b, and see the instructions there.

If you don't rent personal property for profit, your deductions are limited and you can't report a loss to offset other income. See *Activity not for profit* under *Other Income*, later.

Repayments

If you had to repay an amount that you included in your income in an earlier year, you may be able to deduct the amount repaid from your income for the year in which you repaid it. Or, if the amount you repaid is more than $3,000, you may be able to take a credit against your tax for the year in which you repaid it. Generally, you can claim a deduction or credit only if the repayment qualifies as an expense or loss incurred in your trade or business or in a for-profit transaction.

Type of deduction. The type of deduction you're allowed in the year of repayment depends on the type of income you included in the earlier year. You generally deduct the repayment on the same form or schedule on which you previously reported it as income. For example, if you reported it as self-employment income, deduct it as a business expense on Schedule C (Form 1040) or Schedule F (Form 1040). If you reported it as a capital gain, deduct it as a capital loss as explained in the Instructions for Schedule D (Form 1040). If you reported it as wages, unemployment compensation, or other nonbusiness income, you may be able to deduct it as an other itemized deduction if the amount repaid is over $3,000.

Beginning in 2018, you can no longer claim any miscellaneous itemized deductions, so if the amount repaid was $3,000 or less, you are not able to deduct it from your income in the year you repaid it.

Repaid social security benefits. If you repaid social security benefits or equivalent railroad retirement benefits, see *Repayment of benefits* in chapter 7.

Repayment over $3,000. If the amount you repaid was more than $3,000, you can deduct the repayment as an other itemized deduction on Schedule A (Form 1040), line 16, if you included the income under a claim of right. This means that at the time you included the income, it appeared that you had an unrestricted right to it. However, you can choose to take a credit for the year of repayment. Figure your tax under both methods and compare the results. Use the method (deduction or credit) that results in less tax.

When determining whether the amount you repaid was more or less than $3,000, consider the total amount being repaid on the return. Each instance of repayment isn't considered separately.

Method 1. Figure your tax for 2022 claiming a deduction for the repaid amount. If you deduct it as an other itemized deduction, enter it on Schedule A (Form 1040), line 16.

Method 2. Figure your tax for 2022 claiming a credit for the repaid amount. Follow these steps.

1. Figure your tax for 2022 without deducting the repaid amount.
2. Refigure your tax from the earlier year without including in income the amount you repaid in 2022.
3. Subtract the tax in (2) from the tax shown on your return for the earlier year. This is the credit.
4. Subtract the answer in (3) from the tax for 2022 figured without the deduction (step 1).

If method 1 results in less tax, deduct the amount repaid. If method 2 results in less tax, claim the credit figured in (3) above on Schedule 3 (Form 1040), line 13d, by adding the amount of the credit to any other credits on this line, and see the instructions there.

An example of this computation can be found in Pub. 525.

Repaid wages subject to social security and Medicare taxes. If you had to repay an amount that you included in your wages or compensation in an earlier year on which social security, Medicare, or tier 1 RRTA taxes were paid, ask your employer to refund the excess amount to you. If the employer refuses to refund the taxes, ask for a statement indicating the amount of the overcollection to support your claim. File a claim for refund using Form 843, Claim for Refund and Request for Abatement.

Repaid wages subject to Additional Medicare Tax. Employers can't make an adjustment or file a claim for refund for Additional Medicare Tax withholding when there is a repayment of wages received by an employee in a prior year because the employee determines liability for Additional Medicare Tax on the employee's income tax return for the prior year. If you had to repay an amount that you included in your wages or compensation in an earlier year, and on which Additional Medicare Tax was paid, you may be able to recover the Additional Medicare Tax paid on the amount. To recover Additional Medicare Tax on the repaid wages or compensation, you must file Form 1040-X for the prior year in which the wages or compensation was originally received. See the Instructions for Form 1040-X.

Royalties

Royalties from copyrights, patents, and oil, gas, and mineral properties are taxable as ordinary income.

In most cases, you report royalties in Part I of Schedule E (Form 1040). However, if you hold an operating oil, gas, or mineral interest or are in business as a self-employed writer, inventor, artist, etc., report your income and expenses on Schedule C (Form 1040).

Copyrights and patents. Royalties from copyrights on literary, musical, or artistic works, and similar property, or from patents on inventions, are amounts paid to you for the right to use your work over a specified period of time. Royalties are generally based on the number of units sold, such as the number of books, tickets to a performance, or machines sold.

Oil, gas, and minerals. Royalty income from oil, gas, and mineral properties is the amount you receive when natural resources are extracted from your property. The royalties are based on units, such as barrels, tons, etc., and are paid to you by a person or company that leases the property from you.

Depletion. If you're the owner of an economic interest in mineral deposits or oil and gas wells, you can recover your investment through the depletion allowance. For information on this subject, see chapter 9 of Pub. 535.

Coal and iron ore. Under certain circumstances, you can treat amounts you receive from the disposal of coal and iron ore as payments from the sale of a capital asset, rather than as royalty income. For information about gain or loss from the sale of coal and iron ore, see chapter 2 of Pub. 544.

Sale of property interest. If you sell your complete interest in oil, gas, or mineral rights, the amount you receive is considered payment for the sale of property used in a trade or business under section 1231, not royalty income. Under certain circumstances, the sale is subject to capital gain or loss treatment as explained in the Instructions for Schedule D (Form 1040). For more information on selling section 1231 property, see chapter 3 of Pub. 544.

If you retain a royalty, an overriding royalty, or a net profit interest in a mineral property for the life of the property, you have made a lease or a sublease, and any cash you receive for the assignment of other interests in the property is ordinary income subject to a depletion allowance.

Part of future production sold. If you own mineral property but sell part of the future production, in most cases you treat the money you receive from the buyer at the time of the sale as a loan from the buyer. Don't include it in your income or take depletion based on it.

When production begins, you include all the proceeds in your income, deduct all the production expenses, and deduct depletion from that amount to arrive at your taxable income from the property.

Unemployment Benefits

The tax treatment of unemployment benefits you receive depends on the type of program paying the benefits.

Unemployment compensation. You must include in income all unemployment compensation you receive. You should receive a Form 1099-G showing in box 1 the total unemployment compensation paid to you. In most cases, you enter unemployment compensation on Schedule 1 (Form 1040), line 7.

If you received unemployment compensation but did not receive Form 1099-G through the mail, you may need to access your information through your state's website to get your electronic Form 1099-G.

Types of unemployment compensation. Unemployment compensation generally includes any amount received under an unemployment compensation law of the United States or of a state. It includes the following benefits.

- Benefits paid by a state or the District of Columbia from the Federal Unemployment Trust Fund.
- State unemployment insurance benefits.
- Railroad unemployment compensation benefits.
- Disability payments from a government program paid as a substitute for unemployment compensation. (Amounts received as workers' compensation for injuries or illness aren't unemployment compensation. See chapter 5 for more information.)
- Trade readjustment allowances under the Trade Act of 1974.
- Unemployment assistance under the Disaster Relief and Emergency Assistance Act.
- Unemployment assistance under the Airline Deregulation Act of 1978 Program.

Governmental program. If you contribute to a governmental unemployment compensation program and your contributions aren't deductible, amounts you receive under the program aren't included as unemployment compensation until you recover your contributions. If you deducted all of your contributions to the program, the entire amount you receive under the program is included in your income.

Repayment of unemployment compensation. If you repaid in 2022 unemployment compensation you received in 2022, subtract the amount you repaid from the total amount you received and enter the difference on Schedule 1 (Form 1040), line 7. On the dotted line next to your entry, enter "Repaid" and the amount you repaid. If you repaid unemployment compensation in 2022 that you included in income in an earlier year, you can deduct the amount repaid on Schedule A (Form 1040), line 16, if you itemize deductions and the amount is more than $3,000. See Repayments, earlier.

Tax withholding. You can choose to have federal income tax withheld from your unemployment compensation. To make this choice, complete Form W-4V, Voluntary Withholding Request, and give it to the paying office. Tax will be withheld at 10% of your payment.

If you don't choose to have tax withheld from your unemployment compensation, you may be liable for estimated tax. If you don't pay enough tax, either through withholding or estimated tax, or a combination of both, you may have to pay a penalty. For more information on estimated tax, see chapter 4.

Supplemental unemployment benefits. Benefits received from an employer-financed fund (to which the employees didn't contribute) aren't unemployment compensation. They are taxable as wages. For more information, see *Supplemental Unemployment Benefits* in section 5 of Pub. 15-A, Employer's Supplemental Tax Guide. Report these payments on line 1a of Form 1040 or 1040-SR.

Repayment of benefits. You may have to repay some of your supplemental unemployment benefits to qualify for trade readjustment allowances under the Trade Act of 1974. If you repay supplemental unemployment benefits in the same year you receive them, reduce the total benefits by the amount you repay. If you repay the benefits in a later year, you must include the full amount of the benefits received in your income for the year you received them.

Deduct the repayment in the later year as an adjustment to gross income on Form 1040 or 1040-SR. Include the repayment on Schedule 1 (Form 1040), line 24e, and see the instructions there. If the amount you repay in a later year is more than $3,000, you may be able to take a credit against your tax for the later year instead of deducting the amount repaid. For more information on this, see Repayments, earlier.

Private unemployment fund. Unemployment benefit payments from a private (nonunion) fund to which you voluntarily contribute are taxable only if the amounts you receive are more than your total payments into the fund. Report the taxable amount on Schedule 1 (Form 1040), line 8z.

Payments by a union. Benefits paid to you as an unemployed member of a union from regular union dues are included in your income on Schedule 1 (Form 1040), line 8z. However, if you contribute to a special union fund and your payments to the fund aren't deductible, the unemployment benefits you receive from the fund are includible in your income only to the extent they're more than your contributions.

Guaranteed annual wage. Payments you receive from your employer during periods of unemployment, under a union agreement that guarantees you full pay during the year, are taxable as wages. Include them on line 1a of Form 1040 or 1040-SR.

State employees. Payments similar to a state's unemployment compensation may be made by the state to its employees who aren't covered by the state's unemployment compensation law. Although the payments are fully taxable, don't report them as unemployment compensation. Report these payments on Schedule 1 (Form 1040), line 8z.

Welfare and Other Public Assistance Benefits

Don't include in your income governmental benefit payments from a public welfare fund based upon need, such as payments to blind individuals under a state public assistance law. Payments from a state fund for the victims of crime shouldn't be included in the victims' incomes if they're in the nature of welfare payments. Don't deduct medical expenses that are reimbursed by such a fund. You must include in your income any welfare payments that are compensation for services or that are obtained fraudulently.

Reemployment Trade Adjustment Assistance (RTAA) payments. RTAA payments received from a state must be included in your income. The state must send you Form 1099-G to advise you of the amount you should include in income. The amount should be reported on Schedule 1 (Form 1040), line 8z.

Persons with disabilities. If you have a disability, you must include in income compensation you receive for services you perform unless the compensation is otherwise excluded. However, you don't include in income the value of goods, services, and cash that you receive, not in return for your services, but for your training and rehabilitation because you have a disability. Excludable amounts include payments for transportation and attendant care, such as interpreter services for the deaf, reader services for the blind, and services to help individuals with an intellectual disability do their work.

Disaster relief grants. Don't include post-disaster grants received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in your income if the grant payments are made to help you meet necessary expenses or serious needs for medical, dental, housing, personal property, transportation, childcare, or funeral expenses. Don't deduct casualty losses or medical expenses that are specifically reimbursed by these disaster relief grants. If you have deducted a casualty loss for the loss of your personal residence and you later receive a disaster relief grant for the loss of the same residence, you may have to include part or all of the grant in your taxable income. See Recoveries, earlier. Unemployment assistance payments under the Act are taxable unemployment

compensation. See *Unemployment compensation* under *Unemployment Benefits*, earlier.

Disaster relief payments. You can exclude from income any amount you receive that's a qualified disaster relief payment. A qualified disaster relief payment is an amount paid to you:

1. To reimburse or pay reasonable and necessary personal, family, living, or funeral expenses that result from a qualified disaster;
2. To reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of your home or repair or replacement of its contents to the extent it's due to a qualified disaster;
3. By a person engaged in the furnishing or sale of transportation as a common carrier because of the death or personal physical injuries incurred as a result of a qualified disaster; or
4. By a federal, state, or local government, agency, or instrumentality in connection with a qualified disaster in order to promote the general welfare.

You can exclude this amount only to the extent any expense it pays for isn't paid for by insurance or otherwise. The exclusion doesn't apply if you were a participant or conspirator in a terrorist action or a representative of one.

A qualified disaster is:

- A disaster which results from a terrorist or military action;
- A federally declared disaster; or
- A disaster which results from an accident involving a common carrier, or from any other event, which is determined to be catastrophic by the Secretary of the Treasury or his or her delegate.

For amounts paid under item (4) above, a disaster is qualified if it's determined by an applicable federal, state, or local authority to warrant assistance from the federal, state, or local government, agency, or instrumentality.

Disaster mitigation payments. You can exclude from income any amount you receive that's a qualified disaster mitigation payment. Qualified disaster mitigation payments are most commonly paid to you in the period immediately following damage to property as a result of a natural disaster. However, disaster mitigation payments are used to mitigate (reduce the severity of) potential damage from future natural disasters. They're paid to you through state and local governments based on the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act or the National Flood Insurance Act.

You can't increase the basis or adjusted basis of your property for improvements made with nontaxable disaster mitigation payments.

Home Affordable Modification Program (HAMP). If you benefit from Pay-for-Performance Success Payments under HAMP, the payments aren't taxable.

Mortgage assistance payments under section 235 of the National Housing Act. Payments made under section 235 of the National Housing Act for mortgage assistance aren't included in the homeowner's income. Interest paid for the homeowner under the mortgage assistance program can't be deducted.

Medicare. Medicare benefits received under title XVIII of the Social Security Act aren't includible in the gross income of the individuals for whom they're paid. This includes basic (Part A (Hospital Insurance Benefits for the Aged)) and supplementary (Part B (Supplementary Medical Insurance Benefits for the Aged)).

Social security benefits (including lump-sum payments attributable to prior years), Supplemental Security Income (SSI) benefits, and lump-sum death benefits. The Social Security Administration (SSA) provides benefits such as old-age benefits, benefits to disabled workers, and benefits to spouses and dependents. These benefits may be subject to federal income tax depending on your filing status and other income. See chapter 7 in this publication and Pub. 915, Social Security and Equivalent Railroad Retirement Benefits, for more information. An individual originally denied benefits, but later approved, may receive a lump-sum payment for the period when benefits were denied (which may be prior years). See Pub. 915 for information on how to make a lump-sum election, which may reduce your tax liability. There are also other types of benefits paid by the SSA. However, SSI benefits and lump-sum death benefits (one-time payment to spouse and children of deceased) aren't subject to federal income tax. For more information on these benefits, go to *SSA.gov*.

Nutrition Program for the Elderly. Food benefits you receive under the Nutrition Program for the Elderly aren't taxable. If you prepare and serve free meals for the program, include in your income as wages the cash pay you receive, even if you're also eligible for food benefits.

Payments to reduce cost of winter energy. Payments made by a state to qualified people to reduce their cost of winter energy use aren't taxable.

Other Income

The following brief discussions are arranged in alphabetical order. Other income items briefly discussed below are referenced to publications which provide more topical information.

Activity not for profit. You must include on your return income from an activity from which you don't expect to make a profit. An example of this type of activity is a hobby or a farm you operate mostly for recreation and pleasure. Enter this income on Schedule 1 (Form 1040), line 8j. Deductions for expenses related to the activity are limited. They can't total more than the income you report and can be taken only if you itemize deductions on Schedule A (Form 1040). See *Not-for-Profit Activities* in chapter 1 of Pub. 535 for information on whether an activity is considered carried on for a profit.

Alaska Permanent Fund dividend. If you received a payment from Alaska's mineral income fund (Alaska Permanent Fund dividend), report it as income on Schedule 1 (Form 1040), line 8g. The state of Alaska sends each recipient a document that shows the amount of the payment with the check. The amount is also reported to the IRS.

Alimony. Include in your income on Schedule 1 (Form 1040), line 2a, any taxable alimony payments you receive. Amounts you receive for child support aren't income to you. Alimony and child support payments are discussed in Pub. 504.

Don't include alimony payments you receive under a divorce or separation agreement (1) executed after 2018, or (2) executed before 2019 but later modified if the modification expressly states the repeal of the deduction for alimony payments applies to the modification.

Bribes. If you receive a bribe, include it in your income.

Campaign contributions. These contributions aren't income to a candidate unless they're diverted to her or his personal use. To be nontaxable, the contributions must be spent for campaign purposes or kept in a fund for use in future campaigns. However, interest earned on bank deposits, dividends received on contributed securities, and net gains realized on sales of contributed securities are taxable and must be reported on Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations. Excess campaign funds transferred to an office account must be included in the officeholder's income on Schedule 1 (Form 1040), line 8z, in the year transferred.

Carpools. Don't include in your income amounts you receive from the passengers for driving a car in a carpool to and from work. These amounts are considered reimbursement for your expenses. However, this rule doesn't apply if you have developed carpool arrangements into a profit-making business of transporting workers for hire.

Cash rebates. A cash rebate you receive from a dealer or manufacturer of an item you buy isn't income, but you must reduce your basis by the amount of the rebate.

Example. You buy a new car for $24,000 cash and receive a $2,000 rebate check from the manufacturer. The $2,000 isn't income to you. Your basis in the car is $22,000. This is the basis on which you figure gain or loss if you sell the car and depreciation if you use it for business.

Casualty insurance and other reimbursements. You generally shouldn't report these reimbursements on your return unless you're figuring gain or loss from the casualty or theft. See Pub. 547 for more information.

Child support payments. You shouldn't report these payments on your return. See Pub. 504 for more information.

Court awards and damages. To determine if settlement amounts you receive by compromise or judgment must be included in your income, you must consider the item that the settlement replaces. The character of the income as ordinary income or capital gain depends on the nature of the underlying claim. Include the following as ordinary income.

1. Interest on any award.
2. Compensation for lost wages or lost profits in most cases.
3. Punitive damages, in most cases. It doesn't matter if they relate to a physical injury or physical sickness.
4. Amounts received in settlement of pension rights (if you didn't contribute to the plan).
5. Damages for:
   a. Patent or copyright infringement,
   b. Breach of contract, or
   c. Interference with business operations.
6. Back pay and damages for emotional distress received to satisfy a claim under title VII of the Civil Rights Act of 1964.
7. Attorney fees and costs (including contingent fees) where the underlying recovery is included in gross income.
8. Attorney fees and costs relating to whistleblower awards where the underlying recovery is included in gross income.

Don't include in your income compensatory damages for personal physical injury or physical sickness (whether received in a lump sum or installments).

Emotional distress. Emotional distress itself isn't a physical injury or physical sickness, but damages you receive for emotional distress due to a physical injury or sickness are treated as received for the physical injury or sickness. Don't include them in your income.

If the emotional distress is due to a personal injury that isn't due to a physical injury or sickness (for example, employment discrimination or injury to reputation), you must include the damages in your income, except for any damages that aren't more than amounts paid for medical care due to that emotional distress. Emotional distress includes physical symptoms that result from emotional distress, such as headaches, insomnia, and stomach disorders.

Credit card insurance. In most cases, if you receive benefits under a credit card disability or unemployment insurance plan, the benefits are taxable to you. These plans make the minimum monthly payment on your credit card account if you can't make the payment due to injury, illness, disability, or unemployment. Report on Schedule 1 (Form 1040), line 8z, the amount of benefits you received during the year that's more than the amount of the premiums you paid during the year.

Down payment assistance. If you purchase a home and receive assistance from a nonprofit corporation to make the down payment, that assistance isn't included in your income. If the corporation qualifies as a tax-exempt charitable organization, the assistance is treated as a gift and is included in your basis of the house. If the corporation doesn't qualify, the assistance is treated as a rebate or reduction of the purchase price and isn't included in your basis.

Employment agency fees. If you get a job through an employment agency, and the fee is paid by your employer, the fee isn't includible in your income if you aren't liable for it. However, if you pay it and your employer reimburses you for it, it's includible in your income.

Energy conservation subsidies. You can exclude from gross income any subsidy provided, either directly or indirectly, by public utilities for the purchase or installation of an energy conservation measure for a dwelling unit.

Energy conservation measure. This includes installations or modifications that are primarily designed to reduce consumption of electricity or natural gas, or improve the management of energy demand.

Dwelling unit. This includes a house, apartment, condominium, mobile home, boat, or similar property. If a building or structure contains both dwelling and other units, any subsidy must be properly allocated.

Estate and trust income. An estate or trust, unlike a partnership, may have to pay federal income tax. If you're a beneficiary of an estate or trust, you may be taxed on your share of its income distributed or required to be distributed to you. However, there is never a double tax. Estates and trusts file their returns on Form 1041, U.S. Income Tax Return for Estates and Trusts, and your share of the income is reported to you on Schedule K-1 (Form 1041).

Current income required to be distributed. If you're the beneficiary of an estate or trust that must distribute all of its current income, you must report your share of the distributable net income, whether or not you actually received it.

Current income not required to be distributed. If you're the beneficiary of an estate or trust and the fiduciary has the choice of whether to distribute all or part of the current income, you must report:

- All income that's required to be distributed to you, whether or not it's actually distributed, plus
- All other amounts actually paid or credited to you,

up to the amount of your share of distributable net income.

How to report. Treat each item of income the same way that the estate or trust would treat it. For example, if a trust's dividend income is distributed to you, you report the distribution as dividend income on your return. The same rule applies to distributions of tax-exempt interest and capital gains.

The fiduciary of the estate or trust must tell you the type of items making up your share of the estate or trust income and any credits you're allowed on your individual income tax return.

Losses. Losses of estates and trusts generally aren't deductible by the beneficiaries.

Grantor trust. Income earned by a grantor trust is taxable to the grantor, not the beneficiary, if the grantor keeps certain control over the trust. (The grantor is the one who transferred property to the trust.) This rule applies if the property (or income from the property) put into the trust will or may revert (be returned) to the grantor or the grantor's spouse.

Generally, a trust is a grantor trust if the grantor has a reversionary interest valued (at the date of transfer) at more than 5% of the value of the transferred property.

Expenses paid by another. If your personal expenses are paid for by another person, such as a corporation, the payment may be taxable to you depending upon your relationship with that person and the nature of the payment. But if the payment makes up for a loss caused by that person, and only restores you to the position you were in before the loss, the payment isn't includible in your income.

Fees for services. Include all fees for your services in your income. Examples of these fees are amounts you receive for services you perform as:

- A corporate director;
- An executor, administrator, or personal representative of an estate;
- A manager of a trade or business you operated before declaring chapter 11 bankruptcy;
- A notary public; or
- An election precinct official.

Nonemployee compensation. If you aren't an employee and the fees for your services from a single payer in the course of the payer's trade or business total $600 or more for the year, the payer should send you a Form 1099-NEC. You may need to report your fees as self-employment income. See *Self-Employed Persons* in chapter 1 for a discussion of when you're considered self-employed.

Corporate director. Corporate director fees are self-employment income. Report these payments on Schedule C (Form 1040).

Personal representatives. All personal representatives must include in their gross income fees paid to them from an estate. If you aren't in the trade or business of being an executor (for instance, you're the executor of a friend's or relative's estate), report these fees on Schedule 1 (Form 1040), line 8z. If you're in the trade or business of being an executor, report these fees as self-employment income on Schedule C (Form 1040). The fee isn't includible in income if it's waived.

Manager of trade or business for bankruptcy estate. Include in your income all payments received from your bankruptcy estate for managing or operating a trade or business that you operated before you filed for bankruptcy. Report this income on Schedule 1 (Form 1040), line 8z.

Notary public. Report payments for these services on Schedule C (Form 1040). These payments aren't subject to self-employment tax. See the separate Instructions for Schedule SE (Form 1040) for details.

Election precinct official. You should receive a Form W-2 showing payments for services performed as an election official or election worker. Report these payments on line 1a of Form 1040 or 1040-SR.

Foster care providers. Generally, payment you receive from a state, a political subdivision,

or a qualified foster care placement agency for caring for a qualified foster individual in your home is excluded from your income. However, you must include in your income payment to the extent it's received for the care of more than five qualified foster individuals age 19 years or older.

A qualified foster individual is a person who:

1. Is living in a foster family home; and
2. Was placed there by:
   a. An agency of a state or one of its political subdivisions, or
   b. A qualified foster care placement agency.

Difficulty-of-care payments. These are payments that are designated by the payer as compensation for providing the additional care that's required for physically, mentally, or emotionally handicapped qualified foster individuals. A state must determine that this compensation is needed, and the care for which the payments are made must be provided in the foster care provider's home in which the qualified foster individual was placed.

Certain Medicaid waiver payments are treated as difficulty-of-care payments when received by an individual care provider for caring for an eligible individual living in the provider's home. See Notice 2014-7, available at *IRS.gov/irb/2014-04_IRB#NOT-2014-7*, and related questions and answers, available at *IRS.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income*, for more information.

You must include in your income difficulty-of-care payments to the extent they're received for more than:

- 10 qualified foster individuals under age 19, or
- Five qualified foster individuals age 19 or older.

Maintaining space in home. If you're paid to maintain space in your home for emergency foster care, you must include the payment in your income.

Reporting taxable payments. If you receive payments that you must include in your income and you're in business as a foster care provider, report the payments on Schedule C (Form 1040). See Pub. 587, Business Use of Your Home, to help you determine the amount you can deduct for the use of your home.

Found property. If you find and keep property that doesn't belong to you that has been lost or abandoned (treasure trove), it's taxable to you at its fair market value in the first year it's your undisputed possession.

Free tour. If you received a free tour from a travel agency for organizing a group of tourists, you must include its value in your income. Report the fair market value of the tour on Schedule 1 (Form 1040), line 8z, if you aren't in the trade or business of organizing tours. You can't deduct your expenses in serving as the voluntary leader of the group at the group's request. If you organize tours as a trade or business, report the tour's value on Schedule C (Form 1040).

Gambling winnings. You must include your gambling winnings in income on Schedule 1 (Form 1040), line 8b. Winnings from fantasy sports leagues are gambling winnings. If you itemize your deductions on Schedule A (Form 1040), you can deduct gambling losses you had during the year, but only up to the amount of your winnings. If you're in the trade or business of gambling, use Schedule C (Form 1040).

Lotteries and raffles. Winnings from lotteries and raffles are gambling winnings. In addition to cash winnings, you must include in your income the fair market value of bonds, cars, houses, and other noncash prizes.

If you win a state lottery prize payable in installments, see Pub. 525 for more information.

Form W-2G. You may have received a Form W-2G, Certain Gambling Winnings, showing the amount of your gambling winnings and any tax taken out of them. Include the amount from box 1 on Schedule 1 (Form 1040), line 8b. Include the amount shown in box 4 on Form 1040 or 1040-SR, line 25c, as federal income tax withheld.

Reporting winnings and recordkeeping. For more information on reporting gambling winnings and recordkeeping, see *Gambling Losses up to the Amount of Gambling Winnings* in chapter 12.

Gifts and inheritances. In most cases, property you receive as a gift, bequest, or inheritance isn't included in your income. However, if property you receive this way later produces income such as interest, dividends, or rents, that income is taxable to you. If property is given to a trust and the income from it is paid, credited, or distributed to you, that income is also taxable to you. If the gift, bequest, or inheritance is the income from the property, that income is taxable to you.

Inherited pension or individual retirement arrangement (IRA). If you inherited a pension or an IRA, you may have to include part of the inherited amount in your income. See *Survivors and Beneficiaries* in Pub. 575 if you inherited a pension. See *What if You Inherit an IRA?* in Pubs. 590-A and 590-B if you inherited an IRA.

Hobby losses. Losses from a hobby aren't deductible from other income. A hobby is an activity from which you don't expect to make a profit. See *Activity not for profit*, earlier.

If you collect stamps, coins, or other items as a hobby for recreation and pleasure, and you sell any of the items, your gain is taxable as a capital gain. (See Pub. 550.) However, if you sell items from your collection at a loss, you can't deduct the loss.

Illegal activities. Income from illegal activities, such as money from dealing illegal drugs, must be included in your income on Schedule 1 (Form 1040), line 8z, or on Schedule C (Form 1040) if from your self-employment activity.

Indian fishing rights. If you're a member of a qualified Indian tribe that has fishing rights secured by treaty, Executive order, or an Act of Congress as of March 17, 1988, don't include in your income amounts you receive from activities related to those fishing rights. The income isn't subject to income tax, self-employment tax, or employment taxes.

Interest on frozen deposits. In general, you exclude from your income the amount of interest earned on a frozen deposit. See *Interest income on frozen deposits* in chapter 6.

Interest on qualified savings bonds. You may be able to exclude from income the interest from qualified U.S. savings bonds you redeem if you pay qualified higher education expenses in the same year. For more information on this exclusion, see *Education Savings Bond Program* under *U.S. Savings Bonds* in chapter 6.

Job interview expenses. If a prospective employer asks you to appear for an interview and either pays you an allowance or reimburses you for your transportation and other travel expenses, the amount you receive is generally not taxable. You include in income only the amount you receive that's more than your actual expenses.

Jury duty. Jury duty pay you receive must be included in your income on Schedule 1 (Form 1040), line 8h. If you gave any of your jury duty pay to your employer because your employer continued to pay you while you served jury duty, include the amount you gave your employer as an income adjustment on Schedule 1 (Form 1040), line 24a, and see the instructions there.

Kickbacks. You must include kickbacks, side commissions, push money, or similar payments you receive in your income on Schedule 1 (Form 1040), line 8z, or on Schedule C (Form 1040) if from your self-employment activity.

Example. You sell cars and help arrange car insurance for buyers. Insurance brokers pay back part of their commissions to you for referring customers to them. You must include the kickbacks in your income.

Medical savings accounts (Archer MSAs and Medicare Advantage MSAs). In most cases, you don't include in income amounts you withdraw from your Archer MSA or Medicare Advantage MSA if you use the money to pay for qualified medical expenses. Generally, qualified medical expenses are those you can deduct on Schedule A (Form 1040). For more information about qualified medical expenses, see Pub. 502. For more information about Archer MSAs or Medicare Advantage MSAs, see Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans.

Prizes and awards. If you win a prize in a lucky number drawing, television or radio quiz program, beauty contest, or other event, you must include it in your income. For example, if you win a $50 prize in a photography contest, you must report this income on Schedule 1 (Form 1040), line 8i. If you refuse to accept a prize, don't include its value in your income.

Prizes and awards in goods or services must be included in your income at their fair market value.

Employee awards or bonuses. Cash awards or bonuses given to you by your employer for good work or suggestions must generally be included in your income as wages.

However, certain noncash employee achievement awards can be excluded from income. See Bonuses and awards in chapter 5.

Pulitzer, Nobel, and similar prizes. If you were awarded a prize in recognition of accomplishments in religious, charitable, scientific, artistic, educational, literary, or civic fields, you must generally include the value of the prize in your income. However, you don't include this prize in your income if you meet all of the following requirements.

- You were selected without any action on your part to enter the contest or proceeding.
- You aren't required to perform substantial future services as a condition to receiving the prize or award.
- The prize or award is transferred by the payer directly to a governmental unit or tax-exempt charitable organization as designated by you.

See Pub. 525 for more information about the conditions that apply to the transfer.

Qualified Opportunity Fund (QOF). Effective December 22, 2017, Code section 1400Z-2 provides a temporary deferral on inclusion in gross income for capital gains invested in QOFs, and permanent exclusion of capital gains from the sale or exchange of an investment in the QOF if the investment is held for at least 10 years. See the Instructions for Form 8949 on how to report your election to defer eligible gains invested in a QOF. See the instructions for Form 8997, Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments, for reporting information. For additional information, see Opportunity Zones Frequently Asked Questions at IRS.gov/Newsroom/Opportunity-Zones-Frequently-Asked-Questions.

Qualified tuition programs (QTPs). A QTP (also known as a 529 program) is a program set up to allow you to either prepay or contribute to an account established for paying a student's qualified higher education expenses at an eligible educational institution. A program can be established and maintained by a state, an agency or instrumentality of a state, or an eligible educational institution.

The part of a distribution representing the amount paid or contributed to a QTP isn't included in income. This is a return of the investment in the program.

In most cases, the beneficiary doesn't include in income any earnings distributed from a QTP if the total distribution is less than or equal to adjusted qualified higher education expenses. See Pub. 970 for more information.

Railroad retirement annuities. The following types of payments are treated as pension or annuity income and are taxable under the rules explained in Pub. 575, Pension and Annuity Income.

- Tier 1 railroad retirement benefits that are more than the social security equivalent benefit.
- Tier 2 benefits.
- Vested dual benefits.

Rewards. If you receive a reward for providing information, include it in your income.

Sale of home. You may be able to exclude from income all or part of any gain from the sale or exchange of your main home. See Pub. 523.

Sale of personal items. If you sold an item you owned for personal use, such as a car, refrigerator, furniture, stereo, jewelry, or silverware, your gain is taxable as a capital gain. Report it as explained in the Instructions for Schedule D (Form 1040). You can't deduct a loss.

However, if you sold an item you held for investment, such as gold or silver bullion, coins, or gems, any gain is taxable as a capital gain and any loss is deductible as a capital loss.

Example. You sold a painting on an online auction website for $100. You bought the painting for $20 at a garage sale years ago. Report your gain as a capital gain as explained in the Instructions for Schedule D (Form 1040).

Scholarships and fellowships. A candidate for a degree can exclude amounts received as a qualified scholarship or fellowship. A qualified scholarship or fellowship is any amount you receive that's for:

- Tuition and fees to enroll at or attend an educational institution; or
- Fees, books, supplies, and equipment required for courses at the educational institution.

Amounts used for room and board don't qualify for the exclusion. See Pub. 970 for more information on qualified scholarships and fellowship grants.

Payment for services. In most cases, you must include in income the part of any scholarship or fellowship that represents payment for past, present, or future teaching, research, or other services. This applies even if all candidates for a degree must perform the services to receive the degree.

For information about the rules that apply to a tax-free qualified tuition reduction provided to employees and their families by an educational institution, see Pub. 970.

Department of Veterans Affairs (VA) payments. Allowances paid by the VA aren't included in your income. These allowances aren't considered scholarship or fellowship grants.

Prizes. Scholarship prizes won in a contest aren't scholarships or fellowships if you don't have to use the prizes for educational purposes. You must include these amounts in your income on Schedule 1 (Form 1040), line 8i, whether or not you use the amounts for educational purposes.

Sharing/gig economy. Generally, if you work in the gig economy or did gig work, you must include all income received from all jobs whether you received a Form 1099-K, Payment Card and Third-Party Network Transactions, or not. See the Instructions for Schedule C (Form 1040) and the Instructions for Schedule SE (Form 1040).

Stolen property. If you steal property, you must report its fair market value in your income in the year you steal it unless you return it to its rightful owner in the same year.

Transporting school children. Don't include in your income a school board mileage allowance for taking children to and from school if you aren't in the business of taking children to school. You can't deduct expenses for providing this transportation.

Union benefits and dues. Amounts deducted from your pay for union dues, assessments, contributions, or other payments to a union can't be excluded from your income.

Strike and lockout benefits. Benefits paid to you by a union as strike or lockout benefits, including both cash and the fair market value of other property, are usually included in your income as compensation. You can exclude these benefits from your income only when the facts clearly show that the union intended them as gifts to you.

Utility rebates. If you're a customer of an electric utility company and you participate in the utility's energy conservation program, you may receive on your monthly electric bill either:

- A reduction in the purchase price of electricity furnished to you (rate reduction), or
- A nonrefundable credit against the purchase price of the electricity.

The amount of the rate reduction or nonrefundable credit isn't included in your income.

9. Individual Retirement Arrangements (IRAs)

What's New

Modified AGI limit for traditional IRA contributions. For 2022, if you are covered by a retirement plan at work, your deduction for contributions to a traditional IRA is reduced (phased out) if your modified AGI is:

- More than $109,000 but less than $129,000 for a married couple filing a joint return or a qualifying surviving spouse,
- More than $68,000 but less than $78,000 for a single individual or head of household, or
- Less than $10,000 for a married individual filing a separate return.

If you either live with your spouse or file a joint return, and your spouse is covered by a

retirement plan at work but you aren't, your deduction is phased out if your modified AGI is more than $204,000 but less than $214,000. If your modified AGI is $214,000 or more, you can't take a deduction for contributions to a traditional IRA. See *How Much Can You Deduct*, later.

Modified AGI limit for Roth IRA contributions. For 2022, your Roth IRA contribution limit is reduced (phased out) in the following situations.

- Your filing status is married filing jointly or qualifying surviving spouse and your modified AGI is at least $204,000. You can't make a Roth IRA contribution if your modified AGI is $214,000 or more.
- Your filing status is single, head of household, or married filing separately and you didn't live with your spouse at any time in 2022 and your modified AGI is at least $129,000. You can't make a Roth IRA contribution if your modified AGI is $144,000 or more.
- Your filing status is married filing separately, you lived with your spouse at any time during the year, and your modified AGI is more than zero. You can't make a Roth IRA contribution if your modified AGI is $10,000 or more.

See *Can You Contribute to a Roth IRA*, later.

2023 modified AGI limits. You can find information about the 2023 contribution and AGI limits in Pub. 590-A.

Reminders

Qualified disaster tax relief. Special rules provide for tax-favored withdrawals and repayments from certain retirement plans for taxpayers who suffered an economic loss as a result of a qualified disaster. A qualified disaster includes a major disaster that was declared by Presidential Declaration during the period between January 1, 2020, and February 25, 2021. However, in order to qualify under the latest legislation, the major disaster must have an incident period that began on or after December 28, 2019, and on or before December 27, 2020. A qualified disaster loss does not include any disaster that has been declared only by reason of COVID-19. See Form 8915-F, Qualified Disaster Plan Distributions and Repayments, for more information.

See Pub. 590-B, Distributions from Individual Retirement Arrangements (IRAs), for more information.

Maximum age for making traditional IRA contributions repealed. For tax years beginning after 2019, there is no age limit on making contributions to your traditional IRA. For more information, see Pub. 590-A.

Required minimum distributions (RMDs). For distributions required to be made after tax year 2019, the age for the required beginning date for mandatory distributions is changed to age 72 for taxpayers reaching age $70^1/_2$ after 2019.

Contributions to both traditional and Roth IRAs. For information on your combined contribution limit if you contribute to both traditional and Roth IRAs, see *Roth IRAs and traditional IRAs*, later.

Statement of required minimum distribution. If a minimum distribution from your IRA is required, the trustee, custodian, or issuer that held the IRA at the end of the preceding year must either report the amount of the required minimum distribution to you, or offer to figure it for you. The report or offer must include the date by which the amount must be distributed. The report is due January 31 of the year in which the minimum distribution is required. It can be provided with the year-end fair market value statement that you normally get each year. No report is required for IRAs of owners who have died.

IRA interest. Although interest earned from your IRA is generally not taxed in the year earned, it isn't tax-exempt interest. Tax on your traditional IRA is generally deferred until you take a distribution. Don't report this interest on your tax return as tax-exempt interest.

Net Investment Income Tax (NIIT). For purposes of the NIIT, net investment income doesn't include distributions from a qualified retirement plan including IRAs (for example, 401(a), 403(a), 403(b), 408, 408A, or 457(b) plans). However, these distributions are taken into account when determining the modified AGI threshold. Distributions from a nonqualified retirement plan are included in net investment income. See Form 8960, Net Investment Income Tax—Individuals, Estates, and Trusts, and its instructions for more information.

Form 8606. To designate contributions as nondeductible, you must file Form 8606.

The term "50 or older" is used several times in this chapter. It refers to an IRA owner who is age 50 or older by the end of the tax year.

Introduction

An IRA is a personal savings plan that gives you tax advantages for setting aside money for your retirement.

This chapter discusses the following topics.

- The rules for a traditional IRA (any IRA that isn't a Roth or SIMPLE IRA).
- The Roth IRA, which features nondeductible contributions and tax-free distributions.

Simplified Employee Pensions (SEPs) and Savings Incentive Match Plans for Employees (SIMPLE) plans aren't discussed in this chapter. For more information on these plans and employees' SEP IRAs and SIMPLE IRAs that are part of these plans, see Pub. 560, Retirement Plans for Small Business.

For information about contributions, deductions, withdrawals, transfers, rollovers, and other transactions, see Pub. 590-A and Pub. 590-B.

Useful Items

You may want to see:

Publication

- ❏ **560** Retirement Plans for Small Business
- ❏ **575** Pension and Annuity Income
- ❏ **590-A** Contributions to Individual Retirement Arrangements (IRAs)
- ❏ **590-B** Distributions from Individual Retirement Arrangements (IRAs)

Form (and Instructions)

- ❏ **5329** Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
- ❏ **8606** Nondeductible IRAs
- ❏ **8915-F** Qualified Disaster Retirement Plan Distributions and Repayments

For these and other useful items, go to *IRS.gov/Forms*.

Traditional IRAs

In this chapter, the original IRA (sometimes called an ordinary or regular IRA) is referred to as a "traditional IRA." A traditional IRA is any IRA that isn't a Roth IRA or a SIMPLE IRA. Two advantages of a traditional IRA are:

- You may be able to deduct some or all of your contributions to it, depending on your circumstances; and
- Generally, amounts in your IRA, including earnings and gains, aren't taxed until they are distributed.

Who Can Open a Traditional IRA?

You can open and make contributions to a traditional IRA if you (or, if you file a joint return, your spouse) received taxable compensation during the year.

For tax years beginning after 2019, there is no age limit on making contributions to your traditional IRA. For more information, see Pub. 590-A.

What is compensation? Generally, compensation is what you earn from working. Compensation includes wages, salaries, tips, professional fees, bonuses, and other amounts you receive for providing personal services. The IRS treats as compensation any amount properly shown in box 1 (Wages, tips, other compensation) of Form W-2, Wage and Tax Statement, provided that this amount is reduced by any amount properly shown in box 11 (Nonqualified plans).

Scholarship or fellowship payments are generally compensation for this purpose only if reported in box 1 of your Form W-2. However, for tax years beginning after 2019, certain non-tuition fellowship and stipend payments not reported to you on Form W-2 are treated as taxable compensation for IRA purposes. These amounts include taxable non-tuition fellowship and stipend payments made to aid you in the pursuit of graduate or postdoctoral study and included in your gross income under the rules discussed in chapter 1 of Pub. 970, Tax Benefits for Education.

Compensation also includes commissions and taxable alimony and separate maintenance payments.

Self-employment income. If you are self-employed (a sole proprietor or a partner), compensation is the net earnings from your trade or business (provided your personal services are a material income-producing factor) reduced by the total of:

- The deduction for contributions made on your behalf to retirement plans, and
- The deductible part of your self-employment tax.

Compensation includes earnings from self-employment even if they aren't subject to self-employment tax because of your religious beliefs.

Nontaxable combat pay. For IRA purposes, if you were a member of the U.S. Armed Forces, your compensation includes any nontaxable combat pay you receive.

What isn't compensation? Compensation doesn't include any of the following items.

- Earnings and profits from property, such as rental income, interest income, and dividend income.
- Pension or annuity income.
- Deferred compensation received (compensation payments postponed from a past year).
- Income from a partnership for which you don't provide services that are a material income-producing factor.
- Conservation Reserve Program (CRP) payments reported on Schedule SE (Form 1040), line 1b.
- Any amounts (other than combat pay) you exclude from income, such as foreign earned income and housing costs.

When and How Can a Traditional IRA Be Opened?

You can open a traditional IRA at any time. However, the time for making contributions for any year is limited. See *When Can Contributions Be Made*, later.

You can open different kinds of IRAs with a variety of organizations. You can open an IRA at a bank or other financial institution or with a mutual fund or life insurance company. You can also open an IRA through your stockbroker. Any IRA must meet Internal Revenue Code requirements.

Kinds of traditional IRAs. Your traditional IRA can be an individual retirement account or annuity. It can be part of either a SEP or an employer or employee association trust account.

How Much Can Be Contributed?

There are limits and other rules that affect the amount that can be contributed to a traditional IRA. These limits and other rules are explained below.

Community property laws. Except as discussed later under *Kay Bailey Hutchison Spousal IRA limit*, each spouse figures their limit separately, using their own compensation. This is the rule even in states with community property laws.

Brokers' commissions. Brokers' commissions paid in connection with your traditional IRA are subject to the contribution limit.

Trustees' fees. Trustees' administrative fees aren't subject to the contribution limit.

Qualified reservist repayments. If you are (or were) a member of a reserve component and you were ordered or called to active duty after September 11, 2001, you may be able to contribute (repay) to an IRA amounts equal to any qualified reservist distributions you received. You can make these repayment contributions even if they would cause your total contributions to the IRA to be more than the general limit on contributions. To be eligible to make these repayment contributions, you must have received a qualified reservist distribution from an IRA or from a section 401(k) or 403(b) plan or similar arrangement.

For more information, see *Qualified reservist repayments* under *How Much Can Be Contributed?* in chapter 1 of Pub. 590-A.

Contributions on your behalf to a traditional IRA reduce your limit for contributions to a Roth IRA. (See Roth IRAs, later.)

General limit. For 2022, the most that can be contributed to your traditional IRA is generally the smaller of the following amounts.

- $6,000 ($7,000 if you are 50 or older).
- Your taxable compensation (defined earlier) for the year.

This is the most that can be contributed regardless of whether the contributions are to one or more traditional IRAs or whether all or part of the contributions are nondeductible. (See *Nondeductible Contributions*, later.) Qualified reservist repayments don't affect this limit.

Example 1. You are 34 years old and single and earned $24,000 in 2022. Your IRA contributions for 2022 are limited to $6,000.

Example 2. You are an unmarried college student working part time and earned $3,500 in 2022. Your IRA contributions for 2022 are limited to $3,500, the amount of your compensation.

Kay Bailey Hutchison Spousal IRA limit. For 2022, if you file a joint return and your taxable compensation is less than that of your spouse, the most that can be contributed for the year to your IRA is the smaller of the following amounts.

1. $6,000 ($7,000 if you are 50 or older).
2. The total compensation includible in the gross income of both you and your spouse for the year, reduced by the following two amounts.
   a. Your spouse's IRA contribution for the year to a traditional IRA.
   b. Any contribution for the year to a Roth IRA on behalf of your spouse.

This means that the total combined contributions that can be made for the year to your IRA and your spouse's IRA can be as much as $12,000 ($13,000 if only one of you is 50 or older, or $14,000 if both of you are 50 or older).

When Can Contributions Be Made?

As soon as you open your traditional IRA, contributions can be made to it through your chosen sponsor (trustee or other administrator). Contributions must be in the form of money (cash, check, or money order). Property can't be contributed.

Contributions must be made by due date. Contributions can be made to your traditional IRA for a year at any time during the year or by the due date for filing your return for that year, not including extensions.

Designating year for which contribution is made. If an amount is contributed to your traditional IRA between January 1 and April 15, you should tell the sponsor which year (the current year or the previous year) the contribution is for. If you don't tell the sponsor which year it is for, the sponsor can assume, and report to the IRS, that the contribution is for the current year (the year the sponsor received it).

Filing before a contribution is made. You can file your return claiming a traditional IRA contribution before the contribution is actually made. Generally, the contribution must be made by the due date of your return, not including extensions.

Contributions not required. You don't have to contribute to your traditional IRA for every tax year, even if you can.

How Much Can You Deduct?

Generally, you can deduct the lesser of:

- The contributions to your traditional IRA for the year, or
- The general limit (or the Kay Bailey Hutchison Spousal IRA limit, if it applies).

However, if you or your spouse was covered by an employer retirement plan, you may not be able to deduct this amount. See *Limit if Covered by Employer Plan*, later.

You may be able to claim a credit for contributions to your traditional IRA. For more information, see chapter 3 of Pub. 590-A.

Trustees' fees. Trustees' administrative fees that are billed separately and paid in connection with your traditional IRA aren't deductible as IRA contributions. You are also not able to deduct these fees as an itemized deduction.

Brokers' commissions. Brokers' commissions are part of your IRA contribution and, as such, are deductible subject to the limits.

Full deduction. If neither you nor your spouse was covered for any part of the year by an employer retirement plan, you can take a

deduction for total contributions to one or more traditional IRAs of up to the lesser of:

- $6,000 ($7,000 if you are 50 or older in 2022), or
- 100% of your compensation.

This limit is reduced by any contributions made to a 501(c)(18) plan on your behalf.

Kay Bailey Hutchison Spousal IRA. In the case of a married couple with unequal compensation who file a joint return, the deduction for contributions to the traditional IRA of the spouse with less compensation is limited to the lesser of the following amounts.

1. $6,000 ($7,000 if the spouse with the lower compensation is 50 or older in 2022).
2. The total compensation includible in the gross income of both spouses for the year reduced by the following three amounts.
   a. The IRA deduction for the year of the spouse with the greater compensation.
   b. Any designated nondeductible contribution for the year made on behalf of the spouse with the greater compensation.
   c. Any contributions for the year to a Roth IRA on behalf of the spouse with the greater compensation.

This limit is reduced by any contributions to a 501(c)(18) plan on behalf of the spouse with the lesser compensation.

Note. If you were divorced or legally separated (and didn't remarry) before the end of the year, you can't deduct any contributions to your spouse's IRA. After a divorce or legal separation, you can deduct only contributions to your own IRA. Your deductions are subject to the rules for single individuals.

Covered by an employer retirement plan. If you or your spouse was covered by an employer retirement plan at any time during the year for which contributions were made, your deduction may be further limited. This is discussed later under *Limit if Covered by Employer Plan*. Limits on the amount you can deduct don't affect the amount that can be contributed. See *Nondeductible Contributions*, later.

Are You Covered by an Employer Plan?

The Form W-2 you receive from your employer has a box used to indicate whether you were covered for the year. The “Retirement plan” box should be checked if you were covered.

Reservists and volunteer firefighters should also see *Situations in Which You Aren’t Covered*, later.

If you aren't certain whether you were covered by your employer's retirement plan, you should ask your employer.

Federal judges. For purposes of the IRA deduction, federal judges are covered by an employer retirement plan.

For Which Year(s) Are You Covered?

Special rules apply to determine the tax years for which you are covered by an employer plan. These rules differ depending on whether the plan is a defined contribution plan or a defined benefit plan.

Tax year. Your tax year is the annual accounting period you use to keep records and report income and expenses on your income tax return. For almost all people, the tax year is the calendar year.

Defined contribution plan. Generally, you are covered by a defined contribution plan for a tax year if amounts are contributed or allocated to your account for the plan year that ends with or within that tax year.

A defined contribution plan is a plan that provides for a separate account for each person covered by the plan. Types of defined contribution plans include profit-sharing plans, stock bonus plans, and money purchase pension plans. For additional information, see Pub. 590-A.

Defined benefit plan. If you are eligible to participate in your employer's defined benefit plan for the plan year that ends within your tax year, you are covered by the plan. This rule applies even if you:

- Declined to participate in the plan,
- Didn't make a required contribution, or
- Didn't perform the minimum service required to accrue a benefit for the year.

A defined benefit plan is any plan that isn't a defined contribution plan. In a defined benefit plan, the level of benefits to be provided to each participant is spelled out in the plan. The plan administrator figures the amount needed to provide those benefits and those amounts are contributed to the plan. Defined benefit plans include pension plans and annuity plans.

No vested interest. If you accrue a benefit for a plan year, you are covered by that plan even if you have no vested interest in (legal right to) the accrual.

Situations in Which You Aren’t Covered

Unless you are covered under another employer plan, you aren't covered by an employer plan if you are in one of the situations described below.

Social security or railroad retirement. Coverage under social security or railroad retirement isn't coverage under an employer retirement plan.

Benefits from a previous employer's plan. If you receive retirement benefits from a previous employer's plan, you aren't covered by that plan.

Reservists. If the only reason you participate in a plan is because you are a member of a reserve unit of the U.S. Armed Forces, you may not be covered by the plan. You aren't covered by the plan if both of the following conditions are met.

1. The plan you participate in is established for its employees by:
   a. The United States,
   b. A state or political subdivision of a state, or
   c. An instrumentality of either (a) or (b) above.
2. You didn't serve more than 90 days on active duty during the year (not counting duty for training).

Volunteer firefighters. If the only reason you participate in a plan is because you are a volunteer firefighter, you may not be covered by the plan. You aren't covered by the plan if both of the following conditions are met.

1. The plan you participate in is established for its employees by:
   a. The United States,
   b. A state or political subdivision of a state, or
   c. An instrumentality of either (a) or (b) above.
2. Your accrued retirement benefits at the beginning of the year won't provide more than $1,800 per year at retirement.

Limit if Covered by Employer Plan

If either you or your spouse was covered by an employer retirement plan, you may be entitled to only a partial (reduced) deduction or no deduction at all, depending on your income and your filing status.

Your deduction begins to decrease (phase out) when your income rises above a certain amount and is eliminated altogether when it reaches a higher amount. These amounts vary depending on your filing status.

To determine if your deduction is subject to phaseout, you must determine your modified AGI and your filing status. See *Filing status* and *Modified adjusted gross income (AGI)*, later. Then use Table 9-1 or Table 9-2 to determine if the phaseout applies.

Social security recipients. Instead of using Table 9-1 or Table 9-2, use the worksheets in *Appendix B* of Pub. 590-A if, for the year, all of the following apply.

- You received social security benefits.
- You received taxable compensation.
- Contributions were made to your traditional IRA.
- You or your spouse was covered by an employer retirement plan.

Use those worksheets to figure your IRA deduction, your nondeductible contribution, and the taxable portion, if any, of your social security benefits.

Deduction phaseout. If you are covered by an employer retirement plan and you didn't receive any social security retirement benefits, your IRA deduction may be reduced or eliminated depending on your filing status and modified AGI as shown in Table 9-1.

If your spouse is covered. If you aren't covered by an employer retirement plan, but your spouse is, and you didn't receive any social security benefits, your IRA deduction may

Table 9-1. **Effect of Modified AGI[1] on Deduction if You Are Covered by Retirement Plan at Work**

If you are covered by a retirement plan at work, use this table to determine if your modified AGI affects the amount of your deduction.

IF your filing status is...	AND your modified AGI is...	THEN you can take...
Single or **Head of household**	$68,000 or less	a full deduction.
	more than $68,000 but less than $78,000	a partial deduction.
	$78,000 or more	no deduction.
Married filing jointly or **Qualifying surviving spouse**	$109,000 or less	a full deduction.
	more than $109,000 but less than $129,000	a partial deduction.
	$129,000 or more	no deduction.
Married filing separately[2]	less than $10,000	a partial deduction.
	$10,000 or more	no deduction.

[1] Modified AGI (adjusted gross income). See *Modified adjusted gross income (AGI)*, later.

[2] If you didn't live with your spouse at any time during the year, your filing status is considered Single for this purpose (therefore, your IRA deduction is determined under the "Single" column).

Table 9-2. **Effect of Modified AGI[1] on Deduction if You Aren't Covered by Retirement Plan at Work**

If you aren't covered by a retirement plan at work, use this table to determine if your modified AGI affects the amount of your deduction.

IF your filing status is...	AND your modified AGI is...	THEN you can take...
Single, **Head of household,** or **Qualifying surviving spouse**	any amount	a full deduction.
Married filing jointly or **separately** with a spouse who ***isn't*** covered by a plan at work	any amount	a full deduction.
Married filing jointly with a spouse who ***is*** covered by a plan at work	$204,000 or less	a full deduction.
	more than $204,000 but less than $214,000	a partial deduction.
	$214,000 or more	no deduction.
Married filing separately with a spouse who ***is*** covered by a plan at work[2]	less than $10,000	a partial deduction.
	$10,000 or more	no deduction.

[1] Modified AGI (adjusted gross income). See *Modified adjusted gross income (AGI)*, later.

[2] You are entitled to the full deduction if you didn't live with your spouse at any time during the year.

be reduced or eliminated entirely depending on your filing status and modified AGI as shown in Table 9-2.

Filing status. Your filing status depends primarily on your marital status. For this purpose, you need to know if your filing status is single, head of household, married filing jointly, qualifying surviving spouse, or married filing separately. If you need more information on filing status, see chapter 2.

Lived apart from spouse. If you didn't live with your spouse at any time during the year and you file a separate return, your filing status, for this purpose, is single.

Modified adjusted gross income (AGI). You may be able to use Worksheet 9-1 to figure your modified AGI. However, if you made contributions to your IRA for 2022 and received a distribution from your IRA in 2022, see Pub. 590-A.

Don't assume that your modified AGI is the same as your compensation. Your modified AGI may include income in addition to your compensation (discussed earlier), such as interest, dividends, and income from IRA distributions.

When filing Form 1040 or 1040-SR, refigure the AGI amount on line 11 without taking into account any of the following amounts.

- IRA deduction.
- Student loan interest deduction.
- Foreign earned income exclusion.
- Foreign housing exclusion or deduction.
- Exclusion of qualified savings bond interest shown on Form 8815, Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
- Exclusion of employer-provided adoption benefits shown on Form 8839, Qualified Adoption Expenses.

This is your modified AGI.

Worksheet 9-1. **Figuring Your Modified AGI**

Keep for Your Records

Use this worksheet to figure your modified AGI for traditional IRA purposes.

1.	Enter your adjusted gross income (AGI) from Form 1040 or 1040-SR, line 11, figured without taking into account the amount from Schedule 1 (Form 1040), line 20	**1.** ______
2.	Enter any student loan interest deduction from Schedule 1 (Form 1040), line 21	**2.** ______
3.	Enter any foreign earned income and/or housing exclusion from Form 2555, line 45	**3.** ______
4.	Enter any foreign housing deduction from Form 2555, line 50	**4.** ______
5.	Enter any excludable savings bond interest from Form 8815, line 14	**5.** ______
6.	Enter any excluded employer-provided adoption benefits from Form 8839, line 28	**6.** ______
7.	Add lines 1 through 6. This is your **modified AGI** for traditional IRA purposes	**7.** ______

Both contributions for 2022 and distributions in 2022. If all three of the following apply, any IRA distributions you received in 2022 may be partly tax free and partly taxable.

- You received distributions in 2022 from one or more traditional IRAs.
- You made contributions to a traditional IRA for 2022.
- Some of those contributions may be nondeductible contributions.

If this is your situation, you must figure the taxable part of the traditional IRA distribution before you can figure your modified AGI. To do this, you can use Worksheet 1-1 in Pub. 590-B.

If at least one of the above doesn't apply, figure your modified AGI using Worksheet 9-1.

How to figure your reduced IRA deduction. You can figure your reduced IRA deduction for Form 1040 or 1040-SR by using the worksheets in chapter 1 of Pub. 590-A. Also, the Instructions for Form 1040 include similar worksheets that you may be able to use instead.

Reporting Deductible Contributions

When filing Form 1040 or 1040-SR, enter your IRA deduction on Schedule 1 (Form 1040), line 20.

Nondeductible Contributions

Although your deduction for IRA contributions may be reduced or eliminated, contributions can be made to your IRA up to the general limit or, if it applies, the Kay Bailey Hutchison Spousal IRA limit. The difference between your total permitted contributions and your IRA deduction, if any, is your nondeductible contribution.

Example. You are 30 years old and single. In 2022, you were covered by a retirement plan at work. Your salary was $67,000. Your modified AGI was $80,000. You made a $6,000 IRA contribution for 2022. Because you were covered by a retirement plan and your modified AGI was over $78,000, you can't deduct the $6,000 IRA contribution. You must designate this contribution as a nondeductible contribution by reporting it on Form 8606, as explained next.

Form 8606. To designate contributions as nondeductible, you must file Form 8606.

You don't have to designate a contribution as nondeductible until you file your tax return. When you file, you can even designate otherwise deductible contributions as nondeductible.

You must file Form 8606 to report nondeductible contributions even if you don't have to file a tax return for the year.

A Form 8606 isn't used for the year that you make a rollover from a qualified retirement plan to a traditional IRA and the rollover includes nontaxable amounts. In those situations, a Form 8606 is completed for the year you take a distribution from that IRA. See Form 8606 under Distributions Fully or Partly Taxable*, later.*

Failure to report nondeductible contributions. If you don't report nondeductible contributions, all of the contributions to your traditional IRA will be treated as deductible contributions when withdrawn. All distributions from your IRA will be taxed unless you can show, with satisfactory evidence, that nondeductible contributions were made.

Penalty for overstatement. If you overstate the amount of nondeductible contributions on your Form 8606 for any tax year, you must pay a penalty of $100 for each overstatement, unless it was due to reasonable cause.

Penalty for failure to file Form 8606. You will have to pay a $50 penalty if you don't file a required Form 8606, unless you can prove that the failure was due to reasonable cause.

Tax on earnings on nondeductible contributions. As long as contributions are within the contribution limits, none of the earnings or gains on contributions (deductible or nondeductible) will be taxed until they are distributed. See *When Can You Withdraw or Use IRA Assets*, later.

Cost basis. You will have a cost basis in your traditional IRA if you made any nondeductible contributions. Your cost basis is the sum of the nondeductible contributions to your IRA minus any withdrawals or distributions of nondeductible contributions.

Inherited IRAs

If you inherit a traditional IRA, you are called a "beneficiary." A beneficiary can be any person or entity the owner chooses to receive the benefits of the IRA after he or she dies. Beneficiaries of a traditional IRA must include in their gross income any taxable distributions they receive.

Inherited from spouse. If you inherit a traditional IRA from your spouse, you generally have the following three choices. You can do one of the following.

1. Treat it as your own IRA by designating yourself as the account owner.
2. Treat it as your own by rolling it over into your IRA, or to the extent it is taxable, into a:
   a. Qualified employer plan,
   b. Qualified employee annuity plan (section 403(a) plan),
   c. Tax-sheltered annuity plan (section 403(b) plan), or
   d. Deferred compensation plan of a state or local government (section 457 plan).
3. Treat yourself as the beneficiary rather than treating the IRA as your own.

Treating it as your own. You will be considered to have chosen to treat the IRA as your own if:

- Contributions (including rollover contributions) are made to the inherited IRA, or
- You don't take the required minimum distribution for a year as a beneficiary of the IRA.

You will only be considered to have chosen to treat the IRA as your own if:

- You are the sole beneficiary of the IRA, and
- You have an unlimited right to withdraw amounts from it.

However, if you receive a distribution from your deceased spouse's IRA, you can roll that distribution over into your own IRA within the 60-day time limit, as long as the distribution isn't a required distribution, even if you aren't the sole beneficiary of your deceased spouse's IRA.

Inherited from someone other than spouse. If you inherit a traditional IRA from anyone other than your deceased spouse, you can't treat the inherited IRA as your own. This means that you can't make any contributions to the IRA. It also means you can't roll over any amounts into or out of the inherited IRA. However, you can make a trustee-to-trustee transfer as long as the IRA into which amounts are being moved is set up and maintained in the name of the deceased IRA owner for the benefit of you as beneficiary.

For more information, see the discussion of Inherited IRAs under Rollover From One IRA Into Another, later.

Can You Move Retirement Plan Assets?

You can transfer, tax free, assets (money or property) from other retirement plans (including traditional IRAs) to a traditional IRA. You can make the following kinds of transfers.

- Transfers from one trustee to another.
- Rollovers.
- Transfers incident to a divorce.

Transfers to Roth IRAs. Under certain conditions, you can move assets from a traditional IRA or from a designated Roth account to a Roth IRA. You can also move assets from a qualified retirement plan to a Roth IRA. See Can You Move Amounts Into a Roth IRA? under *Roth IRAs,* later.

Trustee-to-Trustee Transfer

A transfer of funds in your traditional IRA from one trustee directly to another, either at your request or at the trustee's request, isn't a rollover. This includes the situation where the current trustee issues a check to the new trustee, but gives it to you to deposit. Because there is no distribution to you, the transfer is tax free. Because it isn't a rollover, it isn't affected by the 1-year waiting period required between rollovers, discussed later under Rollover From One IRA Into Another. For information about direct transfers to IRAs from retirement plans other than IRAs, see *Can You Move Retirement Plan Assets?* in chapter 1 and *Can You Move Amounts Into a Roth IRA?* in chapter 2 of Pub. 590-A.

Rollovers

Generally, a rollover is a tax-free distribution to you of cash or other assets from one retirement plan that you contribute (roll over) to another retirement plan. The contribution to the second retirement plan is called a “rollover contribution.”

Note. An amount rolled over tax free from one retirement plan to another is generally includible in income when it is distributed from the second plan.

Kinds of rollovers to a traditional IRA. You can roll over amounts from the following plans into a traditional IRA.

- A traditional IRA.
- An employer's qualified retirement plan for its employees.
- A deferred compensation plan of a state or local government (section 457 plan).
- A tax-sheltered annuity plan (section 403(b) plan).

Treatment of rollovers. You can't deduct a rollover contribution, but you must report the rollover distribution on your tax return as discussed later under Reporting rollovers from IRAs and Reporting rollovers from employer plans.

Rollover notice. A written explanation of rollover treatment must be given to you by the plan (other than an IRA) making the distribution. See *Written explanation to recipients* in Pub. 590-A.

Kinds of rollovers from a traditional IRA. You may be able to roll over, tax free, a distribution from your traditional IRA into a qualified plan. These plans include the federal Thrift Savings Plan (for federal employees), deferred compensation plans of state or local governments (section 457 plans), and tax-sheltered annuity plans (section 403(b) plans). The part of the distribution that you can roll over is the part that would otherwise be taxable (includible in your income). Qualified plans may, but aren't required to, accept such rollovers.

Time limit for making a rollover contribution. You must generally make the rollover contribution by the 60th day after the day you receive the distribution from your traditional IRA or your employer's plan.

The IRS may waive the 60-day requirement where the failure to do so would be against equity or good conscience, such as in the event of a casualty, disaster, or other event beyond your reasonable control. For more information, see *Can You Move Retirement Plan Assets?* in chapter 1 of Pub. 590-A.

Extension of rollover period. If an amount distributed to you from a traditional IRA or a qualified employer retirement plan is a frozen deposit at any time during the 60-day period allowed for a rollover, special rules extend the rollover period. For more information, see *Can You Move Retirement Plan Assets?* in chapter 1 of Pub. 590-A.

Rollover From One IRA Into Another

You can withdraw, tax free, all or part of the assets from one traditional IRA if you reinvest them within 60 days in the same or another traditional IRA. Because this is a rollover, you can't deduct the amount that you reinvest in an IRA.

Waiting period between rollovers. Generally, if you make a tax-free rollover of any part of a distribution from a traditional IRA, you can't, within a 1-year period, make a tax-free rollover of any later distribution from that same IRA. You also can't make a tax-free rollover of any amount distributed, within the same 1-year period, from the IRA into which you made the tax-free rollover.

The 1-year period begins on the date you receive the IRA distribution, not on the date you roll it over into an IRA. Rules apply to the number of rollovers you can have with your traditional IRAs. See Application of one-rollover limitation next.

Application of one-rollover limitation. You can make only one rollover from an IRA to another (or the same) IRA in any 1-year period, regardless of the number of IRAs you own. The limit applies by aggregating all of an individual's IRAs, including SEP and SIMPLE IRAs, as well as traditional and Roth IRAs, effectively treating them as one IRA for purposes of the limit. However, trustee-to-trustee transfers between IRAs aren't limited and rollovers from traditional IRAs to Roth IRAs (conversions) aren't limited.

Example. You have three traditional IRAs: IRA-1, IRA-2, and IRA-3. You didn't take any distributions from your IRAs in 2022. On January 1, 2023, you took a distribution from IRA-1 and rolled it over into IRA-2 on the same day. For 2023, you can't roll over any other 2022 IRA distribution, including a rollover distribution involving IRA-3. This wouldn’t apply to a trustee-to-trustee transfer or a Roth IRA conversion.

Partial rollovers. If you withdraw assets from a traditional IRA, you can roll over part of the withdrawal tax free and keep the rest of it. The amount you keep will generally be taxable (except for the part that is a return of nondeductible contributions). The amount you keep may be subject to the 10% additional tax on early distributions, discussed later under What Acts Result in Penalties or Additional Taxes.

Required distributions. Amounts that must be distributed during a particular year under the required minimum distribution rules (discussed later) aren't eligible for rollover treatment.

Inherited IRAs. If you inherit a traditional IRA from your spouse, you can generally roll it over, or you can choose to make the inherited IRA your own. See Treating it as your own, earlier.

Not inherited from spouse. If you inherit a traditional IRA from someone other than your spouse, you can't roll it over or allow it to receive a rollover contribution. You must withdraw the IRA assets within a certain period. For more information, see *When Must You Withdraw Assets? (Required Minimum Distributions)* in chapter 1 of Pub. 590-B.

Reporting rollovers from IRAs. Report any rollover from one traditional IRA to the same or another traditional IRA on Form 1040 or 1040-SR as follows.

Enter the total amount of the distribution on Form 1040 or 1040-SR, line 4a. If the total amount on Form 1040 or 1040-SR, line 4a, was rolled over, enter zero on Form 1040 or 1040-SR, line 4b. If the total distribution wasn't rolled over, enter the taxable portion of the part that wasn't rolled over on Form 1040 or 1040-SR, line 4b. Enter “Rollover” next to Form 1040 or 1040-SR, line 4b. For more information, see the Instructions for Form 1040.

If you rolled over the distribution into a qualified plan (other than an IRA) or you make the rollover in 2023, attach a statement explaining what you did.

Rollover From Employer's Plan Into an IRA

You can roll over into a traditional IRA all or part of an eligible rollover distribution you receive from your (or your deceased spouse's):

- Employer's qualified pension, profit-sharing, or stock bonus plan;
- Annuity plan;
- Tax-sheltered annuity plan (section 403(b) plan); or
- Governmental deferred compensation plan (section 457 plan).

A qualified plan is one that meets the requirements of the Internal Revenue Code.

Eligible rollover distribution. Generally, an eligible rollover distribution is any distribution of all or part of the balance to your credit in a qualified retirement plan except the following.

1. A required minimum distribution (explained later under *When Must You Withdraw IRA Assets? (Required Minimum Distributions)*).
2. A hardship distribution.
3. Any of a series of substantially equal periodic distributions paid at least once a year over:
   a. Your lifetime or life expectancy,
   b. The lifetimes or life expectancies of you and your beneficiary, or
   c. A period of 10 years or more.
4. Corrective distributions of excess contributions or excess deferrals, and any income allocable to the excess, or of excess annual additions and any allocable gains.
5. A loan treated as a distribution because it doesn't satisfy certain requirements either when made or later (such as upon default), unless the participant's accrued benefits are reduced (offset) to repay the loan. For more information, see *Plan loan offsets* under *Time Limit for Making a Rollover Contribution* in Pub. 590-A.
6. Dividends on employer securities.
7. The cost of life insurance coverage.

Your rollover into a traditional IRA may include both amounts that would be taxable and amounts that wouldn’t be taxable if they were distributed to you but not rolled over. To the extent the distribution is rolled over into a traditional IRA, it isn’t includible in your income.

Any nontaxable amounts that you roll over into your traditional IRA become part of your basis (cost) in your IRAs. To recover your basis when you take distributions from your IRA, you must complete Form 8606 for the year of the distribution. See Form 8606 under Distributions Fully or Partly Taxable*, later.*

Rollover by nonspouse beneficiary. A direct transfer from a deceased employee's qualified pension, profit-sharing, or stock bonus plan; annuity plan; tax-sheltered annuity (section 403(b)) plan; or governmental deferred compensation (section 457) plan to an IRA set up to receive the distribution on your behalf can be treated as an eligible rollover distribution if you are the designated beneficiary of the plan and not the employee's spouse. The IRA is treated as an inherited IRA. For more information about inherited IRAs, see *Inherited IRAs*, earlier.

Reporting rollovers from employer plans. Enter the total distribution (before income tax or other deductions were withheld) on Form 1040 or 1040-SR, line 4a. This amount should be shown in box 1 of Form 1099-R. From this amount, subtract any contributions (usually shown in box 5 of Form 1099-R) that were taxable to you when made. From that result, subtract the amount that was rolled over either directly or within 60 days of receiving the distribution. Enter the remaining amount, even if zero, on Form 1040 or 1040-SR, line 4b. Also, enter "Rollover" next to Form 1040 or 1040-SR, line 4b.

Transfers Incident to Divorce

If an interest in a traditional IRA is transferred from your spouse or former spouse to you by a divorce or separate maintenance decree or a written document related to such a decree, the interest in the IRA, starting from the date of the transfer, is treated as your IRA. The transfer is tax free. For detailed information, see *Distributions under divorce or similar proceedings (alternate payees)* under *Rollover From Employer's Plan Into an IRA* in Pub. 590-A.

Converting From Any Traditional IRA to a Roth IRA

Allowable conversions. You can withdraw all or part of the assets from a traditional IRA and reinvest them (within 60 days) in a Roth IRA. The amount that you withdraw and timely contribute (convert) to the Roth IRA is called a “conversion contribution.” If properly (and timely) rolled over, the 10% additional tax on early distributions won't apply. However, a part or all of the conversion contribution from your traditional IRA is included in your gross income.

Required distributions. You can't convert amounts that must be distributed from your traditional IRA for a particular year (including the calendar year in which you reach age 72 under the required minimum distribution rules (discussed later)).

Income. You must include in your gross income distributions from a traditional IRA that you would have had to include in income if you hadn't converted them into a Roth IRA. These amounts are normally included in income on your return for the year that you converted them from a traditional IRA to a Roth IRA.

You don't include in gross income any part of a distribution from a traditional IRA that is a return of your basis, as discussed later.

You must file Form 8606 to report 2022 conversions from traditional, SEP, or SIMPLE IRAs to a Roth IRA in 2022 (unless you recharacterized the entire amount) and to figure the amount to include in income.

If you must include any amount in your gross income, you may have to increase your withholding or make estimated tax payments. See chapter 4.

Recharacterizations

You may be able to treat a contribution made to one type of IRA as having been made to a different type of IRA. This is called “recharacterizing the contribution.” See *Can You Move Retirement Plan Assets?* in chapter 1 of Pub. 590-A for more detailed information.

How to recharacterize a contribution. To recharacterize a contribution, you must generally have the contribution transferred from the first IRA (the one to which it was made) to the second IRA in a trustee-to-trustee transfer. If the transfer is made by the due date (including extensions) for your tax return for the year during which the contribution was made, you can elect to treat the contribution as having been originally made to the second IRA instead of to the first IRA. If you recharacterize your contribution, you must do all three of the following.

- Include in the transfer any net income allocable to the contribution. If there was a loss, the net income you must transfer may be a negative amount.
- Report the recharacterization on your tax return for the year during which the contribution was made.
- Treat the contribution as having been made to the second IRA on the date that it was actually made to the first IRA.

No recharacterizations of conversions made in 2018 or later. A conversion of a traditional IRA to a Roth IRA, and a rollover from any other eligible retirement plan to a Roth IRA, made in tax years beginning after tax year 2017, can’t be recharacterized as having been made to a traditional IRA. If you made a conversion in the 2017 tax year, you had until the due date (with extensions) for filing the return for that tax year to recharacterize it.

No deduction allowed. You can't deduct the contribution to the first IRA. Any net income you transfer with the recharacterized contribution is treated as earned in the second IRA.

How do you recharacterize a contribution? To recharacterize a contribution, you must notify both the trustee of the first IRA (the one to which the contribution was actually made) and the trustee of the second IRA (the one to which the contribution is being moved) that you have elected to treat the contribution as having been made to the second IRA rather than the first. You must make the notifications by the date of the transfer. Only one notification is required if both IRAs are maintained by the same trustee. The notification(s) must include all of the following information.

- The type and amount of the contribution to the first IRA that is to be recharacterized.
- The date on which the contribution was made to the first IRA and the year for which it was made.
- A direction to the trustee of the first IRA to transfer in a trustee-to-trustee transfer the amount of the contribution and any net income (or loss) allocable to the contribution to the trustee of the second IRA.
- The name of the trustee of the first IRA and the name of the trustee of the second IRA.

- Any additional information needed to make the transfer.

Reporting a recharacterization. If you elect to recharacterize a contribution to one IRA as a contribution to another IRA, you must report the recharacterization on your tax return as directed by Form 8606 and its instructions. You must treat the contribution as having been made to the second IRA.

When Can You Withdraw or Use IRA Assets?

There are rules limiting use of your IRA assets and distributions from it. Violation of the rules generally results in additional taxes in the year of violation. See *What Acts Result in Penalties or Additional Taxes*, later.

Contributions returned before the due date of return. If you made IRA contributions in 2022, you can withdraw them tax free by the due date of your return. If you have an extension of time to file your return, you can withdraw them tax free by the extended due date. You can do this if, for each contribution you withdraw, both of the following conditions apply.

- You didn't take a deduction for the contribution.
- You withdraw any interest or other income earned on the contribution. You can take into account any loss on the contribution while it was in the IRA when figuring the amount that must be withdrawn. If there was a loss, the net income earned on the contribution may be a negative amount.

Note. To figure the amount you must withdraw, see Worksheet 1-4 under *When Can You Withdraw or Use Assets?* in chapter 1 of Pub. 590-A.

Earnings includible in income. You must include in income any earnings on the contributions you withdraw. Include the earnings in income for the year in which you made the contributions, not in the year in which you withdraw them.

Generally, except for any part of a withdrawal that is a return of nondeductible contributions (basis), any withdrawal of your contributions after the due date (or extended due date) of your return will be treated as a taxable distribution. Excess contributions can also be recovered tax free as discussed under What Acts Result in Penalties or Additional Taxes*, later.*

Early distributions tax. The 10% additional tax on distributions made before you reach age 59$^1/_2$ doesn't apply to these tax-free withdrawals of your contributions. However, the distribution of interest or other income must be reported on Form 5329 and, unless the distribution qualifies as an exception to the age 59$^1/_2$ rule, it will be subject to this tax. See *Early Distributions* under *What Acts Result in Penalties or Additional Taxes?* in Pub. 590-B.

When Must You Withdraw IRA Assets? (Required Minimum Distributions)

You can't keep funds in a traditional IRA indefinitely. Eventually, they must be distributed. If there are no distributions, or if the distributions aren't large enough, you may have to pay a 50% excise tax on the amount not distributed as required. See *Excess Accumulations (Insufficient Distributions)*, later. The requirements for distributing IRA funds differ depending on whether you are the IRA owner or the beneficiary of a decedent's IRA.

Required minimum distribution. The amount that must be distributed each year is referred to as the "required minimum distribution."

Distributions not eligible for rollover. Amounts that must be distributed (required minimum distributions) during a particular year aren't eligible for rollover treatment.

IRA owners. If you are the owner of a traditional IRA, you must generally start receiving distributions from your IRA by April 1 of the year following the year in which you reach age 72. April 1 of the year following the year in which you reach age 72 is referred to as the "required beginning date."

Distributions by the required beginning date. You must receive at least a minimum amount for each year starting with the year you reach age 72. If you don't (or didn't) receive that minimum amount in the year you become age 72, then you must receive distributions for the year you become age 72 by April 1 of the next year.

If an IRA owner dies after reaching age 72 but before April 1 of the next year, no minimum distribution is required because death occurred before the required beginning date.

Even if you begin receiving distributions before you attain age 72, you must begin figuring and receiving required minimum distributions by your required beginning date.

Distributions after the required beginning date. The required minimum distribution for any year after the year you turn age 72 must be made by December 31 of that later year.

Beneficiaries. If you are the beneficiary of a decedent's traditional IRA, the requirements for distributions from that IRA generally depend on whether the IRA owner died before or after the required beginning date for distributions.

More information. For more information, including how to figure your minimum required distribution each year and how to figure your required distribution if you are a beneficiary of a decedent's IRA, see *When Must You Withdraw Assets? (Required Minimum Distributions)* in chapter 1 of Pub. 590-B.

Are Distributions Taxable?

In general, distributions from a traditional IRA are taxable in the year you receive them.

Exceptions. Exceptions to distributions from traditional IRAs being taxable in the year you receive them are:

- Rollovers;
- Qualified charitable distributions (QCDs), discussed later;
- Tax-free withdrawals of contributions, discussed earlier; and
- The return of nondeductible contributions, discussed later under *Distributions Fully or Partly Taxable*.

Although a conversion of a traditional IRA is considered a rollover for Roth IRA purposes, it isn't an exception to the rule that distributions from a traditional IRA are taxable in the year you receive them. Conversion distributions are includible in your gross income subject to this rule and the special rules for conversions explained in Converting From Any Traditional IRA Into a Roth IRA *under* Can You Move Retirement Plan Assets? *in chapter 1 of Pub. 590-A.*

Qualified charitable distributions (QCDs). A QCD is generally a nontaxable distribution made directly by the trustee of your IRA to an organization eligible to receive tax deductible contributions. See *Qualified Charitable Distributions* in Pub. 590-B for more information.

A QCD will count towards your minimum required distribution. See Qualified charitable distributions *under* Are Distributions Taxable? *in chapter 1 of Pub. 590-B for more information.*

Ordinary income. Distributions from traditional IRAs that you include in income are taxed as ordinary income.

No special treatment. In figuring your tax, you can't use the 10-year tax option or capital gain treatment that applies to lump-sum distributions from qualified retirement plans.

Distributions Fully or Partly Taxable

Distributions from your traditional IRA may be fully or partly taxable, depending on whether your IRA includes any nondeductible contributions.

Fully taxable. If only deductible contributions were made to your traditional IRA (or IRAs, if you have more than one), you have no basis in your IRA. Because you have no basis in your IRA, any distributions are fully taxable when received. See *Reporting taxable distributions on your return*, later.

Partly taxable. If you made nondeductible contributions or rolled over any after-tax amounts to any of your traditional IRAs, you have a cost basis (investment in the contract) equal to the amount of those contributions. These nondeductible contributions aren't taxed when they are distributed to you. They are a return of your investment in your IRA.

Only the part of the distribution that represents nondeductible contributions and rolled over after-tax amounts (your cost basis) is tax free. If nondeductible contributions have been made or after-tax amounts have been rolled

over to your IRA, distributions consist partly of nondeductible contributions (basis) and partly of deductible contributions, earnings, and gains (if there are any). Until all of your basis has been distributed, each distribution is partly nontaxable and partly taxable.

Form 8606. You must complete Form 8606 and attach it to your return if you receive a distribution from a traditional IRA and have ever made nondeductible contributions or rolled-over after-tax amounts to any of your traditional IRAs. Using the form, you will figure the nontaxable distributions for 2022 and your total IRA basis for 2022 and earlier years.

Note. If you are required to file Form 8606 but you aren't required to file an income tax return, you must still file Form 8606. Send it to the IRS at the time and place you would otherwise file an income tax return.

Distributions reported on Form 1099-R. If you receive a distribution from your traditional IRA, you will receive Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., or a similar statement. IRA distributions are shown in boxes 1 and 2a of Form 1099-R. The number or letter codes in box 7 tell you what type of distribution you received from your IRA.

Withholding. Federal income tax is withheld from distributions from traditional IRAs unless you choose not to have tax withheld. See chapter 4.

IRA distributions delivered outside the United States. In general, if you are a U.S. citizen or resident alien and your home address is outside the United States or its possessions, you can't choose exemption from withholding on distributions from your traditional IRA.

Reporting taxable distributions on your return. Report fully taxable distributions, including early distributions, on Form 1040 or 1040-SR, line 4b (no entry is required on Form 1040 or 1040-SR, line 4a). If only part of the distribution is taxable, enter the total amount on Form 1040 or 1040-SR, line 4a, and the taxable part on Form 1040 or 1040-SR, line 4b.

What Acts Result in Penalties or Additional Taxes?

The tax advantages of using traditional IRAs for retirement savings can be offset by additional taxes and penalties if you don't follow the rules.

There are additions to the regular tax for using your IRA funds in prohibited transactions. There are also additional taxes for the following activities.

- Investing in collectibles.
- Having unrelated business income; see Pub. 590-B.
- Making excess contributions.
- Taking early distributions.
- Allowing excess amounts to accumulate (failing to take required distributions).

There are penalties for overstating the amount of nondeductible contributions and for failure to file a Form 8606, if required.

Prohibited Transactions

Generally, a prohibited transaction is any improper use of your traditional IRA by you, your beneficiary, or any disqualified person.

Disqualified persons include your fiduciary and members of your family (spouse, ancestor, lineal descendent, and any spouse of a lineal descendent).

The following are examples of prohibited transactions with a traditional IRA.

- Borrowing money from it; see Pub. 590-B.
- Selling property to it.
- Using it as security for a loan.
- Buying property for personal use (present or future) with IRA funds.

Effect on an IRA account. Generally, if you or your beneficiary engages in a prohibited transaction in connection with your traditional IRA account at any time during the year, the account stops being an IRA as of the first day of that year.

Effect on you or your beneficiary. If your account stops being an IRA because you or your beneficiary engaged in a prohibited transaction, the account is treated as distributing all its assets to you at their fair market values on the first day of the year. If the total of those values is more than your basis in the IRA, you will have a taxable gain that is includible in your income. For information on figuring your gain and reporting it in income, see *Are Distributions Taxable*, earlier. The distribution may be subject to additional taxes or penalties.

Taxes on prohibited transactions. If someone other than the owner or beneficiary of a traditional IRA engages in a prohibited transaction, that person may be liable for certain taxes. In general, there is a 15% tax on the amount of the prohibited transaction and a 100% additional tax if the transaction isn't corrected.

More information. For more information on prohibited transactions, see *What Acts Result in Penalties or Additional Taxes?* in chapter 1 of Pub. 590-A.

Investment in Collectibles

If your traditional IRA invests in collectibles, the amount invested is considered distributed to you in the year invested. You may have to pay the 10% additional tax on early distributions, discussed later.

Collectibles. These include:

- Artworks,
- Rugs,
- Antiques,
- Metals,
- Gems,
- Stamps,
- Coins,
- Alcoholic beverages, and
- Certain other tangible personal property.

Exception. Your IRA can invest in one-, one-half-, one-quarter-, or one-tenth-ounce U.S. gold coins, or one-ounce silver coins minted by the Treasury Department. It can also invest in certain platinum coins and certain gold, silver, palladium, and platinum bullion.

Excess Contributions

Generally, an excess contribution is the amount contributed to your traditional IRA(s) for the year that is more than the smaller of:

- The maximum deductible amount for the year (for 2022, this is $6,000 ($7,000 if you are 50 or older)); or
- Your taxable compensation for the year.

An excess contribution could be the result of your contribution, your spouse's contribution, your employer's contribution, or an improper rollover contribution. If your employer makes contributions on your behalf to a SEP IRA, see chapter 2 of Pub. 560.

Tax on excess contributions. In general, if the excess contributions for a year aren't withdrawn by the date your return for the year is due (including extensions), you are subject to a 6% tax. You must pay the 6% tax each year on excess amounts that remain in your traditional IRA at the end of your tax year. The tax can't be more than 6% of the combined value of all your IRAs as of the end of your tax year. The additional tax is figured on Form 5329.

Excess contributions withdrawn by due date of return. You won't have to pay the 6% tax if you withdraw an excess contribution made during a tax year and you also withdraw interest or other income earned on the excess contribution. You must complete your withdrawal by the date your tax return for that year is due, including extensions.

How to treat withdrawn contributions. Don't include in your gross income an excess contribution that you withdraw from your traditional IRA before your tax return is due if both the following conditions are met.

- No deduction was allowed for the excess contribution.
- You withdraw the interest or other income earned on the excess contribution.

You can take into account any loss on the contribution while it was in the IRA when figuring the amount that must be withdrawn. If there was a loss, the net income you must withdraw may be a negative amount.

How to treat withdrawn interest or other income. You must include in your gross income the interest or other income that was earned on the excess contribution. Report it on your return for the year in which the excess contribution was made. Your withdrawal of interest or other income may be subject to an additional 10% tax on early distributions, discussed later.

Excess contributions withdrawn after due date of return. In general, you must include all distributions (withdrawals) from your traditional

IRA in your gross income. However, if the following conditions are met, you can withdraw excess contributions from your IRA and not include the amount withdrawn in your gross income.

- Total contributions (other than rollover contributions) for 2022 to your IRA weren't more than $6,000 ($7,000 if you are 50 or older).
- You didn't take a deduction for the excess contribution being withdrawn.

The withdrawal can take place at any time, even after the due date, including extensions, for filing your tax return for the year.

Excess contribution deducted in an earlier year. If you deducted an excess contribution in an earlier year for which the total contributions weren't more than the maximum deductible amount for that year (see the following table), you can still remove the excess from your traditional IRA and not include it in your gross income. To do this, file Form 1040-X for that year and don't deduct the excess contribution on the amended return. Generally, you can file an amended return within 3 years after you filed your return or 2 years from the time the tax was paid, whichever is later.

Year(s)	Contribution limit	Contribution limit if 50 or older at the end of the year
2019 through 2021	$6,000	$7,000
2013 through 2018	$5,500	$6,500
2008 through 2012	$5,000	$6,000
2006 or 2007	$4,000	$5,000
2005	$4,000	$4,500
2002 through 2004	$3,000	$3,500
1997 through 2001	$2,000	—
before 1997	$2,250	—

Excess due to incorrect rollover information. If an excess contribution in your traditional IRA is the result of a rollover and the excess occurred because the information the plan was required to give you was incorrect, you can withdraw the excess contribution. The limits mentioned above are increased by the amount of the excess that is due to the incorrect information. You will have to amend your return for the year in which the excess occurred to correct the reporting of the rollover amounts in that year. Don't include in your gross income the part of the excess contribution caused by the incorrect information. For more information, see *Excess Contributions* under *What Acts Result in Penalties or Additional Taxes?* in Pub. 590-A.

Early Distributions

You must include early distributions of taxable amounts from your traditional IRA in your gross income. Early distributions are also subject to an additional 10% tax. See the discussion of Form 5329 under Reporting Additional Taxes, later, to figure and report the tax.

Early distributions defined. Early distributions are generally amounts distributed from your traditional IRA account or annuity before you are age 59½.

Age 59½ rule. Generally, if you are under age 59½, you must pay a 10% additional tax on the distribution of any assets (money or other property) from your traditional IRA. Distributions before you are age 59½ are called "early distributions."

The 10% additional tax applies to the part of the distribution that you have to include in gross income. It is in addition to any regular income tax on that amount.

After age 59½ and before age 72. After you reach age 59½, you can receive distributions without having to pay the 10% additional tax. Even though you can receive distributions after you reach age 59½, distributions aren't required until you reach age 72. See When Must You Withdraw IRA Assets? (Required Minimum Distributions), earlier.

Exceptions. There are several exceptions to the age 59½ rule. Even if you receive a distribution before you are age 59½, you may not have to pay the 10% additional tax if you are in one of the following situations.

- You have unreimbursed medical expenses that are more than 7.5% of your AGI.
- The distributions aren't more than the cost of your medical insurance due to a period of unemployment.
- You are totally and permanently disabled.
- You are the beneficiary of a deceased IRA owner.
- You are receiving distributions in the form of an annuity.
- The distributions aren't more than your qualified higher education expenses.
- You use the distributions to buy, build, or rebuild a first home.
- The distribution is due to an IRS levy of the IRA or retirement plan.
- The distribution is a qualified reservist distribution.

Most of these exceptions are explained under *Early Distributions* in *What Acts Result in Penalties or Additional Taxes?* in chapter 1 of Pub. 590-B.

Note. Distributions that are timely and properly rolled over, as discussed earlier, aren't subject to either regular income tax or the 10% additional tax. Certain withdrawals of excess contributions after the due date of your return are also tax free and therefore not subject to the 10% additional tax. (See Excess contributions withdrawn after due date of return, earlier.) This also applies to transfers incident to divorce, as discussed earlier.

Receivership distributions. Early distributions (with or without your consent) from savings institutions placed in receivership are subject to this tax unless one of the exceptions listed earlier applies. This is true even if the distribution is from a receiver that is a state agency.

Additional 10% tax. The additional tax on early distributions is 10% of the amount of the early distribution that you must include in your gross income. This tax is in addition to any regular income tax resulting from including the distribution in income.

Nondeductible contributions. The tax on early distributions doesn't apply to the part of a distribution that represents a return of your nondeductible contributions (basis).

More information. For more information on early distributions, see *What Acts Result in Penalties or Additional Taxes?* in chapter 1 of Pub. 590-B.

Excess Accumulations (Insufficient Distributions)

You can't keep amounts in your traditional IRA indefinitely. Generally, you must begin receiving distributions by April 1 of the year following the year in which you reach age 72. The required minimum distribution for any year after the year in which you reach age 72 must be made by December 31 of that later year.

Tax on excess. If distributions are less than the required minimum distribution for the year, you may have to pay a 50% excise tax for that year on the amount not distributed as required.

Request to waive the tax. If the excess accumulation is due to reasonable error, and you have taken, or are taking, steps to remedy the insufficient distribution, you can request that the tax be waived. If you believe you qualify for this relief, attach a statement of explanation and complete Form 5329 as instructed under *Waiver of tax for reasonable cause* in the Instructions for Form 5329.

Exemption from tax. If you are unable to take required distributions because you have a traditional IRA invested in a contract issued by an insurance company that is in state insurer delinquency proceedings, the 50% excise tax doesn't apply if the conditions and requirements of Revenue Procedure 92-10 are satisfied.

More information. For more information on excess accumulations, see *What Acts Result in Penalties or Additional Taxes?* in chapter 1 of Pub. 590-B.

Reporting Additional Taxes

Generally, you must use Form 5329 to report the tax on excess contributions, early distributions, and excess accumulations.

Filing a tax return. If you must file an individual income tax return, complete Form 5329 and attach it to your Form 1040 or 1040-SR. Enter the total additional taxes due on Schedule 2 (Form 1040), line 8.

Not filing a tax return. If you don't have to file a tax return but do have to pay one of the additional taxes mentioned earlier, file the completed Form 5329 with the IRS at the time and place you would have filed your Form 1040 or 1040-SR. Be sure to include your address on page 1 and your signature and date on page 2. Enclose, but don't attach, a check or money

order payable to “United States Treasury” for the tax you owe, as shown on Form 5329. Enter your social security number and “2022 Form 5329” on your check or money order.

Form 5329 not required. You don't have to use Form 5329 if any of the following situations exists.

- Distribution code 1 (early distribution) is correctly shown in box 7 of all your Forms 1099-R. If you don't owe any other additional tax on a distribution, multiply the taxable part of the early distribution by 10% (0.10) and enter the result on Schedule 2 (Form 1040), line 8. Enter “No” to the left of the line to indicate that you don't have to file Form 5329. However, if you owe this tax and also owe any other additional tax on a distribution, don't enter this 10% additional tax directly on your Form 1040 or 1040-SR. You must file Form 5329 to report your additional taxes.
- If you rolled over part or all of a distribution from a qualified retirement plan, the part rolled over isn't subject to the tax on early distributions.
- If you have a qualified disaster distribution.

Roth IRAs

Regardless of your age, you may be able to establish and make nondeductible contributions to a retirement plan called a Roth IRA.

Contributions not reported. You don't report Roth IRA contributions on your return.

What Is a Roth IRA?

A Roth IRA is an individual retirement plan that, except as explained in this chapter, is subject to the rules that apply to a traditional IRA (defined earlier). It can be either an account or an annuity. Individual retirement accounts and annuities are described under *How Can a Traditional IRA Be Opened?* in chapter 1 of Pub. 590-A.

To be a Roth IRA, the account or annuity must be designated as a Roth IRA when it is opened. A deemed IRA can be a Roth IRA, but neither a SEP IRA nor a SIMPLE IRA can be designated as a Roth IRA.

Unlike a traditional IRA, you can't deduct contributions to a Roth IRA. But, if you satisfy the requirements, qualified distributions (discussed later) are tax free. You can leave amounts in your Roth IRA as long as you live.

When Can a Roth IRA Be Opened?

You can open a Roth IRA at any time. However, the time for making contributions for any year is limited. See *When Can You Make Contributions* under *Can You Contribute to a Roth IRA?* next.

Can You Contribute to a Roth IRA?

Generally, you can contribute to a Roth IRA if you have taxable compensation (defined later) and your modified AGI (defined later) is less than:

- $214,000 for married filing jointly or qualifying surviving spouse;
- $144,000 for single, head of household, or married filing separately and you didn't live with your spouse at any time during the year; or
- $10,000 for married filing separately and you lived with your spouse at any time during the year.

You may be eligible to claim a credit for contributions to your Roth IRA. For more information, see chapter 3 of Pub. 590-A.

Is there an age limit for contributions? Contributions can be made to your Roth IRA regardless of your age.

Can you contribute to a Roth IRA for your spouse? You can contribute to a Roth IRA for your spouse provided the contributions satisfy the Kay Bailey Hutchison Spousal IRA limit (discussed under *How Much Can Be Contributed*, earlier, under *Traditional IRAs*), you file jointly, and your modified AGI is less than $214,000.

Compensation. Compensation includes wages, salaries, tips, professional fees, bonuses, and other amounts received for providing personal services. It also includes commissions, self-employment income, nontaxable combat pay, military differential pay, and taxable alimony and separate maintenance payments.

See *What is compensation* for more information.

Modified AGI. Your modified AGI for Roth IRA purposes is your AGI as shown on your return with some adjustments. Use Worksheet 9-2 to determine your modified AGI.

Worksheet 9-2. **Modified AGI for Roth IRA Purposes** *Keep for Your Records*

Use this worksheet to figure your modified AGI for Roth IRA purposes.

1.	Enter your AGI from Form 1040 or 1040-SR, line 11	**1.**	______
2.	Enter any income resulting from the conversion of an IRA (other than a Roth IRA) to a Roth IRA (included on Form 1040 or 1040-SR, line 4b) and a rollover from a qualified retirement plan to a Roth IRA (included on Form 1040 or 1040-SR, line 5b)	**2.**	______
3.	Subtract line 2 from line 1	**3.**	______
4.	Enter any traditional IRA deduction from Schedule 1 (Form 1040), line 20	**4.**	______
5.	Enter any student loan interest deduction from Schedule 1 (Form 1040), line 21	**5.**	______
6.	Enter any foreign earned income and/or housing exclusion from Form 2555, line 45	**6.**	______
7.	Enter any foreign housing deduction from Form 2555, line 50	**7.**	______
8.	Enter any excludable savings bond interest from Form 8815, line 14	**8.**	______
9.	Enter any excluded employer-provided adoption benefits from Form 8839, line 28	**9.**	______
10.	Add the amounts on lines 3 through 9	**10.**	______
11.	Enter: • $214,000 if married filing jointly or qualifying surviving spouse, • $10,000 if married filing separately and you lived with your spouse at any time during the year, or • $144,000 for all others	**11.**	______

Is the amount on line 10 more than the amount on line 11?
If yes, then see the ***Note*** below.
If no, then the amount on line 10 is your **modified AGI** for Roth IRA purposes.

Note. If the amount on line 10 is more than the amount on line 11 and you have other income or loss items, such as social security income or passive activity losses, that are subject to AGI-based phaseouts, you can refigure your AGI solely for the purpose of figuring your modified AGI for Roth IRA purposes. (If you receive social security benefits, use Worksheet 1 in *Appendix B* of Pub. 590-A to refigure your AGI.) Then, go to line 3 above in this Worksheet 9-2 to refigure your modified AGI. If you don't have other income or loss items subject to AGI-based phaseouts, your modified AGI for Roth IRA purposes is the amount on line 10.

How Much Can Be Contributed?

The contribution limit for Roth IRAs generally depends on whether contributions are made only to Roth IRAs or to both traditional IRAs and Roth IRAs.

Roth IRAs only. If contributions are made only to Roth IRAs, your contribution limit is generally the lesser of the following amounts.

- $6,000 ($7,000 if you are 50 or older in 2022).
- Your taxable compensation.

However, if your modified AGI is above a certain amount, your contribution limit may be reduced, as explained later under *Contribution limit reduced*.

Roth IRAs and traditional IRAs. If contributions are made to both Roth IRAs and traditional IRAs established for your benefit, your contribution limit for Roth IRAs is generally the same as your limit would be if contributions were made only to Roth IRAs, but then reduced by all contributions for the year to all IRAs other than Roth IRAs. Employer contributions under a SEP or SIMPLE IRA plan don't affect this limit.

This means that your contribution limit is generally the lesser of the following amounts.

- $6,000 ($7,000 if you are 50 or older in 2022) minus all contributions (other than employer contributions under a SEP or SIMPLE IRA plan) for the year to all IRAs other than Roth IRAs.
- Your taxable compensation minus all contributions (other than employer contributions under a SEP or SIMPLE IRA plan) for the year to all IRAs other than Roth IRAs.

However, if your modified AGI is above a certain amount, your contribution limit may be reduced, as explained next under *Contribution limit reduced*.

Contribution limit reduced. If your modified AGI is above a certain amount, your contribution limit is gradually reduced. Use Table 9-3 to determine if this reduction applies to you.

Table 9-3. **Effect of Modified AGI on Roth IRA Contribution**

This table shows whether your contribution to a Roth IRA is affected by the amount of your modified AGI.

IF you have taxable compensation and your filing status is...	AND your modified AGI is...	THEN...
Married filing jointly or **Qualifying surviving spouse**	less than $204,000	you can contribute up to $6,000 ($7,000 if you are 50 or older in 2022).
	at least $204,000 but less than $214,000	the amount you can contribute is reduced as explained under *Contribution limit reduced* in chapter 2 of Pub. 590-A.
	$214,000 or more	you can't contribute to a Roth IRA.
Married filing separately and you lived with your spouse at any time during the year	zero (-0-)	you can contribute up to $6,000 ($7,000 if you are 50 or older in 2022).
	more than zero (-0-) but less than $10,000	the amount you can contribute is reduced as explained under *Contribution limit reduced* in chapter 2 of Pub. 590-A.
	$10,000 or more	you can't contribute to a Roth IRA.
Single, Head of household, or **Married filing separately** and you didn't live with your spouse at any time during the year	less than $129,000	you can contribute up to $6,000 ($7,000 if you are 50 or older in 2022).
	at least $129,000 but less than $144,000	the amount you can contribute is reduced as explained under *Contribution limit reduced* in chapter 2 of Pub. 590-A.
	$144,000 or more	you can't contribute to a Roth IRA.

Figuring the reduction. If the amount you can contribute to your Roth IRA is reduced, see Worksheet 2-2 under *Can You Contribute to a Roth IRA?* in chapter 2 of Pub. 590-A for how to figure the reduction.

When Can You Make Contributions?

You can make contributions to a Roth IRA for a year at any time during the year or by the due date of your return for that year (not including extensions).

You can make contributions for 2022 by the due date (not including extensions) for filing your 2022 tax return.

What if You Contribute Too Much?

A 6% excise tax applies to any excess contribution to a Roth IRA.

Excess contributions. These are the contributions to your Roth IRAs for a year that equal the total of:

1. Amounts contributed for the tax year to your Roth IRAs (other than amounts properly and timely rolled over from a Roth IRA or properly converted from a traditional IRA or rolled over from a qualified retirement plan, as described later) that are more than your contribution limit for the year; plus
2. Any excess contributions for the preceding year, reduced by the total of:
   a. Any distributions out of your Roth IRAs for the year, plus
   b. Your contribution limit for the year minus your contributions to all your IRAs for the year.

Withdrawal of excess contributions. For purposes of determining excess contributions, any contribution that is withdrawn on or before the due date (including extensions) for filing your tax return for the year is treated as an amount not contributed. This treatment applies only if any earnings on the contributions are also withdrawn. The earnings are considered to have been earned and received in the year the excess contribution was made.

Applying excess contributions. If contributions to your Roth IRA for a year were more than the limit, you can apply the excess contribution in one year to a later year if the contributions for that later year are less than the maximum allowed for that year.

Can You Move Amounts Into a Roth IRA?

You may be able to convert amounts from either a traditional, SEP, or SIMPLE IRA into a Roth IRA. You may be able to roll amounts over from a qualified retirement plan to a Roth IRA. You may be able to recharacterize contributions made to one IRA as having been made directly to a different IRA. You can roll amounts over from a designated Roth account or from one Roth IRA to another Roth IRA.

Conversions

You can convert a traditional IRA to a Roth IRA. The conversion is treated as a rollover, regardless of the conversion method used. Most of the rules for rollovers, described earlier under *Rollover From One IRA Into Another* under *Traditional IRAs*, apply to these rollovers. However, the 1-year waiting period doesn't apply.

Conversion methods. You can convert amounts from a traditional IRA to a Roth IRA in any of the following ways.

- ***Rollover***. You can receive a distribution from a traditional IRA and roll it over (contribute it) to a Roth IRA within 60 days after the distribution.
- ***Trustee-to-trustee transfer***. You can direct the trustee of the traditional IRA to transfer an amount from the traditional IRA to the trustee of the Roth IRA.
- ***Same trustee transfer***. If the trustee of the traditional IRA also maintains the Roth IRA, you can direct the trustee to transfer an amount from the traditional IRA to the Roth IRA.

Same trustee. Conversions made with the same trustee can be made by redesignating the traditional IRA as a Roth IRA, rather than opening a new account or issuing a new contract.

Rollover from a qualified retirement plan into a Roth IRA. You can roll over into a Roth IRA all or part of an eligible rollover distribution you receive from your (or your deceased spouse's):

- Employer's qualified pension, profit-sharing, or stock bonus plan;
- Annuity plan;
- Tax-sheltered annuity plan (section 403(b) plan); or
- Governmental deferred compensation plan (section 457 plan).

Any amount rolled over is subject to the same rules as those for converting a traditional IRA into a Roth IRA. Also, the rollover contribution must meet the rollover requirements that apply to the specific type of retirement plan.

Income. You must include in your gross income distributions from a qualified retirement plan that you would have had to include in income if you hadn't rolled them over into a Roth IRA. You don't include in gross income any part of a distribution from a qualified retirement plan that is a return of basis (after-tax contributions) to the plan that was taxable to you when paid. These amounts are normally included in income on your return for the year of the rollover from the qualified employer plan to a Roth IRA.

If you must include any amount in your gross income, you may have to increase your withholding or make estimated tax payments. See Pub. 505, Tax Withholding and Estimated Tax.

For more information, see *Rollover From Employer's Plan Into a Roth IRA* in chapter 2 of Pub. 590-A.

Converting from a SIMPLE IRA. Generally, you can convert an amount in your SIMPLE IRA to a Roth IRA under the same rules explained earlier under *Converting From Any Traditional IRA to a Roth IRA* under *Traditional IRAs*.

However, you can't convert any amount distributed from the SIMPLE IRA plan during the 2-year period beginning on the date you first participated in any SIMPLE IRA plan maintained by your employer.

More information. For more detailed information on conversions, see *Can You Move Amounts Into a Roth IRA?* of chapter 2 of Pub. 590-A.

Rollover From a Roth IRA

You can withdraw, tax free, all or part of the assets from one Roth IRA if you contribute them within 60 days to another Roth IRA. Most of the rules for rollovers, explained earlier under *Rollover From One IRA Into Another* under *Traditional IRAs*, apply to these rollovers.

Rollover from designated Roth account. A rollover from a designated Roth account can only be made to another designated Roth account or to a Roth IRA. For more information about designated Roth accounts, see *Designated Roth accounts* under *Rollovers* in Pub. 575.

Are Distributions Taxable?

You don't include in your gross income qualified distributions or distributions that are a return of your regular contributions from your Roth IRA(s). You also don't include distributions from your Roth IRA that you roll over tax free into another Roth IRA. You may have to include part of other distributions in your income. See *Ordering rules for distributions*, later.

What are qualified distributions? A qualified distribution is any payment or distribution from your Roth IRA that meets the following requirements.

1. It is made after the 5-year period beginning with the first tax year for which a contribution was made to a Roth IRA set up for your benefit.
2. The payment or distribution is:
   a. Made on or after the date you reach age 59½,
   b. Made because you are disabled,
   c. Made to a beneficiary or to your estate after your death, or
   d. To pay up to $10,000 (lifetime limit) of certain qualified first-time homebuyer amounts. See *First home* under *What Acts Result in Penalties or Additional Taxes?* in chapter 1 of Pub. 590-B for more information.

Additional tax on distributions of conversion and certain rollover contributions within 5-year period. If, within the 5-year period starting with the first day of your tax year in which you convert an amount from a traditional IRA or roll over an amount from a qualified retirement plan to a Roth IRA, you take a distribution from a Roth IRA, you may have to pay the 10% additional tax on early distributions. You must generally pay the 10% additional tax on any amount attributable to the part of the amount converted or rolled over (the conversion or rollover contribution) that you had to include in income. A separate 5-year period applies to each conversion and rollover. See *Ordering rules for distributions*, later, to determine the amount, if any, of the distribution that is attributable to the part of the conversion or rollover contribution that you had to include in income.

Additional tax on other early distributions. Unless an exception applies, you must pay the 10% additional tax on the taxable part of any distributions that aren't qualified distributions. See Pub. 590-B for more information.

Ordering rules for distributions. If you receive a distribution from your Roth IRA that isn't a qualified distribution, part of it may be taxable. There is a set order in which contributions (including conversion contributions and rollover contributions from qualified retirement plans) and earnings are considered to be distributed from your Roth IRA. Regular contributions are distributed first. See *Ordering Rules for Distributions* under *Are Distributions Taxable?* in chapter 2 of Pub. 590-B for more information.

Must you withdraw or use Roth IRA assets? You aren't required to take distributions from your Roth IRA at any age. The minimum distribution rules that apply to traditional IRAs don't apply to Roth IRAs while the owner is alive. However, after the death of a Roth IRA owner, certain minimum distribution rules that apply to traditional IRAs also apply to Roth IRAs.

More information. For more detailed information on Roth IRAs, see chapter 2 of Pub. 590-A and Pub. 590-B.

Part Three.

Standard Deduction, Itemized Deductions, and Other Deductions

After you have figured your adjusted gross income, you are ready to subtract the deductions used to figure taxable income. You can subtract either the standard deduction or itemized deductions, and, if you qualify, the qualified business income deduction. Itemized deductions are deductions for certain expenses that are listed on Schedule A (Form 1040). The three chapters in this part discuss the standard deduction and certain itemized deductions. See chapter 10 for the factors to consider when deciding whether to take the standard deduction or itemized deductions.

The Form 1040 and 1040-SR schedules that are discussed in these chapters are:

- *Schedule 1, Additional Income and Adjustments to Income;*
- *Schedule 2 (Part II), Other Taxes; and*
- *Schedule 3 (Part I), Nonrefundable Credits.*

10.

Standard Deduction

What's New

Standard deduction increased. The standard deduction for taxpayers who don't itemize their deductions on Schedule A (Form 1040) has increased. The amount of your standard deduction depends on your filing status and other factors. Use the 2022 Standard Deduction Tables near the end of this chapter to figure your standard deduction.

Introduction

This chapter discusses the following topics.

- How to figure the amount of your standard deduction.
- The standard deduction for dependents.
- Who should itemize deductions.

Most taxpayers have a choice of either taking a standard deduction or itemizing their deductions. If you have a choice, you can use the method that gives you the lower tax.

The standard deduction is a dollar amount that reduces your taxable income. It is a benefit that eliminates the need for many taxpayers to itemize actual deductions, such as medical expenses, charitable contributions, and taxes, on Schedule A (Form 1040). The standard deduction is higher for taxpayers who:

- Are 65 or older, or
- Are blind.

You benefit from the standard deduction if your standard deduction is more than the total of your allowable itemized deductions.

Persons not eligible for the standard deduction. Your standard deduction is zero and you should itemize any deductions you have if:

- Your filing status is married filing separately, and your spouse itemizes deductions on their return;
- You are filing a tax return for a short tax year because of a change in your annual accounting period; or
- You are a nonresident or dual-status alien during the year. You are considered a dual-status alien if you were both a nonresident and resident alien during the year.

If you are a nonresident alien who is married to a U.S. citizen or resident alien at the end of the year, you can choose to be treated as a U.S. resident. (See Pub. 519.) If you make this choice, you can take the standard deduction.

If you can be claimed as a dependent on another person's return (such as your parents' return), your standard deduction may be limited. See Standard Deduction for Dependents, later.

Useful Items

You may want to see:

Publication

- ❏ **501** Dependents, Standard Deduction, and Filing Information
- ❏ **502** Medical and Dental Expenses
- ❏ **526** Charitable Contributions
- ❏ **530** Tax Information for Homeowners
- ❏ **547** Casualties, Disasters, and Thefts
- ❏ **550** Investment Income and Expenses
- ❏ **970** Tax Benefits for Education
- ❏ **936** Home Mortgage Interest Deduction

Form (and Instructions)

- ❏ **Schedule A (Form 1040)** Itemized Deductions

Standard Deduction Amount

The standard deduction amount depends on your filing status, whether you are 65 or older or blind, and whether another taxpayer can claim you as a dependent. Generally, the standard deduction amounts are adjusted each year for inflation. The standard deduction amounts for most people are shown in Table 10-1.

Decedent's final return. The standard deduction for a decedent's final tax return is the same as it would have been had the decedent continued to live. However, if the decedent wasn't 65 or older at the time of death, the higher standard deduction for age can't be claimed.

Higher Standard Deduction for Age (65 or Older)

If you are age 65 or older on the last day of the year and don't itemize deductions, you are entitled to a higher standard deduction. You are considered 65 on the day before your 65th birthday. Therefore, you can take a higher standard deduction for 2022 if you were born before January 2, 1958.

Use Table 10-2 to figure the standard deduction amount.

Death of a taxpayer. If you are preparing a return for someone who died in 2022, read this before using Table 10-2 or Table 10-3. Consider the taxpayer to be 65 or older at the end of 2022 only if they were 65 or older at the time of death. Even if the taxpayer was born before January 2, 1958, they are not considered 65 or

older at the end of 2022 unless they were 65 or older at the time of death.

A person is considered to reach age 65 on the day before their 65th birthday.

Higher Standard Deduction for Blindness

If you are blind on the last day of the year and you don't itemize deductions, you are entitled to a higher standard deduction.

Not totally blind. If you aren't totally blind, you must get a certified statement from an eye doctor (ophthalmologist or optometrist) that:

- You can't see better than 20/200 in the better eye with glasses or contact lenses, or
- Your field of vision is 20 degrees or less.

If your eye condition isn't likely to improve beyond these limits, the statement should include this fact. Keep the statement in your records.

If your vision can be corrected beyond these limits only by contact lenses that you can wear only briefly because of pain, infection, or ulcers, you can take the higher standard deduction for blindness if you otherwise qualify.

Spouse 65 or Older or Blind

You can take the higher standard deduction if your spouse is age 65 or older or blind and:

- You file a joint return, or
- You file a separate return and your spouse had no gross income and can't be claimed as a dependent by another taxpayer.

Death of a spouse. If your spouse died in 2022 before reaching age 65, you can't take a higher standard deduction because of your spouse. Even if your spouse was born before January 2, 1958, your spouse isn't considered 65 or older at the end of 2022 unless your spouse was 65 or older at the time of death.

A person is considered to reach age 65 on the day before their 65th birthday.

Example. Your spouse was born on February 14, 1957, and died on February 13, 2022. Your spouse is considered age 65 at the time of death. However, if your spouse died on February 12, 2022, your spouse isn't considered age 65 at the time of death and isn't 65 or older at the end of 2022.

You can't claim the higher standard deduction for an individual other than yourself and your spouse.

Higher Standard Deduction for Net Disaster Loss

Your standard deduction may be increased by any net qualified disaster loss.

See the Instructions for Form 1040 and the Instructions for Schedule A (Form 1040) for more information on how to figure your increased standard deduction and how to report it on Form 1040 or 1040-SR.

Examples

The following examples illustrate how to determine your standard deduction using Tables 10-1 and 10-2.

Example 1. L, 46, and D, 33, are filing a joint return for 2022. Neither is blind, and neither can be claimed as a dependent. They decide not to itemize their deductions. They use Table 10-1. Their standard deduction is $25,900.

Example 2. The facts are the same as in *Example 1*, except that L is blind at the end of 2022. L and D use Table 10-2. Their standard deduction is $27,300.

Example 3. B and L are filing a joint return for 2022. Both are over age 65. Neither is blind, and neither can be claimed as a dependent. If they don't itemize deductions, they use Table 10-2. Their standard deduction is $28,700.

Standard Deduction for Dependents

The standard deduction for an individual who can be claimed as a dependent on another person's tax return is generally limited to the greater of:

- $1,150, or
- The individual's earned income for the year plus $400 (but not more than the regular standard deduction amount, generally $12,950).

However, if the individual is 65 or older or blind, the standard deduction may be higher.

If you (or your spouse, if filing jointly) can be claimed as a dependent on someone else's return, use Table 10-3 to determine your standard deduction.

Earned income defined. Earned income is salaries, wages, tips, professional fees, and other amounts received as pay for work you actually perform.

For purposes of the standard deduction, earned income also includes any part of a taxable scholarship or fellowship grant. See chapter 1 of Pub. 970, Tax Benefits for Education, for more information on what qualifies as a scholarship or fellowship grant.

Example 1. M is 16 years old and single. M's parents can claim M as a dependent on their 2022 tax return. M has interest income of $780 and wages of $150 and no itemized deductions. M uses Table 10-3 to find M's standard deduction. M enters $150 (earned income) on line 1, $550 ($150 + $400) on line 3, $1,150 (the larger of $550 and $1,150) on line 5, and $12,950 on line 6. M's standard deduction, on line 7a, is $1,150 (the smaller of $1,150 and $12,950).

Example 2. J, a 22-year-old college student, can be claimed as a dependent on J's parents' 2022 tax return. J is married and files a separate return. J's spouse doesn't itemize deductions. J has $1,500 in interest income and wages of $3,800 and no itemized deductions. J finds J's standard deduction by using Table 10-3. J enters earned income, $3,800, on line 1. J adds lines 1 and 2 and enters $4,200 ($3,800 + $400) on line 3. On line 5, J enters $4,200, the larger of lines 3 and 4. Because J is married filing a separate return, J enters $12,950 on line 6. On line 7a, J enters $4,200 as the standard deduction amount because it is smaller than $12,950, the amount on line 6.

Example 3. A, who is single, can be claimed as a dependent on A's parents' 2022 tax return. A is 18 years old and blind. A has interest income of $1,300 and wages of $2,900 and no itemized deductions. A uses Table 10-3 to find the standard deduction amount. A enters wages of $2,900 on line 1 and adds lines 1 and 2 and enters $3,300 ($2,900 + 400) on line 3. On line 5, A enters $3,300, the larger of lines 3 and 4. Because A is single, A enters $12,950 on line 6. A enters $3,300 on line 7a. This is the smaller of the amounts on lines 5 and 6. Because A checked the box in the top part of the worksheet, indicating A is blind, A enters $1,750 on line 7b then adds the amounts on lines 7a and 7b and enters the standard deduction amount of $5,050 ($3,300 + $1,750) on line 7c.

Example 4. E is 18 years old and single and can be claimed as a dependent on E's parents' 2022 tax return. E has wages of $7,000, interest income of $500, a business loss of $3,000 and no itemized deductions. E uses Table 10-3 to figure the standard deduction amount. E enters $4,000 ($7,000 − $3,000) on line 1, adds lines 1 and 2 and enters $4,400 ($4,000 + $400) on line 3. On line 5, E enters $4,400, the larger of lines 3 and 4, and because E is single, $12,950 on line 6. On line 7a, E enters $4,400 as the standard deduction amount because it is smaller than $12,950, the amount on line 6.

Who Should Itemize

You should itemize deductions if your total deductions are more than your standard deduction amount. Also, you should itemize if you don't qualify for the standard deduction, as discussed earlier under *Persons not eligible for the standard deduction*.

You should first figure your itemized deductions and compare that amount to your standard deduction to make sure you are using the method that gives you the greater benefit.

When to itemize. You may benefit from itemizing your deductions on Schedule A (Form 1040) if you:

- Don't qualify for the standard deduction,
- Had large uninsured medical and dental expenses during the year,
- Paid interest and taxes on your home,
- Had large uninsured casualty or theft losses,
- Made large contributions to qualified charities, or

- Have total itemized deductions that are more than the standard deduction to which you are otherwise entitled.

These deductions are explained in chapter 11 and in the publications listed under *Useful Items*, earlier.

If you decide to itemize your deductions, complete Schedule A and attach it to your Form 1040 or 1040-SR. Enter the amount from Schedule A, line 17, on Form 1040 or Form 1040-SR, line 12.

Electing to itemize for state tax or other purposes. Even if your itemized deductions are less than your standard deduction, you can elect to itemize deductions on your federal return rather than taking the standard deduction. You may want to do this if, for example, the tax benefit of itemizing your deductions on your state tax return is greater than the tax benefit you lose on your federal return by not taking the standard deduction. To make this election, you must check the box on line 18 of Schedule A.

Changing your mind. If you don't itemize your deductions and later find that you should have itemized—or if you itemize your deductions and later find you shouldn't have—you can change your return by filing Form 1040-X, Amended U.S. Individual Income Tax Return. See *Amended Returns and Claims for Refund* in chapter 1 for more information on amended returns.

Married persons who filed separate returns. You can change methods of taking deductions only if you and your spouse both make the same changes. Both of you must file a consent to assessment for any additional tax either one may owe as a result of the change.

You and your spouse can use the method that gives you the lower total tax, even though one of you may pay more tax than you would have paid by using the other method. You both must use the same method of claiming deductions. If one itemizes deductions, the other should itemize because they won't qualify for the standard deduction. See *Persons not eligible for the standard deduction*, earlier.

2022 Standard Deduction Tables

If you are married filing a separate return and your spouse itemizes deductions, or if you are a dual-status alien, you can't take the standard deduction even if you were born before January 2, 1958, or are blind.

Table 10-1. Standard Deduction Chart for Most People*

IF your filing status is...	THEN your standard deduction is...
Single or Married filing separately	$12,950
Married filing jointly or Qualifying surviving spouse	25,900
Head of household	19,400

* Don't use this chart if you were born before January 2, 1958, are blind, or if someone else can claim you (or your spouse, if filing jointly) as a dependent. Use Table 10-2 or 10-3 instead.

Table 10-2. Standard Deduction Chart for People Born Before January 2, 1958, or Who Are Blind*

Check the correct number of boxes below. Then go to the chart.

You: Born before January 2, 1958 ☐ Blind ☐

Your spouse: Born before January 2, 1958 ☐ Blind ☐

Total number of boxes checked ☐

IF your filing status is...	AND the number in the box above is...	THEN your standard deduction is...
Single	1 2	$14,700 16,450
Married filing jointly	1 2 3 4	$27,300 28,700 30,100 31,500
Qualifying surviving spouse	1 2	$27,300 28,700
Married filing separately**	1 2 3 4	$14,350 15,750 17,150 18,550
Head of household	1 2	$21,150 22,900

* If someone else can claim you (or your spouse, if filing jointly) as a dependent, use Table 10-3 instead.

** You can check the boxes for *Your Spouse* if your filing status is married filing separately and your spouse had no income, isn't filing a return, and can't be claimed as a dependent on another person's return.

Table 10-3. Standard Deduction Worksheet for Dependents

Use this worksheet only if someone else can claim you (or your spouse, if filing jointly) as a dependent.

Check the correct number of boxes below. Then go to the worksheet.

You: Born before January 2, 1958 ☐ Blind ☐

Your spouse: Born before January 2, 1958 ☐ Blind ☐

Total number of boxes checked ☐

1.	Enter your earned income (defined below). If none, enter -0-.	**1.** ______
2.	Additional amount.	**2.** $400
3.	Add lines 1 and 2.	**3.** ______
4.	Minimum standard deduction.	**4.** $1,150
5.	Enter the larger of line 3 or line 4.	**5.** ______
6.	Enter the amount shown below for your filing status. • Single or Married filing separately—$12,950 • Married filing jointly—$25,900 • Head of household—$19,400	**6.** ______
7.	**Standard deduction.** **a.** Enter the smaller of line 5 or line 6. If born after January 1, 1958, and not blind, stop here. This is your standard deduction. Otherwise, go on to line 7b. **b.** If born before January 2, 1958, or blind, multiply $1,750 ($1,400 if married) by the number in the box above. **c.** Add lines 7a and 7b. This is your standard deduction for 2022.	**7a.** ______ **7b.** ______ **7c.** ______

Earned income *includes wages, salaries, tips, professional fees, and other compensation received for personal services you performed. It also includes any taxable scholarship or fellowship grant.*

11. Taxes

Reminders

Limitation on deduction for state and local taxes. The Tax Cuts and Jobs Act provided for a temporary limitation on the deduction for state and local taxes. See *Limitation on deduction for state and local taxes*, later.

No deduction for foreign taxes paid for real estate. You can no longer deduct foreign taxes you paid on real estate.

Introduction

This chapter discusses which taxes you can deduct if you itemize deductions on Schedule A (Form 1040). It also explains which taxes you can deduct on other schedules or forms and which taxes you can't deduct.

This chapter covers the following topics.

- Income taxes (federal, state, local, and foreign).
- General sales taxes (state and local).
- Real estate taxes (state, local, and foreign).
- Personal property taxes (state and local).
- Taxes and fees you can't deduct.

Use Table 11-1 as a guide to determine which taxes you can deduct.

The end of the chapter contains a section that explains which forms you use to deduct different types of taxes.

Business taxes. You can deduct certain taxes only if they are ordinary and necessary expenses of your trade or business or of producing income. For information on these taxes, see Pub. 535, Business Expenses.

State or local taxes. These are taxes imposed by the 50 states, U.S. possessions, or any of their political subdivisions (such as a county or city), or by the District of Columbia.

Indian tribal government. An Indian tribal government recognized by the Secretary of the Treasury as performing substantial government functions will be treated as a state for purposes of claiming a deduction for taxes. Income taxes, real estate taxes, and personal property taxes imposed by that Indian tribal government (or by any of its subdivisions that are treated as political subdivisions of a state) are deductible.

General sales taxes. These are taxes imposed at one rate on retail sales of a broad range of classes of items.

Foreign taxes. These are taxes imposed by a foreign country or any of its political subdivisions.

Useful Items

You may want to see:

Publication

- ❏ **502** Medical and Dental Expenses
- ❏ **503** Child and Dependent Care Expenses
- ❏ **504** Divorced or Separated Individuals
- ❏ **514** Foreign Tax Credit for Individuals
- ❏ **525** Taxable and Nontaxable Income
- ❏ **530** Tax Information for Homeowners

Form (and Instructions)

- ❏ **Schedule A (Form 1040)** Itemized Deductions
- ❏ **Schedule E (Form 1040)** Supplemental Income and Loss
- ❏ **1116** Foreign Tax Credit

For these and other useful items, go to *IRS.gov/Forms*.

Tests To Deduct Any Tax

The following two tests must be met for you to deduct any tax.

- The tax must be imposed on you.
- You must pay the tax during your tax year.

The tax must be imposed on you. In general, you can deduct only taxes imposed on you.

Generally, you can deduct property taxes only if you are an owner of the property. If your spouse owns the property and pays the real estate taxes, the taxes are deductible on your spouse's separate return or on your joint return.

You must pay the tax during your tax year. If you are a cash basis taxpayer, you can deduct only those taxes you actually paid during your tax year. If you pay your taxes by check and the check is honored by your financial institution, the day you mail or deliver the check is the date of payment. If you use a pay-by-phone account (such as a credit card or electronic funds withdrawal), the date reported on the statement of the financial institution showing when payment was made is the date of payment. If you contest a tax liability and are a cash basis taxpayer, you can deduct the tax only in the year you actually pay it (or transfer money or other property to provide for satisfaction of the contested liability). See Pub. 538, Accounting Periods and Methods, for details.

If you use an accrual method of accounting, see Pub. 538 for more information.

Income Taxes

This section discusses the deductibility of state and local income taxes (including employee contributions to state benefit funds) and foreign income taxes.

State and Local Income Taxes

You can deduct state and local income taxes.

Exception. You can't deduct state and local income taxes you pay on income that is exempt from federal income tax, unless the exempt income is interest income. For example, you can't deduct the part of a state's income tax that is on a cost-of-living allowance exempt from federal income tax.

What To Deduct

Your deduction may be for withheld taxes, estimated tax payments, or other tax payments as follows.

Withheld taxes. You can deduct state and local income taxes withheld from your salary in the year they are withheld. Your Form(s) W-2 will show these amounts. Forms W-2G, 1099-B, 1099-DIV, 1099-G, 1099-K, 1099-MISC, 1099-NEC, 1099-OID, and 1099-R may also show state and local income taxes withheld.

Estimated tax payments. You can deduct estimated tax payments you made during the year to a state or local government. However, you must have a reasonable basis for making the estimated tax payments. Any estimated state or local tax payments that aren't made in good faith at the time of payment aren't deductible.

Example. You made an estimated state income tax payment. However, the estimate of your state tax liability shows that you will get a refund of the full amount of your estimated payment. You had no reasonable basis to believe you had any additional liability for state income taxes and you can't deduct the estimated tax payment.

Refund applied to taxes. You can deduct any part of a refund of prior-year state or local income taxes that you chose to have credited to your 2022 estimated state or local income taxes.

Don't reduce your deduction by either of the following items.

- Any state or local income tax refund (or credit) you expect to receive for 2022.
- Any refund of (or credit for) prior-year state and local income taxes you actually received in 2022.

However, part or all of this refund (or credit) may be taxable. See *Refund (or credit) of state or local income taxes*, later.

Separate federal returns. If you and your spouse file separate state, local, and federal income tax returns, each of you can deduct on your federal return only the amount of your own state and local income tax that you paid during the tax year.

Joint state and local returns. If you and your spouse file joint state and local returns and separate federal returns, each of you can deduct on your separate federal return a part of the state and local income taxes paid during the tax year. You can deduct only the amount of the total taxes that is proportionate to your gross income compared to the combined gross income of you and your spouse. However, you can't deduct more than the amount you actually paid during the year. You can avoid this calculation if you and your spouse are jointly and individually liable for the full amount of the state and local

income taxes. If so, you and your spouse can deduct on your separate federal returns the amount you each actually paid.

Joint federal return. If you file a joint federal return, you can deduct the state and local income taxes both of you paid.

Contributions to state benefit funds. As an employee, you can deduct mandatory contributions to state benefit funds withheld from your wages that provide protection against loss of wages. For example, certain states require employees to make contributions to state funds providing disability or unemployment insurance benefits. Mandatory payments made to the following state benefit funds are deductible as state income taxes on Schedule A (Form 1040), line 5a.

- Alaska Unemployment Compensation Fund.
- California Nonoccupational Disability Benefit Fund.
- New Jersey Nonoccupational Disability Benefit Fund.
- New Jersey Unemployment Compensation Fund.
- New York Nonoccupational Disability Benefit Fund.
- Pennsylvania Unemployment Compensation Fund.
- Rhode Island Temporary Disability Benefit Fund.
- Washington State Supplemental Workmen's Compensation Fund.

Employee contributions to private or voluntary disability plans aren't deductible.

Refund (or credit) of state or local income taxes. If you receive a refund of (or credit for) state or local income taxes in a year after the year in which you paid them, you may have to include the refund in income on Schedule 1 (Form 1040), line 1, in the year you receive it. This includes refunds resulting from taxes that were overwithheld, applied from a prior-year return, not figured correctly, or figured again because of an amended return. If you didn't itemize your deductions in the previous year, don't include the refund in income. If you deducted the taxes in the previous year, include all or part of the refund on Schedule 1 (Form 1040), line 1, in the year you receive the refund. For a discussion of how much to include, see *Recoveries* in Pub. 525, Taxable and Nontaxable Income, for more information.

Foreign Income Taxes

Generally, you can take either a deduction or a credit for income taxes imposed on you by a foreign country or a U.S. possession. However, you can't take a deduction or credit for foreign income taxes paid on income that is exempt from U.S. tax under the foreign earned income exclusion or the foreign housing exclusion. For information on these exclusions, see Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad. For information on the foreign tax credit, see Pub. 514.

State and Local General Sales Taxes

You can elect to deduct state and local general sales taxes, instead of state and local income taxes, as an itemized deduction on Schedule A (Form 1040), line 5a. You can use either your actual expenses or the state and local sales tax tables to figure your sales tax deduction.

Actual expenses. Generally, you can deduct the actual state and local general sales taxes (including compensating use taxes) if the tax rate was the same as the general sales tax rate.

Food, clothing, and medical supplies. Sales taxes on food, clothing, and medical supplies are deductible as a general sales tax even if the tax rate was less than the general sales tax rate.

Motor vehicles. Sales taxes on motor vehicles are deductible as a general sales tax even if the tax rate was less than the general sales tax rate. However, if you paid sales tax on a motor vehicle at a rate higher than the general sales tax, you can deduct only the amount of the tax that you would have paid at the general sales tax rate on that vehicle. Include any state and local general sales taxes paid for a leased motor vehicle. For purposes of this section, motor vehicles include cars, motorcycles, motor homes, recreational vehicles, sport utility vehicles, trucks, vans, and off-road vehicles.

If you use the actual expenses method, you must have receipts to show the general sales taxes paid.

Trade or business items. Don't include sales taxes paid on items used in your trade or business on Schedule A (Form 1040). Instead, go to the instructions for the form you are using to report business income and expenses to see if you can deduct these taxes.

Optional sales tax tables. Instead of using your actual expenses, you can figure your state and local general sales tax deduction using the state and local sales tax tables in the Instructions for Schedule A (Form 1040). You may also be able to add the state and local general sales taxes paid on certain specified items.

Your applicable table amount is based on the state where you live, your income, and your family size. Your income is your adjusted gross income plus any nontaxable items such as the following.

- Tax-exempt interest.
- Veterans' benefits.
- Nontaxable combat pay.
- Workers' compensation.
- Nontaxable part of social security and railroad retirement benefits.
- Nontaxable part of IRA, pension, or annuity distributions, excluding rollovers.
- Public assistance payments.

If you lived in different states during the same tax year, you must prorate your applicable table amount for each state based on the days you lived in each state. See the instructions for Schedule A (Form 1040), line 5a, for details.

State and Local Real Estate Taxes

Deductible real estate taxes are any state and local taxes on real property levied for the general public welfare. You can deduct these taxes only if they are assessed uniformly against all property under the jurisdiction of the taxing authority. The proceeds must be for general community or governmental purposes and not be a payment for a special privilege granted or service rendered to you.

Deductible real estate taxes generally don't include taxes charged for local benefits and improvements that increase the value of the property. They also don't include itemized charges for services (such as trash collection) assessed against specific property or certain people, even if the charge is paid to the taxing authority. For more information about taxes and charges that aren't deductible, see *Real Estate-Related Items You Can't Deduct*, later.

Tenant-shareholders in a cooperative housing corporation. Generally, if you are a tenant-stockholder in a cooperative housing corporation, you can deduct the amount paid to the corporation that represents your share of the real estate taxes the corporation paid or incurred for your dwelling unit. The corporation should provide you with a statement showing your share of the taxes. For more information, see *Special Rules for Cooperatives* in Pub. 530.

Division of real estate taxes between buyers and sellers. If you bought or sold real estate during the year, the real estate taxes must be divided between the buyer and the seller.

The buyer and the seller must divide the real estate taxes according to the number of days in the real property tax year (the period to which the tax is imposed relates) that each owned the property. The seller is treated as paying the taxes up to, but not including, the date of sale. The buyer is treated as paying the taxes beginning with the date of sale. This applies regardless of the lien dates under local law. Generally, this information is included on the settlement statement provided at the closing.

If you (the seller) can't deduct taxes until they are paid because you use the cash method of accounting, and the buyer of your property is personally liable for the tax, you are considered to have paid your part of the tax at the time of the sale. This lets you deduct the part of the tax to the date of sale even though you didn't actually pay it. However, you must also include the amount of that tax in the selling price of the property. The buyer must include the same amount in his or her cost of the property.

You figure your deduction for taxes on each property bought or sold during the real property tax year as follows.

Worksheet 11-1. **Figuring Your State and Local Real Estate Tax Deduction**
Keep for Your Records

1.	Enter the total state and local real estate taxes for the real property tax year	
2.	Enter the number of days in the real property tax year that you owned the property	
3.	Divide line 2 by 365 (for leap years, divide line 2 by 366)	.
4.	Multiply line 1 by line 3. This is your deduction. Enter it on Schedule A (Form 1040), line 5b	

Note. Repeat steps 1 through 4 for each property you bought or sold during the real property tax year. Your total deduction is the sum of the line 4 amounts for all of the properties.

Real estate taxes for prior years. Don't divide delinquent taxes between the buyer and seller if the taxes are for any real property tax year before the one in which the property is sold. Even if the buyer agrees to pay the delinquent taxes, the buyer can't deduct them. The buyer must add them to the cost of the property. The seller can deduct these taxes paid by the buyer. However, the seller must include them in the selling price.

Examples. The following examples illustrate how real estate taxes are divided between buyer and seller.

Example 1. Dennis and Beth White's real property tax year for both their old home and their new home is the calendar year, with payment due August 1. The tax on their old home, sold on May 7, was $620. The tax on their new home, bought on May 3, was $732. Dennis and Beth are considered to have paid a proportionate share of the real estate taxes on the old home even though they didn't actually pay them to the taxing authority. On the other hand, they can claim only a proportionate share of the taxes they paid on their new property even though they paid the entire amount.

Dennis and Beth owned their old home during the real property tax year for 126 days (January 1 to May 6, the day before the sale). They figure their deduction for taxes on their old home as follows.

Worksheet 11-1. **Figuring Your State and Local Real Estate Tax Deduction — Taxes on Old Home**

1.	Enter the total state and local real estate taxes for the real property tax year	$620
2.	Enter the number of days in the real property tax year that you owned the property	126
3.	Divide line 2 by 365 (for leap years, divide line 2 by 366)	0.3452
4.	Multiply line 1 by line 3. This is your deduction. Enter it on Schedule A (Form 1040), line 5b	$214

Since the buyers of their old home paid all of the taxes, Dennis and Beth also include the $214 in the selling price of the old home. (The buyers add the $214 to their cost of the home.)

Dennis and Beth owned their new home during the real property tax year for 243 days (May 3 to December 31, including their date of purchase). They figure their deduction for taxes on their new home as follows.

Worksheet 11-1. **Figuring Your State and Local Real Estate Tax Deduction — Taxes on New Home**

1.	Enter the total state and local real estate taxes for the real property tax year	$732
2.	Enter the number of days in the real property tax year that you owned the property	243
3.	Divide line 2 by 365 (for leap years, divide line 2 by 366)	0.6658
4.	Multiply line 1 by line 3. This is your deduction. Enter it on Schedule A (Form 1040), line 5b	$487

Since Dennis and Beth paid all of the taxes on the new home, they add $245 ($732 paid less $487 deduction) to their cost of the new home. (The sellers add this $245 to their selling price and deduct the $245 as a real estate tax.)

Dennis and Beth's real estate tax deduction for their old and new homes is the sum of $214 and $487, or $701. They will enter this amount on Schedule A (Form 1040), line 5b.

Example 2. George and Helen Brown bought a new home on May 3, 2022. Their real property tax year for the new home is the calendar year. Real estate taxes for 2021 were assessed in their state on January 1, 2022. The taxes became due on May 31, 2022, and October 31, 2022.

The Browns agreed to pay all taxes due after the date of purchase. Real estate taxes for 2021 were $680. They paid $340 on May 31, 2022, and $340 on October 31, 2022. These taxes were for the 2021 real property tax year. The Browns can't deduct them since they didn't own the property until 2022. Instead, they must add $680 to the cost of their new home.

In January 2023, the Browns receive their 2022 property tax statement for $752, which they will pay in 2023. The Browns owned their new home during the 2022 real property tax year for 243 days (May 3 to December 31). They will figure their 2023 deduction for taxes as follows.

Worksheet 11-1. **Figuring Your State and Local Real Estate Tax Deduction — Taxes on New Home**

1.	Enter the total state and local real estate taxes for the real property tax year	$752
2.	Enter the number of days in the real property tax year that you owned the property	243
3.	Divide line 2 by 365 (for leap years, divide line 2 by 366)	0.6658
4.	Multiply line 1 by line 3. This is your deduction. Claim it on Schedule A (Form 1040), line 5b	$501

The remaining $251 ($752 paid less $501 deduction) of taxes paid in 2023, along with the $680 paid in 2022, is added to the cost of their new home.

Because the taxes up to the date of sale are considered paid by the seller on the date of sale, the seller is entitled to a 2022 tax deduction of $931. This is the sum of the $680 for 2021 and the $251 for the 122 days the seller owned the home in 2022. The seller must also include the $931 in the selling price when they figure the gain or loss on the sale. The seller should contact the Browns in January 2023 to find out how much real estate tax is due for 2022.

Form 1099-S. For certain sales or exchanges of real estate, the person responsible for closing the sale (generally, the settlement agent) prepares Form 1099-S, Proceeds From Real Estate Transactions, to report certain information to the IRS and to the seller of the property. Box 2 of Form 1099-S is for the gross proceeds from the sale and should include the portion of the seller's real estate tax liability that the buyer will pay after the date of sale. The buyer includes these taxes in the cost basis of the property, and the seller both deducts this amount as a tax paid and includes it in the sales price of the property.

For a real estate transaction that involves a home, any real estate tax the seller paid in advance but that is the liability of the buyer appears on Form 1099-S, box 6. The buyer deducts this amount as a real estate tax, and the seller reduces their real estate tax deduction (or includes it in income) by the same amount. See Refund (or rebate), later.

Taxes placed in escrow. If your monthly mortgage payment includes an amount placed in escrow (put in the care of a third party) for real estate taxes, you may not be able to deduct the total amount placed in escrow. You can deduct only the real estate tax that the third party actually paid to the taxing authority. If the third party doesn't notify you of the amount of real estate tax that was paid for you, contact the third party or the taxing authority to find the proper amount to show on your return.

Tenants by the entirety. If you and your spouse held property as tenants by the entirety and you file separate federal returns, each of you can deduct only the taxes each of you paid on the property.

Divorced individuals. If your divorce or separation agreement states that you must pay the real estate taxes for a home owned by you and your spouse, part of your payments may be deductible as alimony and part as real estate taxes. See *Payments to a third party* in Pub. 504, Divorced or Separated Individuals, for more information.

Ministers' and military housing allowances. If you are a minister or a member of the uniformed services and receive a housing allowance that you can exclude from income, you still can deduct all of the real estate taxes you pay on your home.

Refund (or rebate). If you received a refund or rebate in 2022 of real estate taxes you paid in 2022, you must reduce your deduction by the amount refunded to you. If you received a refund or rebate in 2022 of real estate taxes you deducted in an earlier year, you generally must include the refund or rebate in income in the year you receive it. However, the amount you include in income is limited to the amount of the deduction that reduced your tax in the earlier

Table 11-1. **Which Taxes Can You Deduct?**

Type of Tax	You Can Deduct	You Can't Deduct
Fees and Charges	Fees and charges that are expenses of your trade or business or of producing income.	Fees and charges that aren't expenses of your trade or business or of producing income, such as fees for driver's licenses, car inspections, parking, or charges for water bills (see *Taxes and Fees You Can't Deduct*). Fines and penalties.
Income Taxes	State and local income taxes. Foreign income taxes. Employee contributions to state funds listed under *Contributions to state benefit funds*.	Federal income taxes. Employee contributions to private or voluntary disability plans. State and local general sales taxes if you choose to deduct state and local income taxes.
General Sales Taxes	State and local general sales taxes, including compensating use taxes.	State and local income taxes if you choose to deduct state and local general sales taxes.
Other Taxes	Taxes that are expenses of your trade or business. Taxes on property producing rent or royalty income. One-half of self-employment tax paid.	Federal excise taxes, such as tax on gasoline, that aren't expenses of your trade or business or of producing income. Per capita taxes.
Personal Property Taxes	State and local personal property taxes.	Customs duties that aren't expenses of your trade or business or of producing income.
Real Estate Taxes	State and local real estate taxes. Tenant's share of real estate taxes paid by a cooperative housing corporation.	Real estate taxes that are treated as imposed on someone else (see *Division of real estate taxes between buyers and sellers*). Foreign real estate taxes. Taxes for local benefits (with exceptions). See *Real Estate-Related Items You Can't Deduct*. Trash and garbage pickup fees (with exceptions). See *Real Estate-Related Items You Can't Deduct*. Rent increase due to higher real estate taxes. Homeowners' association charges.

year. For more information, see *Recoveries* in Pub. 525.

Real Estate-Related Items You Can't Deduct

Payments for the following items generally aren't deductible as real estate taxes.

- Taxes for local benefits.
- Itemized charges for services (such as trash and garbage pickup fees).
- Transfer taxes (or stamp taxes).
- Rent increases due to higher real estate taxes.
- Homeowners' association charges.

Taxes for local benefits. Deductible real estate taxes generally don't include taxes charged for local benefits and improvements tending to increase the value of your property. These include assessments for streets, sidewalks, water mains, sewer lines, public parking facilities, and similar improvements. You should increase the basis of your property by the amount of the assessment.

Local benefit taxes are deductible only if they are for maintenance, repair, or interest charges related to those benefits. If only a part of the taxes is for maintenance, repair, or interest, you must be able to show the amount of that part to claim the deduction. If you can't determine what part of the tax is for maintenance, repair, or interest, none of it is deductible.

Taxes for local benefits may be included in your real estate tax bill. If your taxing authority (or mortgage lender) doesn't furnish you a copy of your real estate tax bill, ask for it. You should use the rules above to determine if the local benefit tax is deductible. Contact the taxing authority if you need additional information about a specific charge on your real estate tax bill.

Itemized charges for services. An itemized charge for services assessed against specific property or certain people isn't a tax, even if the charge is paid to the taxing authority. For example, you can't deduct the charge as a real estate tax if it is:

- A unit fee for the delivery of a service (such as a $5 fee charged for every 1,000 gallons of water you use),
- A periodic charge for a residential service (such as a $20 per month or $240 annual fee charged to each homeowner for trash collection), or
- A flat fee charged for a single service provided by your government (such as a $30 charge for mowing your lawn because it was allowed to grow higher than permitted under your local ordinance).

You must look at your real estate tax bill to determine if any nondeductible itemized charges, such as those listed above, are included in the bill. If your taxing authority (or mortgage lender) doesn't furnish you a copy of your real estate tax bill, ask for it.

Exception. Service charges used to maintain or improve services (such as trash collection or police and fire protection) are deductible as real estate taxes if:

- The fees or charges are imposed at a like rate against all property in the taxing jurisdiction;
- The funds collected aren't earmarked; instead, they are commingled with general revenue funds; and

- Funds used to maintain or improve services aren't limited to or determined by the amount of these fees or charges collected.

Transfer taxes (or stamp taxes). Transfer taxes and similar taxes and charges on the sale of a personal home aren't deductible. If they are paid by the seller, they are expenses of the sale and reduce the amount realized on the sale. If paid by the buyer, they are included in the cost basis of the property.

Rent increase due to higher real estate taxes. If your landlord increases your rent in the form of a tax surcharge because of increased real estate taxes, you can't deduct the increase as taxes.

Homeowners' association charges. These charges aren't deductible because they are imposed by the homeowners' association, rather than the state or local government.

Personal Property Taxes

Personal property tax is deductible if it is a state or local tax that is:

- Charged on personal property;
- Based only on the value of the personal property; and
- Charged on a yearly basis, even if it is collected more or less than once a year.

A tax that meets the above requirements can be considered charged on personal property even if it is for the exercise of a privilege. For example, a yearly tax based on value qualifies as a personal property tax even if it is called a registration fee and is for the privilege of registering motor vehicles or using them on the highways.

If the tax is partly based on value and partly based on other criteria, it may qualify in part.

Example. Your state charges a yearly motor vehicle registration tax of 1% of value plus 50 cents per hundredweight. You paid $32 based on the value ($1,500) and weight (3,400 lbs.) of your car. You can deduct $15 (1% × $1,500) as a personal property tax because it is based on the value. The remaining $17 ($0.50 × 34), based on the weight, isn't deductible.

Taxes and Fees You Can't Deduct

Many federal, state, and local government taxes aren't deductible because they don't fall within the categories discussed earlier. Other taxes and fees, such as federal income taxes, aren't deductible because the tax law specifically prohibits a deduction for them. See Table 11-1.

Taxes and fees that are generally not deductible include the following items.

- ***Employment taxes.*** This includes social security, Medicare, and railroad retirement taxes withheld from your pay. However, one-half of self-employment tax you pay is deductible. In addition, the social security and other employment taxes you pay on the wages of a household worker may be included in medical expenses that you can deduct, or childcare expenses that allow you to claim the child and dependent care credit. For more information, see Pub. 502, Medical and Dental Expenses, and Pub. 503, Child and Dependent Care Expenses.
- ***Estate, inheritance, legacy, or succession taxes.*** You can deduct the estate tax attributable to income in respect of a decedent if you, as a beneficiary, must include that income in your gross income. In that case, deduct the estate tax on Schedule A (Form 1040), line 16. For more information, see Pub. 559, Survivors, Executors, and Administrators.
- ***Federal income taxes.*** This includes income taxes withheld from your pay.
- ***Fines and penalties.*** You can't deduct fines and penalties paid to a government for violation of any law, including related amounts forfeited as collateral deposits.
- ***Foreign personal or real property taxes.***
- ***Gift taxes.***
- ***License fees.*** You can't deduct license fees for personal purposes (such as marriage, driver's, and pet license fees).
- ***Per capita taxes.*** You can't deduct state or local per capita taxes.

Many taxes and fees other than those listed above are also nondeductible, unless they are ordinary and necessary expenses of a business or income-producing activity. For other nondeductible items, see Real Estate-Related Items You Can't Deduct, earlier.

Where To Deduct

You deduct taxes on the following schedules.

State and local income taxes. These taxes are deducted on Schedule A (Form 1040), line 5a, even if your only source of income is from business, rents, or royalties.

Limitation on deduction for state and local taxes. The deduction for state and local taxes is limited to $10,000 ($5,000 if married filing married separately). State and local taxes are the taxes that you include on Schedule A (Form 1040), lines 5a, 5b, and 5c. Include taxes imposed by a U.S. possession with your state and local taxes on Schedule A (Form 1040), lines 5a, 5b, and 5c. However, don't include any U.S. possession taxes you paid that are allocable to excluded income.

You may want to take a credit for U.S. possession tax instead of a deduction. See the instructions for Schedule 3 (Form 1040), line 1, for details.

General sales taxes. Sales taxes are deducted on Schedule A (Form 1040), line 5a. You must check the box on line 5a. If you elect to deduct sales taxes, you can't deduct state and local income taxes on Schedule A (Form 1040), line 5a.

Foreign income taxes. Generally, income taxes you pay to a foreign country or U.S. possession can be claimed as an itemized deduction on Schedule A (Form 1040), line 6, or as a credit against your U.S. income tax on Schedule 3 (Form 1040), line 1. To claim the credit, you may have to complete and attach Form 1116. For more information, see the Instructions for Form 1040 or Pub. 514.

Real estate taxes and personal property taxes. Real estate and personal property taxes are deducted on Schedule A (Form 1040), lines 5b and 5c, respectively, unless they are paid on property used in your business, in which case they are deducted on Schedule C (Form 1040) or Schedule F (Form 1040). Taxes on property that produces rent or royalty income are deducted on Schedule E (Form 1040).

Self-employment tax. Deduct one-half of your self-employment tax on Schedule 1 (Form 1040), line 15.

Other taxes. All other deductible taxes are deducted on Schedule A (Form 1040), line 6.

12. Other Itemized Deductions

What's New

Standard mileage rate. The 2022 rate for business use of a vehicle is 58.5 cents a mile from January 1, 2022 to June 30, 2022, and 62.5 cents a mile from July 1, 2022 to December 31, 2022.

Reminders

Educator expenses. Educator expenses include amounts paid or incurred after March 12, 2020, for personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of coronavirus. For more information, see the instructions for Schedule 1 (Form 1040), line 11, and *Educator Expenses* in Pub. 529, Miscellaneous Deductions.

No miscellaneous itemized deductions allowed. You can no longer claim any miscellaneous itemized deductions. Miscellaneous itemized deductions are those deductions that would have been subject to the 2%-of-adjusted-gross-income (AGI) limitation. See Miscellaneous Itemized Deductions, later.

Fines and penalties. Rules regarding deducting fines and penalties have changed. See *Fines and Penalties*, later.

Introduction

This chapter explains that you can no longer claim any miscellaneous itemized deductions, unless you fall into one of the qualified categories of employment claiming a deduction relating to unreimbursed employee expenses. Miscellaneous itemized deductions are those deductions that would have been subject to the 2%-of-AGI limitation. You can still claim certain expenses as itemized deductions on Schedule A (Form 1040), Schedule A (Form 1040-NR), or as an adjustment to income on Form 1040 or 1040-SR. This chapter covers the following topics.

- Miscellaneous itemized deductions.
- Expenses you can't deduct.
- Expenses you can deduct.
- How to report your deductions.

You must keep records to verify your deductions. You should keep receipts, canceled checks, substitute checks, financial account statements, and other documentary evidence. For more information on recordkeeping, see *What Records Should I Keep?* in chapter 1.

Useful Items

You may want to see:

Publication

- ❑ **463** Travel, Gift, and Car Expenses
- ❑ **525** Taxable and Nontaxable Income
- ❑ **529** Miscellaneous Deductions
- ❑ **535** Business Expenses
- ❑ **547** Casualties, Disasters, and Thefts
- ❑ **575** Pension and Annuity Income
- ❑ **587** Business Use of Your Home
- ❑ **946** How To Depreciate Property

Form (and Instructions)

- ❑ **Schedule A (Form 1040)** Itemized Deductions
- ❑ **2106** Employee Business Expenses
- ❑ **8839** Qualified Adoption Expenses
- ❑ **Schedule K-1 (Form 1041)** Beneficiary's Share of Income, Deductions, Credits, etc.

For these and other useful items, go to *IRS.gov/Forms*.

Miscellaneous Itemized Deductions

You can no longer claim any miscellaneous itemized deductions that are subject to the 2%-of-AGI limitation, including unreimbursed employee expenses. However, you may be able to deduct certain unreimbursed employee business expenses if you fall into one of the following categories of employment listed under *Unreimbursed Employee Expenses* next.

Unreimbursed Employee Expenses

You can no longer claim a deduction for unreimbursed employee expenses unless you fall into one of the following categories of employment.

- Armed Forces reservists.
- Qualified performing artists.
- Fee-basis state or local government officials.
- Employees with impairment-related work expenses.

Categories of Employment

You can deduct unreimbursed employee expenses only if you qualify as an Armed Forces reservist, a qualified performing artist, a fee-basis state or local government official, or an employee with impairment-related work expenses.

Armed Forces reservist (member of a reserve component). You are a member of a reserve component of the Armed Forces of the United States if you are in the Army, Navy, Marine Corps, Air Force, or Coast Guard Reserve; the Army National Guard of the United States; or the Reserve Corps of the Public Health Service.

Qualified performing artist. You are a qualified performing artist if you:

1. Performed services in the performing arts as an employee for at least two employers during the tax year,
2. Received from at least two of the employers wages of $200 or more per employer,
3. Had allowable business expenses attributable to the performing arts of more than 10% of gross income from the performing arts, and
4. Had AGI of $16,000 or less before deducting expenses as a performing artist.

Fee-basis state or local government official. You are a qualifying fee-basis official if you are employed by a state or political subdivision of a state and are compensated, in whole or in part, on a fee basis.

Employee with impairment-related work expenses. Impairment-related work expenses are the allowable expenses of an individual with physical or mental disabilities for attendant care at their place of employment. They also include other expenses in connection with the place of employment that enable the employee to work. See Pub. 463, Travel, Gift, and Car Expenses, for more details.

Allowable unreimbursed employee expenses. If you qualify as an employee in one of the categories mentioned above, you may be able to deduct the following items as unreimbursed employee expenses.

Unreimbursed employee expenses for individuals in these categories of employment are deducted as adjustments to gross income. Qualified employees listed in one of the categories above must complete Form 2106, Employee Business Expenses, to take the deduction.

You can deduct only unreimbursed employee expenses that are paid or incurred during your tax year, for carrying on your trade or business of being an employee, and ordinary and necessary.

An expense is ordinary if it's common and accepted in your trade, business, or profession. An expense is necessary if it's appropriate and helpful to your business. An expense doesn't have to be required to be considered necessary.

Educator Expenses

If you were an eligible educator in 2022, you can deduct up to $300 of qualified expenses you paid in 2022 as an adjustment to gross income on Schedule 1 (Form 1040), line 11, rather than as a miscellaneous itemized deduction. If you and your spouse are filing jointly and both of you were eligible educators, the maximum deduction is $600. However, neither spouse can deduct more than $300 of their qualified expenses. For additional information, see *Educator Expenses* in Pub. 529, Miscellaneous Deductions.

Educator expenses include amounts paid or incurred after March 12, 2020, for personal protective equipment, disinfectant, and other supplies used for the prevention of the spread of coronavirus. For more information, see the instructions for Schedule 1 (Form 1040), line 11, and Educator Expenses *in Pub. 529, Miscellaneous Deductions.*

Expenses You Can't Deduct

Because of the suspension of miscellaneous itemized deductions, there are two categories of expenses you can't deduct: miscellaneous itemized deductions subject to the 2%-of-AGI limitation, and those expenses that are traditionally nondeductible under the Internal Revenue Code. Both categories of deduction are discussed next.

Miscellaneous Deductions Subject to 2% AGI

Unless you fall into one of the qualified categories of employment under *Unreimbursed Employee Expenses*, earlier, miscellaneous itemized deductions that are subject to the 2%-of-AGI limitation can no longer be claimed. For expenses not related to unreimbursed employee expenses, you generally can't deduct the following expenses, even if you fall into one of the qualified categories of employment listed earlier.

Appraisal Fees

Appraisal fees you pay to figure a casualty loss or the fair market value of donated property are

miscellaneous itemized deductions and can no longer be deducted.

Casualty and Theft Losses

Damaged or stolen property used in performing services as an employee is a miscellaneous deduction and can no longer be deducted. For other casualty and theft losses, see Pub. 547, Casualties, Disasters, and Thefts.

Clerical Help and Office Rent

Office expenses, such as rent and clerical help, you pay in connection with your investments and collecting taxable income on those investments are miscellaneous itemized deductions and are no longer deductible.

Credit or Debit Card Convenience Fees

The convenience fee charged by the card processor for paying your income tax (including estimated tax payments) by credit or debit card is a miscellaneous itemized deduction and is no longer deductible.

Depreciation on Home Computer

If you use your home computer to produce income (for example, to manage your investments that produce taxable income), the depreciation of the computer for that part of the usage of the computer is a miscellaneous itemized deduction and is no longer deductible.

Fees To Collect Interest and Dividends

Fees you pay to a broker, bank, trustee, or similar agent to collect your taxable bond interest or dividends on shares of stock are miscellaneous itemized deductions and can no longer be deducted.

Hobby Expenses

A hobby isn't a business because it isn't carried on to make a profit. Hobby expenses are miscellaneous itemized deductions and can no longer be deducted. See *Not-for-Profit Activities* in chapter 1 of Pub. 535, Business Expenses.

Indirect Deductions of Pass-Through Entities

Pass-through entities include partnerships, S corporations, and mutual funds that aren't publicly offered. Deductions of pass-through entities are passed through to the partners or shareholders. The partner's or shareholder's share of passed-through deductions for investment expenses are miscellaneous itemized deductions and can no longer be deducted.

Nonpublicly offered mutual funds. These funds will send you a Form 1099-DIV, Dividends and Distributions, or a substitute form, showing your share of gross income and investment expenses. The investment expenses reported on Form 1099-DIV are a miscellaneous itemized deduction and are no longer deductible.

Investment Fees and Expenses

Investment fees, custodial fees, trust administration fees, and other expenses you paid for managing your investments that produce taxable income are miscellaneous itemized deductions and are no longer deductible.

Legal Expenses

You can usually deduct legal expenses that you incur in attempting to produce or collect taxable income or that you pay in connection with the determination, collection, or refund of any tax.

Legal expenses that you incur in attempting to produce or collect taxable income, or that you pay in connection with the determination, collection, or refund of any tax are miscellaneous itemized deductions and are no longer deductible.

You can deduct expenses of resolving tax issues relating to profit or loss from business reported on Schedule C (Form 1040), Profit or Loss From Business, from rentals or royalties reported on Schedule E (Form 1040), Supplemental Income and Loss, or from farm income and expenses reported on Schedule F (Form 1040), Profit or Loss From Farming, on that schedule. Expenses for resolving nonbusiness tax issues are miscellaneous itemized deductions and are no longer deductible.

Loss on Deposits

For information on whether, and if so, how, you may deduct a loss on your deposit in a qualified financial institution, see *Loss on Deposits* in Pub. 547.

Repayments of Income

Generally, repayments of amounts that you included in income in an earlier year is a miscellaneous itemized deduction and can no longer be deducted. If you had to repay more than $3,000 that you included in your income in an earlier year, you may be able to deduct the amount. See *Repayments Under Claim of Right*, later.

Repayments of Social Security Benefits

For information on how to deduct your repayments of certain social security benefits, see *Repayments More Than Gross Benefits* in chapter 7.

Safe Deposit Box Rent

Rent you pay for a safe deposit box you use to store taxable income-producing stocks, bonds, or investment-related papers is a miscellaneous itemized deduction and can no longer be deducted. You also can't deduct the rent if you use the box for jewelry, other personal items, or tax-exempt securities.

Service Charges on Dividend Reinvestment Plans

Service charges you pay as a subscriber in a dividend reinvestment plan are a miscellaneous itemized deduction and can no longer be deducted. These service charges include payments for:

- Holding shares acquired through a plan,
- Collecting and reinvesting cash dividends, and
- Keeping individual records and providing detailed statements of accounts.

Tax Preparation Fees

Tax preparation fees on the return for the year in which you pay them are a miscellaneous itemized deduction and can no longer be deducted. These fees include the cost of tax preparation software programs and tax publications. They also include any fee you paid for electronic filing of your return.

Trustee's Administrative Fees for IRA

Trustee's administrative fees that are billed separately and paid by you in connection with your IRA are a miscellaneous itemized deduction and can no longer be deducted. For more information about IRAs, see chapter 9.

Nondeductible Expenses

In addition to the miscellaneous itemized deductions discussed earlier, you can't deduct the following expenses.

List of Nondeductible Expenses

- Adoption expenses.
- Broker's commissions.
- Burial or funeral expenses, including the cost of a cemetery lot.
- Campaign expenses.
- Capital expenses.
- Check-writing fees.
- Club dues.
- Commuting expenses.
- Fees and licenses, such as car licenses, marriage licenses, and dog tags.
- Fines or penalties.
- Health spa expenses.
- Hobby losses, but see *Hobby Expenses*, earlier.
- Home repairs, insurance, and rent.
- Home security system.
- Illegal bribes and kickbacks. See *Bribes and kickbacks* in chapter 11 of Pub. 535.
- Investment-related seminars.
- Life insurance premiums paid by the insured.
- Lobbying expenses.
- Losses from the sale of your home, furniture, personal car, etc.
- Lost or misplaced cash or property.

- Lunches with co-workers.
- Meals while working late.
- Medical expenses as business expenses other than medical examinations required by your employer.
- Personal disability insurance premiums.
- Personal legal expenses.
- Personal, living, or family expenses.
- Political contributions.
- Professional accreditation fees.
- Professional reputation improvement expense.
- Relief fund contributions.
- Residential telephone line.
- Stockholders' meeting attendance expenses.
- Tax-exempt income earning/collecting expenses.
- The value of wages never received or lost vacation time.
- Travel expenses for another individual.
- Voluntary unemployment benefit fund contributions.
- Wristwatches.

Adoption Expenses

You can't deduct the expenses of adopting a child, but you may be able to take a credit for those expenses. See the Instructions for Form 8839, Qualified Adoption Expenses, for more information.

Campaign Expenses

You can't deduct campaign expenses of a candidate for any office, even if the candidate is running for reelection to the office. These include qualification and registration fees for primary elections.

Legal fees. You can't deduct legal fees paid to defend charges that arise from participation in a political campaign.

Check-Writing Fees on Personal Account

If you have a personal checking account, you can't deduct fees charged by the bank for the privilege of writing checks, even if the account pays interest.

Club Dues

Generally, you can't deduct the cost of membership in any club organized for business, pleasure, recreation, or other social purpose. This includes business, social, athletic, luncheon, sporting, airline, hotel, golf, and country clubs.

You can't deduct dues paid to an organization if one of its main purposes is to:

- Conduct entertainment activities for members or their guests, or
- Provide members or their guests with access to entertainment facilities.

Dues paid to airline, hotel, and luncheon clubs aren't deductible.

Commuting Expenses

You can't deduct commuting expenses (the cost of transportation between your home and your main or regular place of work). If you haul tools, instruments, or other items in your car to and from work, you can deduct only the additional cost of hauling the items such as the rent on a trailer to carry the items.

Fines and Penalties

Generally, no deduction is allowed for fines and penalties paid to a government or specified nongovernmental entity for the violation of any law except in the following situations.

- Amounts that constitute restitution.
- Amounts paid to come into compliance with the law.
- Amounts paid or incurred as the result of certain court orders in which no government or specified nongovernmental agency is a party.
- Amounts paid or incurred for taxes due.

Nondeductible amounts include an amount paid in settlement of your actual or potential liability for a fine or penalty (civil or criminal). Fines or penalties include amounts paid such as parking tickets, tax penalties, and penalties deducted from teachers' paychecks after an illegal strike.

No deduction is allowed for the restitution amount or amount paid to come into compliance with the law unless the amounts are specifically identified in the settlement agreement or court order. Also, any amount paid or incurred as reimbursement to the government for the costs of any investigation or litigation are not eligible for the exceptions and are nondeductible.

Health Spa Expenses

You can't deduct health spa expenses, even if there is a job requirement to stay in excellent physical condition, such as might be required of a law enforcement officer.

Home Security System

You can't deduct the cost of a home security system as a miscellaneous deduction. However, you may be able to claim a deduction for a home security system as a business expense if you have a home office. See *Security system* under *Figuring the Deduction* in Pub. 587.

Investment-Related Seminars

You can't deduct any expenses for attending a convention, seminar, or similar meeting for investment purposes.

Life Insurance Premiums

You can't deduct premiums you pay on your life insurance. You may be able to deduct, as alimony, premiums you pay on life insurance policies assigned to your former spouse. See Pub. 504, Divorced or Separated Individuals, for information on alimony.

Lobbying Expenses

You generally can't deduct amounts paid or incurred for lobbying expenses. These include expenses to:

- Influence legislation;
- Participate or intervene in any political campaign for, or against, any candidate for public office;
- Attempt to influence the general public, or segments of the public, about elections, legislative matters, or referendums; or
- Communicate directly with covered executive branch officials in any attempt to influence the official actions or positions of those officials.

Lobbying expenses also include any amounts paid or incurred for research, preparation, planning, or coordination of any of these activities.

Dues used for lobbying. If a tax-exempt organization notifies you that part of the dues or other amounts you pay to the organization are used to pay nondeductible lobbying expenses, you can't deduct that part. See *Lobbying Expenses* in Pub. 529 for information on exceptions.

Lost or Mislaid Cash or Property

You can't deduct a loss based on the mere disappearance of money or property. However, an accidental loss or disappearance of property can qualify as a casualty if it results from an identifiable event that is sudden, unexpected, or unusual. See Pub. 547 for more information.

Lunches With Co-Workers

You can't deduct the expenses of lunches with co-workers, except while traveling away from home on business. See Pub. 463 for information on deductible expenses while traveling away from home.

Meals While Working Late

You can't deduct the cost of meals while working late. However, you may be able to claim a deduction if the cost of meals is a deductible entertainment expense, or if you're traveling away from home. See Pub. 463 for information on deductible entertainment expenses and expenses while traveling away from home.

Personal Legal Expenses

You can't deduct personal legal expenses such as those for the following.

- Custody of children.
- Breach of promise to marry suit.
- Civil or criminal charges resulting from a personal relationship.
- Damages for personal injury, except for certain unlawful discrimination and whistle-blower claims.
- Preparation of a title (or defense or perfection of a title).
- Preparation of a will.
- Property claims or property settlement in a divorce.

You can't deduct these expenses even if a result of the legal proceeding is the loss of income-producing property.

Political Contributions

You can't deduct contributions made to a political candidate, a campaign committee, or a newsletter fund. Advertisements in convention bulletins and admissions to dinners or programs that benefit a political party or political candidate aren't deductible.

Professional Accreditation Fees

You can't deduct professional accreditation fees such as the following.

- Accounting certificate fees paid for the initial right to practice accounting.
- Bar exam fees and incidental expenses in securing initial admission to the bar.
- Medical and dental license fees paid to get initial licensing.

Professional Reputation

You can't deduct expenses of radio and TV appearances to increase your personal prestige or establish your professional reputation.

Relief Fund Contributions

You can't deduct contributions paid to a private plan that pays benefits to any covered employee who can't work because of any injury or illness not related to the job.

Residential Telephone Service

You can't deduct any charge (including taxes) for basic local telephone service for the first telephone line to your residence, even if it's used in a trade or business.

Stockholders' Meetings

You can't deduct transportation and other expenses you pay to attend stockholders' meetings of companies in which you own stock but have no other interest. You can't deduct these expenses even if you're attending the meeting to get information that would be useful in making further investments.

Tax-Exempt Income Expenses

You can't deduct expenses to produce tax-exempt income. You can't deduct interest on a debt incurred or continued to buy or carry tax-exempt securities.

If you have expenses to produce both taxable and tax-exempt income, but you can't identify the expenses that produce each type of income, you must divide the expenses based on the amount of each type of income to determine the amount that you can deduct.

Travel Expenses for Another Individual

You generally can't deduct travel expenses you pay or incur for a spouse, dependent, or other individual who accompanies you (or your employee) on business or personal travel unless the spouse, dependent, or other individual is an employee of the taxpayer, the travel is for a bona fide business purpose, and such expenses would otherwise be deductible by the spouse, dependent, or other individual. See Pub. 463 for more information on deductible travel expenses.

Voluntary Unemployment Benefit Fund Contributions

You can't deduct voluntary unemployment benefit fund contributions you make to a union fund or a private fund. However, you can deduct contributions as taxes if state law requires you to make them to a state unemployment fund that covers you for the loss of wages from unemployment caused by business conditions.

Wristwatches

You can't deduct the cost of a wristwatch, even if there is a job requirement that you know the correct time to properly perform your duties.

Expenses You Can Deduct

You can deduct the items listed below as itemized deductions. Report these items on Schedule A (Form 1040), line 16, or Schedule A (Form 1040-NR), line 7.

List of Deductions

Each of the following items is discussed in detail after the list (except where indicated).

- Amortizable premium on taxable bonds.
- Casualty and theft losses from income-producing property.
- Excess deductions of an estate or trust.
- Federal estate tax on income in respect of a decedent.
- Gambling losses up to the amount of gambling winnings.
- Impairment-related work expenses of persons with disabilities.
- Losses from Ponzi-type investment schemes (see Pub. 547 for more information).
- Repayments of more than $3,000 under a claim of right.
- Unlawful discrimination claims.
- Unrecovered investment in an annuity.

Amortizable Premium on Taxable Bonds

In general, if the amount you pay for a bond is greater than its stated principal amount, the excess is bond premium. You can elect to amortize the premium on taxable bonds. The amortization of the premium is generally an offset to interest income on the bond rather than a separate deduction item.

Part of the premium on some bonds may be an itemized deduction on Schedule A (Form 1040). For more information, see *Amortizable Premium on Taxable Bonds* in Pub. 529, and *Bond Premium Amortization* in chapter 3 of Pub. 550, Investment Income and Expenses.

Casualty and Theft Losses of Income-Producing Property

You can deduct a casualty or theft loss as an itemized deduction on Schedule A (Form 1040), line 16, if the damaged or stolen property was income-producing property (property held for investment, such as stocks, notes, bonds, gold, silver, vacant lots, and works of art). First, report the loss in Form 4684, Section B. You may also have to include the loss on Form 4797 if you're otherwise required to file that form. To figure your deduction, add all casualty or theft losses from this type of property included on Form 4684, lines 32 and 38b, or Form 4797, line 18a. For more information on casualty and theft losses, see Pub. 547.

Excess Deductions of an Estate or Trust

Generally, if an estate or trust has an excess deduction resulting from total deductions being greater than its gross income, in the estate's or trust's last tax year, a beneficiary can deduct the excess deductions, depending on its character. The excess deductions retain their character as an adjustment to arrive at adjusted gross income on Schedule 1 (Form 1040), as a non-miscellaneous itemized deduction reported on Schedule A (Form 1040), or as a miscellaneous itemized deduction. For more information on excess deductions of an estate or trust, see the Instructions for Schedule K-1 (Form 1041) for a Beneficiary Filing Form 1040.

Federal Estate Tax on Income in Respect of a Decedent

You can deduct the federal estate tax attributable to income in respect of a decedent that you as a beneficiary include in your gross income. Income in respect of the decedent is gross income that the decedent would have received had death not occurred and that wasn't properly includible in the decedent's final income tax return. See Pub. 559, Survivors, Executors, and Administrators, for more information.

Gambling Losses up to the Amount of Gambling Winnings

You must report the full amount of your gambling winnings for the year on Schedule 1 (Form 1040), line 8b. You deduct your gambling losses for the year on Schedule A (Form 1040), line 16. You can't deduct gambling losses that are more than your winnings.

You can't reduce your gambling winnings by your gambling losses and report the difference. You must report the full amount of your winnings as income and claim your losses (up to the amount of winnings) as an itemized deduction. Therefore, your records should show your winnings separately from your losses.

Diary of winnings and losses. You must keep an accurate diary or similar record of your losses and winnings.

Your diary should contain at least the following information.

- The date and type of your specific wager or wagering activity.
- The name and address or location of the gambling establishment.
- The names of other persons present with you at the gambling establishment.
- The amount(s) you won or lost.

See Pub. 529 for more information.

Impairment-Related Work Expenses

If you have a physical or mental disability that limits your being employed, or substantially limits one or more of your major life activities, such as performing manual tasks, walking, speaking, breathing, learning, and working, you can deduct your impairment-related work expenses.

Impairment-related work expenses are ordinary and necessary business expenses for attendant care services at your place of work and for other expenses in connection with your place of work that are necessary for you to be able to work.

Self-employed. If you're self-employed, enter your impairment-related work expenses on the appropriate form (Schedule C (Form 1040), Schedule E (Form 1040), or Schedule F (Form 1040)) used to report your business income and expenses.

Repayments Under Claim of Right

If you had to repay more than $3,000 that you included in your income in an earlier year because at the time you thought you had an unrestricted right to it, you may be able to deduct the amount you repaid or take a credit against your tax. See *Repayments* in chapter 8 for more information.

Unlawful Discrimination Claims

You may be able to deduct, as an adjustment to income on Schedule 1 (Form 1040), line 24h, attorney fees and court costs for actions settled or decided after October 22, 2004, involving a claim of unlawful discrimination, a claim against the U.S. Government, or a claim made under section 1862(b)(3)(A) of the Social Security Act. However, the amount you can deduct on Schedule 1 (Form 1040), line 24h, is limited to the amount of the judgment or settlement you are including in income for the tax year. See Pub. 525, Taxable and Nontaxable Income, for more information.

Unrecovered Investment in Annuity

A retiree who contributed to the cost of an annuity can exclude from income a part of each payment received as a tax-free return of the retiree's investment. If the retiree dies before the entire investment is recovered tax free, any unrecovered investment can be deducted on the retiree's final income tax return. See Pub. 575, Pension and Annuity Income, for more information about the tax treatment of pensions and annuities.

Part Four.

Figuring Your Taxes, and Refundable and Nonrefundable Credits

The two chapters in this part explain how to figure your tax. They also discuss tax credits that, unlike deductions, are subtracted directly from your tax and reduce your tax dollar for dollar.

The Form 1040 and 1040-SR schedules that are discussed in these chapters are:

- *Schedule 1, Additional Income and Adjustments to Income;*
- *Schedule 2, Additional Taxes; and*
- *Schedule 3, Additional Credits and Payments.*

13.

How To Figure Your Tax

Introduction

After you have figured your income and deductions your next step is to figure your tax. This chapter discusses:

- The general steps you take to figure your tax,
- An additional tax you may have to pay called the alternative minimum tax (AMT), and
- The conditions you must meet if you want the IRS to figure your tax.

Useful Items

You may want to see:

Publication

- ❏ **503** Child and Dependent Care Expenses
- ❏ **505** Tax Withholding and Estimated Tax
- ❏ **524** Credit for the Elderly or Disabled
- ❏ **525** Taxable and Nontaxable Income
- ❏ **531** Reporting Tip Income
- ❏ **550** Investment Income and Expenses
- ❏ **560** Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- ❏ **575** Pension and Annuity Income
- ❏ **596** Earned Income Credit (EIC)
- ❏ **926** Household Employer's Tax Guide
- ❏ **929** Tax Rules for Children and Dependents
- ❏ **969** Health Savings Accounts and Other Tax-Favored Health Plans
- ❏ **970** Tax Benefits for Education
- ❏ **974** Premium Tax Credit (PTC)

Form (and Instructions)

- ❏ **W-2** Wage and Tax Statement
- ❏ **Schedule SE (Form 1040)** Self-Employment Tax
- ❏ **Schedule 8812 (Form 1040)** Credits for Qualifying Children and Other Dependents
- ❏ **1116** Foreign Tax Credit
- ❏ **3800** General Business Credit
- ❏ **4136** Credit for Federal Tax Paid on Fuels
- ❏ **4970** Tax on Accumulation Distribution of Trusts
- ❏ **5329** Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
- ❏ **5405** Repayment of the First-Time Homebuyer Credit
- ❏ **5695** Residential Energy Credit
- ❏ **5884** Work Opportunity Credit
- ❏ **8396** Mortgage Interest Credit
- ❏ **8801** Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts
- ❏ **8835** Renewable Electricity Production Credit
- ❏ **8839** Qualified Adoption Expenses
- ❏ **8846** Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips
- ❏ **8853** Archer MSAs and Long-Term Care Insurance Contracts
- ❏ **8880** Credit for Qualified Retirement Savings Contributions
- ❏ **8889** Health Savings Accounts (HSAs)
- ❏ **8910** Alternative Motor Vehicle Credit
- ❏ **8912** Credit to Holders of Tax Credit Bonds
- ❏ **8936** Qualified Plug-In Electric Drive Motor Vehicle Credit (Including Qualified Two-Wheeled Plug-In Electric Vehicle)
- ❏ **8959** Additional Medicare Tax
- ❏ **8960** Net Investment Income Tax—Individuals, Estates, and Trusts
- ❏ **8962** Premium Tax Credit (PTC)

Figuring Your Tax

Your income tax is based on your taxable income. After you figure your income tax and AMT, if any, subtract your tax credits and add any other taxes you may owe. The result is your total tax. Compare your total tax with your total payments to determine whether you are entitled to a refund or must make a payment.

This section provides a general outline of how to figure your tax. You can find step-by-step directions in the Instructions for Form 1040.

Tax. Most taxpayers use either the Tax Table or the Tax Computation Worksheet to figure their income tax. However, there are special methods if your income includes any of the following items.

- A net capital gain. See Pub. 550.
- Qualified dividends taxed at the same rates as a net capital gain. See Pub. 550.
- Lump-sum distributions. See Pub. 575.
- Farming or fishing income. See Schedule J (Form 1040).
- Tax for certain children who have unearned income. See Pub. 929.
- Parent's election to report child's interest and dividends. See Pub. 929.
- Foreign earned income exclusion or the housing exclusion. (See Form 2555, Foreign Earned Income, and the Foreign Earned Income Tax Worksheet in the Instructions for Form 1040.)

Credits. After you figure your income tax and any AMT (discussed later), determine if you are eligible for any tax credits. Eligibility information for these tax credits is discussed in other publications and your form instructions. The following items are some of the credits you may be able to subtract from your tax and shows where you can find more information on each credit.

- Adoption credit. See Form 8839.

- Alternative motor vehicle credit. See Form 8910.
- Child and dependent care credit. See Pub. 503.
- Child tax credit. See Schedule 8812 (Form 1040).
- Credit for employer social security and Medicare taxes paid on certain employee tips. See Form 8846.
- Credit to holders of tax credit bonds. See Form 8912.
- Education credit. See Pub. 970.
- Elderly or disabled credit. See Pub. 524.
- Foreign tax credit. See Form 1116.
- General business credit. See Form 3800.
- Mortgage interest credit. See Form 8396.
- Plug-in electric drive motor credit. See Form 8936.
- Premium tax credit. See Pub. 974.
- Prior year minimum tax credit. See Form 8801.
- Renewable electricity production credit. See Form 8835.
- Residential clean energy credit. See Form 5695.
- Retirement savings contribution credit. See Form 8880.
- Work opportunity credit. See Form 5884.

Some credits (such as the earned income credit) aren't listed because they are treated as payments. See *Payments*, later.

Other taxes. After you subtract your tax credits, determine whether there are any other taxes you must pay. This chapter doesn't explain these other taxes. You can find that information in other publications and your form instructions. See the following list for other taxes you may need to add to your income tax.

- Additional Medicare tax. See Form 8959.
- Additional tax on ABLE accounts. See Pub. 969.
- Additional tax on Archer MSAs and long-term care insurance contracts. See Form 8853.
- Additional tax on Coverdell ESAs. See Form 5329.
- Additional tax on HSAs. See Form 8889.
- Additional tax on income you received from a nonqualified deferred compensation plan that fails to meet certain requirements. See the Instructions for Form 1040.
- Additional tax on qualified plans and other tax-favored accounts. See Form 5329.
- Additional tax on qualified retirement plans and IRAs. See Form 5329.
- Additional tax on qualified tuition programs. See Pub. 970.
- Excise tax on insider stock compensation from an expatriated corporation. See the Instructions for Form 1040.
- Household employment taxes. See Pub. 926.
- Interest on the deferred tax on gain from certain installment sales with a sales price over $150,000. See the Instructions for Form 1040.
- Interest on the tax due on installment income from the sale of certain residential lots and timeshares. See the Instructions for Form 1040.
- Net investment income tax. See Form 8960.
- Recapture of an education credit. See Pub. 970.
- Recapture of other credits. See the Instructions for Form 1040.
- Repayment of first-time homebuyer credit. See Form 5405.
- Section 72(m)(5) excess benefits tax. See Pub. 560.
- Self-employment tax. See the Schedule SE (Form 1040).
- Social security and Medicare tax on tips. See Pub. 531.
- Social security and Medicare tax on wages. See Pub. 525.
- Tax on accumulation distribution of trusts. See Form 4970.
- Tax on golden parachute payments. See the Instructions for Form 1040.
- Uncollected social security and Medicare tax on group-term life insurance. See Form W-2.
- Uncollected social security and Medicare tax on tips. See Pub. 531.

You may also have to pay AMT (discussed later in this chapter).

Payments. After you determine your total tax, figure the total payments you have already made for the year. Include credits that are treated as payments. This chapter doesn't explain these payments and credits. You can find that information in other publications and your form instructions. See the following list of payments and credits that you may be able to include in your total payments.

- American opportunity credit. See Pub. 970.
- Additional child tax credit. See Schedule 8812 (Form 1040).
- Credit for federal tax on fuels. See Form 4136.
- Credit for tax on undistributed capital gain. See the Instructions for Form 1040.
- Earned income credit. See Pub. 596.
- Estimated tax paid. See Pub. 505.
- Excess social security and RRTA tax withheld. See the Instructions for Form 1040.
- Federal income tax withheld. See Pub. 505.
- Net premium tax credit. See the Instructions for Form 8962 or the Instructions for Form 1040.
- Qualified sick and family leave credits. See the Instructions for Form 1040.
- Tax paid with extension. See the Instructions for Form 1040.

Refund or balance due. To determine whether you are entitled to a refund or whether you must make a payment, compare your total payments with your total tax. If you are entitled to a refund, see your form instructions for information on having it directly deposited into one or more of your accounts (including a traditional IRA, Roth IRA, or a SEP-IRA), or to purchase U.S. savings bonds instead of receiving a paper check.

Alternative Minimum Tax (AMT)

This section briefly discusses an additional tax you may have to pay.

The tax law gives special treatment to some kinds of income and allows special deductions and credits for some kinds of expenses. Taxpayers who benefit from this special treatment may have to pay at least a minimum amount of tax through an additional tax called AMT.

You may have to pay the AMT if your taxable income for regular tax purposes, combined with certain adjustments and tax preference items, is more than a certain amount. See Form 6251, Alternative Minimum Tax—Individuals.

Adjustments and tax preference items. The more common adjustments and tax preference items include:

- Addition of the standard deduction (if claimed);
- Addition of itemized deductions claimed for state and local taxes and certain interest;
- Subtraction of any refund of state and local taxes included in gross income;
- Changes to accelerated depreciation of certain property;
- Difference between gain or loss on the sale of property reported for regular tax purposes and AMT purposes;
- Addition of certain income from incentive stock options;
- Change in certain passive activity loss deductions;
- Addition of certain depletion that is more than the adjusted basis of the property;
- Addition of part of the deduction for certain intangible drilling costs; and
- Addition of tax-exempt interest on certain private activity bonds.

More information. For more information about the AMT, see the Instructions for Form 6251.

Tax Figured by IRS

If you file by the due date of your return (not counting extensions) — April 18, 2023, for most people — you can have the IRS figure your tax for you on Form 1040 or 1040-SR.

If the IRS figures your tax and you paid too much, you will receive a refund. If you didn't pay enough, you will receive a bill for the balance. To avoid interest or the penalty for late payment, you must pay the bill within 30 days of

the date of the bill or by the due date for your return, whichever is later.

The IRS can also figure the credit for the elderly or the disabled and the earned income credit for you.

When the IRS cannot figure your tax. The IRS can't figure your tax for you if any of the following apply.

1. You want your refund directly deposited into your checking or savings account.
2. You want any part of your refund applied to your 2023 estimated tax.
3. You had income for the year from sources other than wages, salaries, tips, interest, dividends, taxable social security benefits, unemployment compensation, IRA distributions, pensions, and annuities.
4. Your taxable income is $100,000 or more.
5. You itemize deductions.
6. You file any of the following forms.
   a. Form 2555, Foreign Earned Income.
   b. Form 4137, Social Security and Medicare Tax on Unreported Tip Income.
   c. Form 4970, Tax on Accumulation Distribution of Trusts.
   d. Form 4972, Tax on Lump-Sum Distributions.
   e. Form 6198, At-Risk Limitations.
   f. Form 6251, Alternative Minimum Tax—Individuals.
   g. Form 8606, Nondeductible IRAs.
   h. Form 8615, Tax for Certain Children Who Have Unearned Income.
   i. Form 8814, Parents' Election To Report Child's Interest and Dividends.
   j. Form 8839, Qualified Adoption Expenses.
   k. Form 8853, Archer MSAs and Long-Term Care Insurance Contracts.
   l. Form 8889, Health Savings Accounts (HSAs).
   m. Form 8919, Uncollected Social Security and Medicare Tax on Wages.

Filing the Return

After you complete the line entries for the tax form you are filing, fill in your name and address. Enter your social security number in the space provided. If you are married, enter the social security numbers of you and your spouse, even if you file separately. Sign and date your return and enter your occupation(s). If you are filing a joint return, both you and your spouse must sign it. Enter your daytime phone number in the space provided. This may help speed the processing of your return if we have a question that can be answered over the phone. If you are filing a joint return, you may enter either your or your spouse's daytime phone number.

If you want to allow your preparer, a friend, a family member, or any other person you choose to discuss your 2022 tax return with the IRS, check the "Yes" box in the "Third Party Designee" area on your return. Also, enter the designee's name, phone number, and any five digits the designee chooses as their personal identification number (PIN). If you check the "Yes" box, you, and your spouse if filing a joint return, are authorizing the IRS to call the designee to answer any questions that may arise during the processing of your return.

Fill in and attach any schedules and forms asked for on the lines you completed to your paper return. Attach a copy of each of your Forms W-2 to your paper return. Also, attach to your paper return any Form 1099-R you received that has withholding tax in box 4.

Mail your return to the Internal Revenue Service Center for the area where you live. A list of Service Center addresses is in the instructions for your tax return.

Form 1040 or 1040-SR Line Entries

If you want the IRS to figure your tax. Read Form 1040 or 1040-SR, lines 1 through 15, and Schedule 1 (Form 1040), if applicable. Fill in the lines that apply to you and attach Schedule 1 (Form 1040), if applicable. Don't complete Form 1040 or 1040-SR, line 16 or 17.

If you are filing a joint return, use the space on the dotted line next to the words "Adjusted Gross Income" on the first page of your return to separately show your taxable income and your spouse's taxable income.

Read Form 1040 or 1040-SR, lines 19 through 33, and Schedules 2 and 3 (Form 1040), if applicable. Fill in the lines that apply to you and attach Schedules 2 and 3 (Form 1040), if applicable. Don't fill in Form 1040 or 1040-SR, lines 22, 24, 33, or 34 through 38. Don't fill in Schedule 2 (Form 1040), line 1 or 3. Also, don't complete Schedule 3 (Form 1040), line 6d, if you are completing Schedule R (Form 1040), or Form 1040 or 1040-SR, line 27, if you want the IRS to figure the credits shown on those lines.

Payments. If you have federal income tax withheld that is shown on Form W-2, box 2, Form 1099, box 4, Form W-2G, box 4, or another form (see Instructions for Form 1040 for more information) enter the amount on Form 1040 or 1040-SR, line 25. Enter any estimated tax payments you made on Form 1040 or 1040-SR, line 26.

Credit for child and dependent care expenses. If you can take this credit, complete Form 2441 and attach it to your paper return. Enter the amount of the credit on Schedule 3 (Form 1040), line 2. The IRS will not figure this credit.

Net premium tax credit. If you take this credit, complete Form 8962, Premium Tax Credit (PTC), and attach it to your return. Enter the amount of the credit on Schedule 3 (Form 1040), line 9. The IRS will not figure this credit.

Credit for the elderly or the disabled. If you can take this credit, the IRS can figure it for you. Enter "CFE" on the line next to Schedule 3 (Form 1040), line 6d, and attach Schedule R (Form 1040) to your paper return. On Schedule R (Form 1040), check the box in Part I for your filing status and age. Complete Parts II and III, lines 11 and 13, if they apply.

Earned income credit. If you can take this credit, the IRS can figure it for you. Enter "EIC" on the dotted line on Form 1040 or 1040-SR, line 27. If you elect to use your nontaxable combat pay in figuring your EIC, enter the amount on Form 1040 or 1040-SR, line 1i.

If you have a qualifying child, you must fill in Schedule EIC (Form 1040), Earned Income Credit, and attach it to your paper return. If you don't provide the child's social security number on Schedule EIC, line 2, the credit will be reduced or disallowed unless the child was born and died in 2022.

If your credit for any year after 1996 was reduced or disallowed by the IRS, you may also have to file Form 8862 with your return. For details, see the Instructions for Form 1040.

14. Child Tax Credit and Credit for Other Dependents

What's New

Child tax credit enhancements have expired. Many changes to the child tax credit (CTC) for 2021 implemented by the American Rescue Plan Act of 2021, have expired. For tax year 2022:

- The enhanced credit allowed for qualifying children under age 6 and children under age 18 has expired. For 2022, the initial amount of the CTC is $2,000 for each qualifying child. The credit amount begins to phase out where modified adjusted gross income exceeds $200,000 ($400,000 in case of a joint return). The amount of the CTC that can be claimed as a refundable credit is limited as it was in 2020 except that the maximum additional child tax credit (ACTC) amount for each qualifying child increased to $1,500.
- The increased age allowance for a qualifying child has expired. A child must be under age 17 at the end of 2022 to be a qualifying child.

ACTC and bona fide residents of Puerto Rico. Bona fide residents of Puerto Rico are no longer required to have three or more qualifying children to be eligible to claim the ACTC. Bona fide residents of Puerto Rico may be eligible to claim the ACTC if they have one or more qualifying children.

Advance child tax credit payments. Advance child tax credit payments have not been issued for 2022.

Reminders

Schedule 8812 (Form 1040). The Schedule 8812 (Form 1040) and its instructions are the single source for figuring and reporting the child tax credit and credit for other dependents. The instructions now include all applicable worksheets for figuring these credits. As a result, Pub. 972, Child Tax Credit, won't be revised. For prior-year versions of Pub. 972, go to *IRS.gov/Pub972*.

Abbreviations used throughout this chapter. The following abbreviations will be used in this chapter when appropriate.

- ACTC means additional child tax credit.
- ATIN means adoption taxpayer identification number.
- CTC means child tax credit.
- ITIN means individual taxpayer identification number.
- ODC means credit for other dependents.
- SSN means social security number.
- TIN means taxpayer identification number. A TIN may be an ATIN, an ITIN, or an SSN.

Other abbreviations may be used in this chapter and will be defined as needed.

Delayed refund for returns claiming the ACTC. The IRS can't issue refunds before mid-February 2023 for returns that properly claim the ACTC. This time frame applies to the entire refund, not just the portion associated with the ACTC.

Introduction

The CTC is a credit that may reduce your tax by as much as $2,000 for each child who qualifies you for the credit. See *Limits on the CTC and ODC*, later.

The ACTC is a credit you may be able to take if you are not able to claim the full amount of the CTC.

The ODC is a credit that may reduce your tax by as much as $500 for each eligible dependent.

The CTC and the ACTC shouldn't be confused with the child and dependent care credit discussed in Pub. 503.

Useful Items

You may want to see:

Form (and Instructions)

❏ **Schedule 8812 (Form 1040)** Credits for Qualifying Children and Other Dependents

❏ **8862** Information To Claim Certain Credits After Disallowance

For these and other useful items, go to *IRS.gov/Forms*.

Taxpayer Identification Number Requirements

You must have a TIN by the due date of your return. If you, or your spouse if filing jointly, don't have an SSN or ITIN issued on or before the due date of your 2022 return (including extensions), you can't claim the CTC, ODC, or ACTC on either your original or amended 2022 tax return.

If you apply for an ITIN on or before the due date of your 2022 return (including extensions) and the IRS issues you an ITIN as a result of the application, the IRS will consider your ITIN as issued on or before the due date of your return.

Each qualifying child you use for CTC or ACTC must have the required SSN. If you have a qualifying child who doesn't have the required SSN, you can't use the child to claim the CTC or ACTC on either your original or amended 2022 tax return. The required SSN is one that is valid for employment and is issued before the due date of your 2022 return (including extensions).

If your qualifying child was born and died in 2022 and you don't have an SSN for the child, attach a copy of the child's birth certificate, death certificate, or hospital records. The document must show the child was born alive.

If your qualifying child doesn't have the required SSN but has another type of TIN issued on or before the due date of your 2022 return (including extensions), you may be able to claim the ODC for that child. See *Credit for Other Dependents (ODC)*, later.

Each dependent you use for the ODC must have a TIN by the due date of your return. If you have a dependent who doesn't have an SSN, ITIN, or ATIN issued on or before the due date of your 2022 return (including extensions), you can't use that dependent to claim the ODC on either your original or amended 2022 tax return.

If you apply for an ITIN or ATIN for the dependent on or before the due date of your 2022 return (including extensions) and the IRS issues the ITIN or ATIN as a result of the application, the IRS will consider the ITIN or ATIN as issued on or before the due date of your return.

Improper Claims

If you erroneously claim the CTC, RCTC (refundable child tax credit for tax year 2021), ACTC, or ODC, and it is later determined that your error was due to reckless or intentional disregard of the CTC, ACTC, or ODC rules, you will not be allowed to claim any of these credits for 2 years. If it is determined that your error was due to fraud, you will not be allowed to claim any of these credits for 10 years. You may also have to pay penalties.

Form 8862 may be required. If your CTC, RCTC (refundable child tax credit for tax year 2021), ACTC, or ODC for a year after 2015 was denied or reduced for any reason other than a math or clerical error, you must attach Form 8862 to your tax return to claim the CTC, ACTC, or ODC, unless an exception applies. See Form 8862, Information To Claim Certain Credits After Disallowance, and its instructions for more information, including whether an exception applies.

Child Tax Credit (CTC)

The CTC is for individuals who claim a child as a dependent if the child meets additional conditions (described later).

Note. This credit is different from and in addition to the credit for child and dependent care expenses and the earned income credit that you may also be eligible to claim.

The maximum amount you can claim for the credit is $2,000 for each child who qualifies you for the CTC. But, see *Limits on the CTC and ODC*, later.

For more information about claiming the CTC, see *Claiming the CTC and ODC*, later.

Qualifying Child for the CTC

A child qualifies you for the CTC if the child meets all of the following conditions.

1. The child is your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, half brother, half sister, or a descendant of any of them (for example, your grandchild, niece, or nephew).
2. The child was under age 17 at the end of 2022.
3. The child didn't provide over half the child's own support for 2022.
4. The child lived with you for more than half of 2022 (see *Exceptions to time lived with you*, later).
5. The child is claimed as a dependent on your return. See chapter 3 for more information about claiming someone as a dependent.
6. The child doesn't file a joint return for the year (or files it only to claim a refund of withheld income tax or estimated tax paid).
7. The child was a U.S. citizen, U.S. national, or U.S. resident alien. For more information, see Pub. 519. If the child was adopted, see *Adopted child*, later.

Example. Your child, B, turned 17 on December 30, 2022. B is a citizen of the United States and can be claimed as a dependent on your return. You can't use B to claim the CTC or ACTC because B was not **under** age 17 at the end of 2022.

If your child is age 17 or older at the end of 2022, see Credit for Other Dependents (ODC), later.

Adopted child. An adopted child is always treated as your own child. An adopted child includes a child lawfully placed with you for legal adoption.

If you are a U.S. citizen or U.S. national and your adopted child lived with you all year as a member of your household in 2022, that child

meets condition 7, earlier, to be a qualifying child for the child tax credit (or condition 3, later, to be a qualifying person for the ODC).

Exceptions to time lived with you. A child is considered to have lived with you for more than half of 2022 if the child was born or died in 2022 and your home was this child's home for more than half the time the child was alive. Temporary absences by you or the child for special circumstances, such as school, vacation, business, medical care, military service, or detention in a juvenile facility, count as time the child lived with you.

There are also exceptions for kidnapped children and children of divorced or separated parents. For details, see *Residency Test* in chapter 3.

Qualifying child of more than one person. A special rule applies if your qualifying child is the qualifying child of more than one person. For details, see *Qualifying Child of More Than One Person* in chapter 3.

Required SSN

In addition to being a qualifying child for the CTC, your child must have the required SSN. The required SSN is one that is valid for employment and that is issued by the Social Security Administration (SSA) before the due date of your 2022 return (including extensions).

If your qualifying child does not have the required SSN, see Credit for Other Dependents (ODC), later.

If your child was a U.S. citizen when the child received the SSN, the SSN is valid for employment. If “Not Valid for Employment” is printed on your child’s social security card and your child’s immigration status has changed so that your child is now a U.S. citizen or permanent resident, ask the SSA for a new social security card without the legend. However, if “Valid for Work Only With DHS Authorization” is printed on your child’s social security card, your child has the required SSN only as long as the Department of Homeland Security (DHS) authorization is valid.

If your child doesn’t have the required SSN, you can't use the child to claim the CTC (or ACTC) on either your original or amended 2022 tax return.

Credit for Other Dependents (ODC)

This credit is for individuals with a dependent who meets additional conditions (described later).

Note. This credit is different from and in addition to the credit for child and dependent care expenses that you may also be eligible to claim.

The maximum amount you can claim for this credit is $500 for each qualifying dependent. See *Limits on the CTC and ODC*, later.

For more information about claiming the ODC, see *Claiming the CTC and ODC*, later.

Qualifying Person for the ODC

A person qualifies you for the ODC if the person meets all of the following conditions.

1. The person is claimed as a dependent on your return. See chapter 3 for more information about claiming someone as a dependent.
2. The person can’t be used by you to claim the CTC or ACTC. See *Child Tax Credit (CTC)*, earlier.
3. The person was a U.S. citizen, U.S. national, or U.S. resident alien. For more information, see Pub. 519. If the person is your adopted child, see *Adopted child*, earlier.

Example. Your 10-year-old dependent, L, lives in Mexico. L is not a U.S. citizen, U.S. national, or U.S. resident alien. You can’t use L to claim the ODC.

You can’t use the same child to claim the CTC or ACTC, and the ODC.

Timely Issued TIN

In addition to being a qualifying person for the ODC, the person must have an SSN, ITIN, or ATIN issued to the dependent on or before the due date of your 2022 return (including extensions). If the person has not been issued an SSN, ITIN, or ATIN by that date, you can’t use the person to claim the ODC on either your original or amended 2022 return. For more information, see *Taxpayer Identification Number Requirements*, earlier.

Limits on the CTC and ODC

The credit amount of your CTC or ODC may be reduced if your modified adjusted gross income (AGI) is more than the amounts shown below for your filing status.

- Married filing jointly — $400,000.
- All other filing statuses — $200,000.

AGI. Your AGI is the amount on line 11 of your Form 1040, 1040-SR, or 1040-NR.

For more information about limits on the CTC and ODC, see the Instructions for Schedule 8812 (Form 1040).

Claiming the CTC and ODC

To claim the CTC or ODC, be sure you meet the following requirements.

- You must file Form 1040, 1040-SR, or 1040-NR and include the name and TIN of each dependent for whom you are claiming the CTC or ODC.
- You must file Schedule 8812 (Form 1040).
- You must file Form 8862, if applicable. See *Improper Claims*, earlier.
- You must enter a timely issued TIN on your tax return for you and your spouse (if filing jointly). See *Taxpayer Identification Number Requirements*, earlier.
- For each qualifying child under 17 for whom you are claiming the CTC, you must enter the required SSN for the child in column (2) of the *Dependents* section of your tax return and check the Child tax credit box in column (4). See *Child Tax Credit (CTC)*, earlier.
- For each dependent for whom you are claiming the ODC, you must enter the timely issued TIN for the dependent in column (2) of the *Dependents* section of your tax return and check the Credit for other dependents box in column (4). See *Credit for Other Dependents (ODC)*, earlier.

Don't check both the Child tax credit box and the Credit for other dependents box for the same person.

Additional Child Tax Credit (ACTC)

This credit is for certain individuals who get less than the full amount of the CTC.

The ODC can’t be used to figure the ACTC. Only your CTC can be used to figure your ACTC. If you are claiming the ODC but not the CTC, you can’t claim the ACTC.

Foreign earned income. If you file Form 2555 (relating to foreign earned income), you can’t claim the ACTC.

Bona fide residents of Puerto Rico. Bona fide residents of Puerto Rico are no longer required to have three or more qualifying children to be eligible to claim the ACTC. See Schedule 8812 (Form 1040) and its instructions.

How to claim the ACTC. To claim the ACTC, see Schedule 8812 (Form 1040) and its instructions.

2022 Tax Table

See the instructions for line 16 to see if you must use the Tax Table below to figure your tax.

Example. A married couple are filing a joint return. Their taxable income on Form 1040, line 15, is $25,300. First, they find the $25,300-25,350 taxable income line. Next, they find the column for married filing jointly and read down the column. The amount shown where the taxable income line and filing status column meet is $2,628. This is the tax amount they should enter in the entry space on Form 1040, line 16.

Sample Table

At Least	But Less Than	Single	Married filing jointly*	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
25,200	**25,250**	2,822	2,616	2,822	2,734
25,250	**25,300**	2,828	2,622	2,828	2,740
25,300	**25,350**	2,834	(2,628)	2,834	2,746
25,350	**25,400**	2,840	2,634	2,840	2,752

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
0	**5**	0	0	0	0
5	**15**	1	1	1	1
15	**25**	2	2	2	2
25	**50**	4	4	4	4
50	**75**	6	6	6	6
75	**100**	9	9	9	9
100	**125**	11	11	11	11
125	**150**	14	14	14	14
150	**175**	16	16	16	16
175	**200**	19	19	19	19
200	**225**	21	21	21	21
225	**250**	24	24	24	24
250	**275**	26	26	26	26
275	**300**	29	29	29	29
300	**325**	31	31	31	31
325	**350**	34	34	34	34
350	**375**	36	36	36	36
375	**400**	39	39	39	39
400	**425**	41	41	41	41
425	**450**	44	44	44	44
450	**475**	46	46	46	46
475	**500**	49	49	49	49
500	**525**	51	51	51	51
525	**550**	54	54	54	54
550	**575**	56	56	56	56
575	**600**	59	59	59	59
600	**625**	61	61	61	61
625	**650**	64	64	64	64
650	**675**	66	66	66	66
675	**700**	69	69	69	69
700	**725**	71	71	71	71
725	**750**	74	74	74	74
750	**775**	76	76	76	76
775	**800**	79	79	79	79
800	**825**	81	81	81	81
825	**850**	84	84	84	84
850	**875**	86	86	86	86
875	**900**	89	89	89	89
900	**925**	91	91	91	91
925	**950**	94	94	94	94
950	**975**	96	96	96	96
975	**1,000**	99	99	99	99

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
1,000					
1,000	**1,025**	101	101	101	101
1,025	**1,050**	104	104	104	104
1,050	**1,075**	106	106	106	106
1,075	**1,100**	109	109	109	109
1,100	**1,125**	111	111	111	111
1,125	**1,150**	114	114	114	114
1,150	**1,175**	116	116	116	116
1,175	**1,200**	119	119	119	119
1,200	**1,225**	121	121	121	121
1,225	**1,250**	124	124	124	124
1,250	**1,275**	126	126	126	126
1,275	**1,300**	129	129	129	129
1,300	**1,325**	131	131	131	131
1,325	**1,350**	134	134	134	134
1,350	**1,375**	136	136	136	136
1,375	**1,400**	139	139	139	139
1,400	**1,425**	141	141	141	141
1,425	**1,450**	144	144	144	144
1,450	**1,475**	146	146	146	146
1,475	**1,500**	149	149	149	149
1,500	**1,525**	151	151	151	151
1,525	**1,550**	154	154	154	154
1,550	**1,575**	156	156	156	156
1,575	**1,600**	159	159	159	159
1,600	**1,625**	161	161	161	161
1,625	**1,650**	164	164	164	164
1,650	**1,675**	166	166	166	166
1,675	**1,700**	169	169	169	169
1,700	**1,725**	171	171	171	171
1,725	**1,750**	174	174	174	174
1,750	**1,775**	176	176	176	176
1,775	**1,800**	179	179	179	179
1,800	**1,825**	181	181	181	181
1,825	**1,850**	184	184	184	184
1,850	**1,875**	186	186	186	186
1,875	**1,900**	189	189	189	189
1,900	**1,925**	191	191	191	191
1,925	**1,950**	194	194	194	194
1,950	**1,975**	196	196	196	196
1,975	**2,000**	199	199	199	199

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
2,000					
2,000	**2,025**	201	201	201	201
2,025	**2,050**	204	204	204	204
2,050	**2,075**	206	206	206	206
2,075	**2,100**	209	209	209	209
2,100	**2,125**	211	211	211	211
2,125	**2,150**	214	214	214	214
2,150	**2,175**	216	216	216	216
2,175	**2,200**	219	219	219	219
2,200	**2,225**	221	221	221	221
2,225	**2,250**	224	224	224	224
2,250	**2,275**	226	226	226	226
2,275	**2,300**	229	229	229	229
2,300	**2,325**	231	231	231	231
2,325	**2,350**	234	234	234	234
2,350	**2,375**	236	236	236	236
2,375	**2,400**	239	239	239	239
2,400	**2,425**	241	241	241	241
2,425	**2,450**	244	244	244	244
2,450	**2,475**	246	246	246	246
2,475	**2,500**	249	249	249	249
2,500	**2,525**	251	251	251	251
2,525	**2,550**	254	254	254	254
2,550	**2,575**	256	256	256	256
2,575	**2,600**	259	259	259	259
2,600	**2,625**	261	261	261	261
2,625	**2,650**	264	264	264	264
2,650	**2,675**	266	266	266	266
2,675	**2,700**	269	269	269	269
2,700	**2,725**	271	271	271	271
2,725	**2,750**	274	274	274	274
2,750	**2,775**	276	276	276	276
2,775	**2,800**	279	279	279	279
2,800	**2,825**	281	281	281	281
2,825	**2,850**	284	284	284	284
2,850	**2,875**	286	286	286	286
2,875	**2,900**	289	289	289	289
2,900	**2,925**	291	291	291	291
2,925	**2,950**	294	294	294	294
2,950	**2,975**	296	296	296	296
2,975	**3,000**	299	299	299	299

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
3,000					
3,000	**3,050**	303	303	303	303
3,050	**3,100**	308	308	308	308
3,100	**3,150**	313	313	313	313
3,150	**3,200**	318	318	318	318
3,200	**3,250**	323	323	323	323
3,250	**3,300**	328	328	328	328
3,300	**3,350**	333	333	333	333
3,350	**3,400**	338	338	338	338
3,400	**3,450**	343	343	343	343
3,450	**3,500**	348	348	348	348
3,500	**3,550**	353	353	353	353
3,550	**3,600**	358	358	358	358
3,600	**3,650**	363	363	363	363
3,650	**3,700**	368	368	368	368
3,700	**3,750**	373	373	373	373
3,750	**3,800**	378	378	378	378
3,800	**3,850**	383	383	383	383
3,850	**3,900**	388	388	388	388
3,900	**3,950**	393	393	393	393
3,950	**4,000**	398	398	398	398
4,000					
4,000	**4,050**	403	403	403	403
4,050	**4,100**	408	408	408	408
4,100	**4,150**	413	413	413	413
4,150	**4,200**	418	418	418	418
4,200	**4,250**	423	423	423	423
4,250	**4,300**	428	428	428	428
4,300	**4,350**	433	433	433	433
4,350	**4,400**	438	438	438	438
4,400	**4,450**	443	443	443	443
4,450	**4,500**	448	448	448	448
4,500	**4,550**	453	453	453	453
4,550	**4,600**	458	458	458	458
4,600	**4,650**	463	463	463	463
4,650	**4,700**	468	468	468	468
4,700	**4,750**	473	473	473	473
4,750	**4,800**	478	478	478	478
4,800	**4,850**	483	483	483	483
4,850	**4,900**	488	488	488	488
4,900	**4,950**	493	493	493	493
4,950	**5,000**	498	498	498	498
5,000					
5,000	**5,050**	503	503	503	503
5,050	**5,100**	508	508	508	508
5,100	**5,150**	513	513	513	513
5,150	**5,200**	518	518	518	518
5,200	**5,250**	523	523	523	523
5,250	**5,300**	528	528	528	528
5,300	**5,350**	533	533	533	533
5,350	**5,400**	538	538	538	538
5,400	**5,450**	543	543	543	543
5,450	**5,500**	548	548	548	548
5,500	**5,550**	553	553	553	553
5,550	**5,600**	558	558	558	558
5,600	**5,650**	563	563	563	563
5,650	**5,700**	568	568	568	568
5,700	**5,750**	573	573	573	573
5,750	**5,800**	578	578	578	578
5,800	**5,850**	583	583	583	583
5,850	**5,900**	588	588	588	588
5,900	**5,950**	593	593	593	593
5,950	**6,000**	598	598	598	598
6,000					
6,000	**6,050**	603	603	603	603
6,050	**6,100**	608	608	608	608
6,100	**6,150**	613	613	613	613
6,150	**6,200**	618	618	618	618
6,200	**6,250**	623	623	623	623
6,250	**6,300**	628	628	628	628
6,300	**6,350**	633	633	633	633
6,350	**6,400**	638	638	638	638
6,400	**6,450**	643	643	643	643
6,450	**6,500**	648	648	648	648
6,500	**6,550**	653	653	653	653
6,550	**6,600**	658	658	658	658
6,600	**6,650**	663	663	663	663
6,650	**6,700**	668	668	668	668
6,700	**6,750**	673	673	673	673
6,750	**6,800**	678	678	678	678
6,800	**6,850**	683	683	683	683
6,850	**6,900**	688	688	688	688
6,900	**6,950**	693	693	693	693
6,950	**7,000**	698	698	698	698
7,000					
7,000	**7,050**	703	703	703	703
7,050	**7,100**	708	708	708	708
7,100	**7,150**	713	713	713	713
7,150	**7,200**	718	718	718	718
7,200	**7,250**	723	723	723	723
7,250	**7,300**	728	728	728	728
7,300	**7,350**	733	733	733	733
7,350	**7,400**	738	738	738	738
7,400	**7,450**	743	743	743	743
7,450	**7,500**	748	748	748	748
7,500	**7,550**	753	753	753	753
7,550	**7,600**	758	758	758	758
7,600	**7,650**	763	763	763	763
7,650	**7,700**	768	768	768	768
7,700	**7,750**	773	773	773	773
7,750	**7,800**	778	778	778	778
7,800	**7,850**	783	783	783	783
7,850	**7,900**	788	788	788	788
7,900	**7,950**	793	793	793	793
7,950	**8,000**	798	798	798	798
8,000					
8,000	**8,050**	803	803	803	803
8,050	**8,100**	808	808	808	808
8,100	**8,150**	813	813	813	813
8,150	**8,200**	818	818	818	818
8,200	**8,250**	823	823	823	823
8,250	**8,300**	828	828	828	828
8,300	**8,350**	833	833	833	833
8,350	**8,400**	838	838	838	838
8,400	**8,450**	843	843	843	843
8,450	**8,500**	848	848	848	848
8,500	**8,550**	853	853	853	853
8,550	**8,600**	858	858	858	858
8,600	**8,650**	863	863	863	863
8,650	**8,700**	868	868	868	868
8,700	**8,750**	873	873	873	873
8,750	**8,800**	878	878	878	878
8,800	**8,850**	883	883	883	883
8,850	**8,900**	888	888	888	888
8,900	**8,950**	893	893	893	893
8,950	**9,000**	898	898	898	898
9,000					
9,000	**9,050**	903	903	903	903
9,050	**9,100**	908	908	908	908
9,100	**9,150**	913	913	913	913
9,150	**9,200**	918	918	918	918
9,200	**9,250**	923	923	923	923
9,250	**9,300**	928	928	928	928
9,300	**9,350**	933	933	933	933
9,350	**9,400**	938	938	938	938
9,400	**9,450**	943	943	943	943
9,450	**9,500**	948	948	948	948
9,500	**9,550**	953	953	953	953
9,550	**9,600**	958	958	958	958
9,600	**9,650**	963	963	963	963
9,650	**9,700**	968	968	968	968
9,700	**9,750**	973	973	973	973
9,750	**9,800**	978	978	978	978
9,800	**9,850**	983	983	983	983
9,850	**9,900**	988	988	988	988
9,900	**9,950**	993	993	993	993
9,950	**10,000**	998	998	998	998
10,000					
10,000	**10,050**	1,003	1,003	1,003	1,003
10,050	**10,100**	1,008	1,008	1,008	1,008
10,100	**10,150**	1,013	1,013	1,013	1,013
10,150	**10,200**	1,018	1,018	1,018	1,018
10,200	**10,250**	1,023	1,023	1,023	1,023
10,250	**10,300**	1,028	1,028	1,028	1,028
10,300	**10,350**	1,034	1,033	1,034	1,033
10,350	**10,400**	1,040	1,038	1,040	1,038
10,400	**10,450**	1,046	1,043	1,046	1,043
10,450	**10,500**	1,052	1,048	1,052	1,048
10,500	**10,550**	1,058	1,053	1,058	1,053
10,550	**10,600**	1,064	1,058	1,064	1,058
10,600	**10,650**	1,070	1,063	1,070	1,063
10,650	**10,700**	1,076	1,068	1,076	1,068
10,700	**10,750**	1,082	1,073	1,082	1,073
10,750	**10,800**	1,088	1,078	1,088	1,078
10,800	**10,850**	1,094	1,083	1,094	1,083
10,850	**10,900**	1,100	1,088	1,100	1,088
10,900	**10,950**	1,106	1,093	1,106	1,093
10,950	**11,000**	1,112	1,098	1,112	1,098
11,000					
11,000	**11,050**	1,118	1,103	1,118	1,103
11,050	**11,100**	1,124	1,108	1,124	1,108
11,100	**11,150**	1,130	1,113	1,130	1,113
11,150	**11,200**	1,136	1,118	1,136	1,118
11,200	**11,250**	1,142	1,123	1,142	1,123
11,250	**11,300**	1,148	1,128	1,148	1,128
11,300	**11,350**	1,154	1,133	1,154	1,133
11,350	**11,400**	1,160	1,138	1,160	1,138
11,400	**11,450**	1,166	1,143	1,166	1,143
11,450	**11,500**	1,172	1,148	1,172	1,148
11,500	**11,550**	1,178	1,153	1,178	1,153
11,550	**11,600**	1,184	1,158	1,184	1,158
11,600	**11,650**	1,190	1,163	1,190	1,163
11,650	**11,700**	1,196	1,168	1,196	1,168
11,700	**11,750**	1,202	1,173	1,202	1,173
11,750	**11,800**	1,208	1,178	1,208	1,178
11,800	**11,850**	1,214	1,183	1,214	1,183
11,850	**11,900**	1,220	1,188	1,220	1,188
11,900	**11,950**	1,226	1,193	1,226	1,193
11,950	**12,000**	1,232	1,198	1,232	1,198

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
12,000					
12,000	**12,050**	1,238	1,203	1,238	1,203
12,050	**12,100**	1,244	1,208	1,244	1,208
12,100	**12,150**	1,250	1,213	1,250	1,213
12,150	**12,200**	1,256	1,218	1,256	1,218
12,200	**12,250**	1,262	1,223	1,262	1,223
12,250	**12,300**	1,268	1,228	1,268	1,228
12,300	**12,350**	1,274	1,233	1,274	1,233
12,350	**12,400**	1,280	1,238	1,280	1,238
12,400	**12,450**	1,286	1,243	1,286	1,243
12,450	**12,500**	1,292	1,248	1,292	1,248
12,500	**12,550**	1,298	1,253	1,298	1,253
12,550	**12,600**	1,304	1,258	1,304	1,258
12,600	**12,650**	1,310	1,263	1,310	1,263
12,650	**12,700**	1,316	1,268	1,316	1,268
12,700	**12,750**	1,322	1,273	1,322	1,273
12,750	**12,800**	1,328	1,278	1,328	1,278
12,800	**12,850**	1,334	1,283	1,334	1,283
12,850	**12,900**	1,340	1,288	1,340	1,288
12,900	**12,950**	1,346	1,293	1,346	1,293
12,950	**13,000**	1,352	1,298	1,352	1,298
13,000					
13,000	**13,050**	1,358	1,303	1,358	1,303
13,050	**13,100**	1,364	1,308	1,364	1,308
13,100	**13,150**	1,370	1,313	1,370	1,313
13,150	**13,200**	1,376	1,318	1,376	1,318
13,200	**13,250**	1,382	1,323	1,382	1,323
13,250	**13,300**	1,388	1,328	1,388	1,328
13,300	**13,350**	1,394	1,333	1,394	1,333
13,350	**13,400**	1,400	1,338	1,400	1,338
13,400	**13,450**	1,406	1,343	1,406	1,343
13,450	**13,500**	1,412	1,348	1,412	1,348
13,500	**13,550**	1,418	1,353	1,418	1,353
13,550	**13,600**	1,424	1,358	1,424	1,358
13,600	**13,650**	1,430	1,363	1,430	1,363
13,650	**13,700**	1,436	1,368	1,436	1,368
13,700	**13,750**	1,442	1,373	1,442	1,373
13,750	**13,800**	1,448	1,378	1,448	1,378
13,800	**13,850**	1,454	1,383	1,454	1,383
13,850	**13,900**	1,460	1,388	1,460	1,388
13,900	**13,950**	1,466	1,393	1,466	1,393
13,950	**14,000**	1,472	1,398	1,472	1,398
14,000					
14,000	**14,050**	1,478	1,403	1,478	1,403
14,050	**14,100**	1,484	1,408	1,484	1,408
14,100	**14,150**	1,490	1,413	1,490	1,413
14,150	**14,200**	1,496	1,418	1,496	1,418
14,200	**14,250**	1,502	1,423	1,502	1,423
14,250	**14,300**	1,508	1,428	1,508	1,428
14,300	**14,350**	1,514	1,433	1,514	1,433
14,350	**14,400**	1,520	1,438	1,520	1,438
14,400	**14,450**	1,526	1,443	1,526	1,443
14,450	**14,500**	1,532	1,448	1,532	1,448
14,500	**14,550**	1,538	1,453	1,538	1,453
14,550	**14,600**	1,544	1,458	1,544	1,458
14,600	**14,650**	1,550	1,463	1,550	1,463
14,650	**14,700**	1,556	1,468	1,556	1,468
14,700	**14,750**	1,562	1,473	1,562	1,474
14,750	**14,800**	1,568	1,478	1,568	1,480
14,800	**14,850**	1,574	1,483	1,574	1,486
14,850	**14,900**	1,580	1,488	1,580	1,492
14,900	**14,950**	1,586	1,493	1,586	1,498
14,950	**15,000**	1,592	1,498	1,592	1,504

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
15,000					
15,000	**15,050**	1,598	1,503	1,598	1,510
15,050	**15,100**	1,604	1,508	1,604	1,516
15,100	**15,150**	1,610	1,513	1,610	1,522
15,150	**15,200**	1,616	1,518	1,616	1,528
15,200	**15,250**	1,622	1,523	1,622	1,534
15,250	**15,300**	1,628	1,528	1,628	1,540
15,300	**15,350**	1,634	1,533	1,634	1,546
15,350	**15,400**	1,640	1,538	1,640	1,552
15,400	**15,450**	1,646	1,543	1,646	1,558
15,450	**15,500**	1,652	1,548	1,652	1,564
15,500	**15,550**	1,658	1,553	1,658	1,570
15,550	**15,600**	1,664	1,558	1,664	1,576
15,600	**15,650**	1,670	1,563	1,670	1,582
15,650	**15,700**	1,676	1,568	1,676	1,588
15,700	**15,750**	1,682	1,573	1,682	1,594
15,750	**15,800**	1,688	1,578	1,688	1,600
15,800	**15,850**	1,694	1,583	1,694	1,606
15,850	**15,900**	1,700	1,588	1,700	1,612
15,900	**15,950**	1,706	1,593	1,706	1,618
15,950	**16,000**	1,712	1,598	1,712	1,624
16,000					
16,000	**16,050**	1,718	1,603	1,718	1,630
16,050	**16,100**	1,724	1,608	1,724	1,636
16,100	**16,150**	1,730	1,613	1,730	1,642
16,150	**16,200**	1,736	1,618	1,736	1,648
16,200	**16,250**	1,742	1,623	1,742	1,654
16,250	**16,300**	1,748	1,628	1,748	1,660
16,300	**16,350**	1,754	1,633	1,754	1,666
16,350	**16,400**	1,760	1,638	1,760	1,672
16,400	**16,450**	1,766	1,643	1,766	1,678
16,450	**16,500**	1,772	1,648	1,772	1,684
16,500	**16,550**	1,778	1,653	1,778	1,690
16,550	**16,600**	1,784	1,658	1,784	1,696
16,600	**16,650**	1,790	1,663	1,790	1,702
16,650	**16,700**	1,796	1,668	1,796	1,708
16,700	**16,750**	1,802	1,673	1,802	1,714
16,750	**16,800**	1,808	1,678	1,808	1,720
16,800	**16,850**	1,814	1,683	1,814	1,726
16,850	**16,900**	1,820	1,688	1,820	1,732
16,900	**16,950**	1,826	1,693	1,826	1,738
16,950	**17,000**	1,832	1,698	1,832	1,744
17,000					
17,000	**17,050**	1,838	1,703	1,838	1,750
17,050	**17,100**	1,844	1,708	1,844	1,756
17,100	**17,150**	1,850	1,713	1,850	1,762
17,150	**17,200**	1,856	1,718	1,856	1,768
17,200	**17,250**	1,862	1,723	1,862	1,774
17,250	**17,300**	1,868	1,728	1,868	1,780
17,300	**17,350**	1,874	1,733	1,874	1,786
17,350	**17,400**	1,880	1,738	1,880	1,792
17,400	**17,450**	1,886	1,743	1,886	1,798
17,450	**17,500**	1,892	1,748	1,892	1,804
17,500	**17,550**	1,898	1,753	1,898	1,810
17,550	**17,600**	1,904	1,758	1,904	1,816
17,600	**17,650**	1,910	1,763	1,910	1,822
17,650	**17,700**	1,916	1,768	1,916	1,828
17,700	**17,750**	1,922	1,773	1,922	1,834
17,750	**17,800**	1,928	1,778	1,928	1,840
17,800	**17,850**	1,934	1,783	1,934	1,846
17,850	**17,900**	1,940	1,788	1,940	1,852
17,900	**17,950**	1,946	1,793	1,946	1,858
17,950	**18,000**	1,952	1,798	1,952	1,864

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
18,000					
18,000	**18,050**	1,958	1,803	1,958	1,870
18,050	**18,100**	1,964	1,808	1,964	1,876
18,100	**18,150**	1,970	1,813	1,970	1,882
18,150	**18,200**	1,976	1,818	1,976	1,888
18,200	**18,250**	1,982	1,823	1,982	1,894
18,250	**18,300**	1,988	1,828	1,988	1,900
18,300	**18,350**	1,994	1,833	1,994	1,906
18,350	**18,400**	2,000	1,838	2,000	1,912
18,400	**18,450**	2,006	1,843	2,006	1,918
18,450	**18,500**	2,012	1,848	2,012	1,924
18,500	**18,550**	2,018	1,853	2,018	1,930
18,550	**18,600**	2,024	1,858	2,024	1,936
18,600	**18,650**	2,030	1,863	2,030	1,942
18,650	**18,700**	2,036	1,868	2,036	1,948
18,700	**18,750**	2,042	1,873	2,042	1,954
18,750	**18,800**	2,048	1,878	2,048	1,960
18,800	**18,850**	2,054	1,883	2,054	1,966
18,850	**18,900**	2,060	1,888	2,060	1,972
18,900	**18,950**	2,066	1,893	2,066	1,978
18,950	**19,000**	2,072	1,898	2,072	1,984
19,000					
19,000	**19,050**	2,078	1,903	2,078	1,990
19,050	**19,100**	2,084	1,908	2,084	1,996
19,100	**19,150**	2,090	1,913	2,090	2,002
19,150	**19,200**	2,096	1,918	2,096	2,008
19,200	**19,250**	2,102	1,923	2,102	2,014
19,250	**19,300**	2,108	1,928	2,108	2,020
19,300	**19,350**	2,114	1,933	2,114	2,026
19,350	**19,400**	2,120	1,938	2,120	2,032
19,400	**19,450**	2,126	1,943	2,126	2,038
19,450	**19,500**	2,132	1,948	2,132	2,044
19,500	**19,550**	2,138	1,953	2,138	2,050
19,550	**19,600**	2,144	1,958	2,144	2,056
19,600	**19,650**	2,150	1,963	2,150	2,062
19,650	**19,700**	2,156	1,968	2,156	2,068
19,700	**19,750**	2,162	1,973	2,162	2,074
19,750	**19,800**	2,168	1,978	2,168	2,080
19,800	**19,850**	2,174	1,983	2,174	2,086
19,850	**19,900**	2,180	1,988	2,180	2,092
19,900	**19,950**	2,186	1,993	2,186	2,098
19,950	**20,000**	2,192	1,998	2,192	2,104
20,000					
20,000	**20,050**	2,198	2,003	2,198	2,110
20,050	**20,100**	2,204	2,008	2,204	2,116
20,100	**20,150**	2,210	2,013	2,210	2,122
20,150	**20,200**	2,216	2,018	2,216	2,128
20,200	**20,250**	2,222	2,023	2,222	2,134
20,250	**20,300**	2,228	2,028	2,228	2,140
20,300	**20,350**	2,234	2,033	2,234	2,146
20,350	**20,400**	2,240	2,038	2,240	2,152
20,400	**20,450**	2,246	2,043	2,246	2,158
20,450	**20,500**	2,252	2,048	2,252	2,164
20,500	**20,550**	2,258	2,053	2,258	2,170
20,550	**20,600**	2,264	2,058	2,264	2,176
20,600	**20,650**	2,270	2,064	2,270	2,182
20,650	**20,700**	2,276	2,070	2,276	2,188
20,700	**20,750**	2,282	2,076	2,282	2,194
20,750	**20,800**	2,288	2,082	2,288	2,200
20,800	**20,850**	2,294	2,088	2,294	2,206
20,850	**20,900**	2,300	2,094	2,300	2,212
20,900	**20,950**	2,306	2,100	2,306	2,218
20,950	**21,000**	2,312	2,106	2,312	2,224

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is— At least	But less than	And you are— Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
21,000					
21,000	21,050	2,318	2,112	2,318	2,230
21,050	21,100	2,324	2,118	2,324	2,236
21,100	21,150	2,330	2,124	2,330	2,242
21,150	21,200	2,336	2,130	2,336	2,248
21,200	21,250	2,342	2,136	2,342	2,254
21,250	21,300	2,348	2,142	2,348	2,260
21,300	21,350	2,354	2,148	2,354	2,266
21,350	21,400	2,360	2,154	2,360	2,272
21,400	21,450	2,366	2,160	2,366	2,278
21,450	21,500	2,372	2,166	2,372	2,284
21,500	21,550	2,378	2,172	2,378	2,290
21,550	21,600	2,384	2,178	2,384	2,296
21,600	21,650	2,390	2,184	2,390	2,302
21,650	21,700	2,396	2,190	2,396	2,308
21,700	21,750	2,402	2,196	2,402	2,314
21,750	21,800	2,408	2,202	2,408	2,320
21,800	21,850	2,414	2,208	2,414	2,326
21,850	21,900	2,420	2,214	2,420	2,332
21,900	21,950	2,426	2,220	2,426	2,338
21,950	22,000	2,432	2,226	2,432	2,344
22,000					
22,000	22,050	2,438	2,232	2,438	2,350
22,050	22,100	2,444	2,238	2,444	2,356
22,100	22,150	2,450	2,244	2,450	2,362
22,150	22,200	2,456	2,250	2,456	2,368
22,200	22,250	2,462	2,256	2,462	2,374
22,250	22,300	2,468	2,262	2,468	2,380
22,300	22,350	2,474	2,268	2,474	2,386
22,350	22,400	2,480	2,274	2,480	2,392
22,400	22,450	2,486	2,280	2,486	2,398
22,450	22,500	2,492	2,286	2,492	2,404
22,500	22,550	2,498	2,292	2,498	2,410
22,550	22,600	2,504	2,298	2,504	2,416
22,600	22,650	2,510	2,304	2,510	2,422
22,650	22,700	2,516	2,310	2,516	2,428
22,700	22,750	2,522	2,316	2,522	2,434
22,750	22,800	2,528	2,322	2,528	2,440
22,800	22,850	2,534	2,328	2,534	2,446
22,850	22,900	2,540	2,334	2,540	2,452
22,900	22,950	2,546	2,340	2,546	2,458
22,950	23,000	2,552	2,346	2,552	2,464
23,000					
23,000	23,050	2,558	2,352	2,558	2,470
23,050	23,100	2,564	2,358	2,564	2,476
23,100	23,150	2,570	2,364	2,570	2,482
23,150	23,200	2,576	2,370	2,576	2,488
23,200	23,250	2,582	2,376	2,582	2,494
23,250	23,300	2,588	2,382	2,588	2,500
23,300	23,350	2,594	2,388	2,594	2,506
23,350	23,400	2,600	2,394	2,600	2,512
23,400	23,450	2,606	2,400	2,606	2,518
23,450	23,500	2,612	2,406	2,612	2,524
23,500	23,550	2,618	2,412	2,618	2,530
23,550	23,600	2,624	2,418	2,624	2,536
23,600	23,650	2,630	2,424	2,630	2,542
23,650	23,700	2,636	2,430	2,636	2,548
23,700	23,750	2,642	2,436	2,642	2,554
23,750	23,800	2,648	2,442	2,648	2,560
23,800	23,850	2,654	2,448	2,654	2,566
23,850	23,900	2,660	2,454	2,660	2,572
23,900	23,950	2,666	2,460	2,666	2,578
23,950	24,000	2,672	2,466	2,672	2,584
24,000					
24,000	24,050	2,678	2,472	2,678	2,590
24,050	24,100	2,684	2,478	2,684	2,596
24,100	24,150	2,690	2,484	2,690	2,602
24,150	24,200	2,696	2,490	2,696	2,608
24,200	24,250	2,702	2,496	2,702	2,614
24,250	24,300	2,708	2,502	2,708	2,620
24,300	24,350	2,714	2,508	2,714	2,626
24,350	24,400	2,720	2,514	2,720	2,632
24,400	24,450	2,726	2,520	2,726	2,638
24,450	24,500	2,732	2,526	2,732	2,644
24,500	24,550	2,738	2,532	2,738	2,650
24,550	24,600	2,744	2,538	2,744	2,656
24,600	24,650	2,750	2,544	2,750	2,662
24,650	24,700	2,756	2,550	2,756	2,668
24,700	24,750	2,762	2,556	2,762	2,674
24,750	24,800	2,768	2,562	2,768	2,680
24,800	24,850	2,774	2,568	2,774	2,686
24,850	24,900	2,780	2,574	2,780	2,692
24,900	24,950	2,786	2,580	2,786	2,698
24,950	25,000	2,792	2,586	2,792	2,704
25,000					
25,000	25,050	2,798	2,592	2,798	2,710
25,050	25,100	2,804	2,598	2,804	2,716
25,100	25,150	2,810	2,604	2,810	2,722
25,150	25,200	2,816	2,610	2,816	2,728
25,200	25,250	2,822	2,616	2,822	2,734
25,250	25,300	2,828	2,622	2,828	2,740
25,300	25,350	2,834	2,628	2,834	2,746
25,350	25,400	2,840	2,634	2,840	2,752
25,400	25,450	2,846	2,640	2,846	2,758
25,450	25,500	2,852	2,646	2,852	2,764
25,500	25,550	2,858	2,652	2,858	2,770
25,550	25,600	2,864	2,658	2,864	2,776
25,600	25,650	2,870	2,664	2,870	2,782
25,650	25,700	2,876	2,670	2,876	2,788
25,700	25,750	2,882	2,676	2,882	2,794
25,750	25,800	2,888	2,682	2,888	2,800
25,800	25,850	2,894	2,688	2,894	2,806
25,850	25,900	2,900	2,694	2,900	2,812
25,900	25,950	2,906	2,700	2,906	2,818
25,950	26,000	2,912	2,706	2,912	2,824
26,000					
26,000	26,050	2,918	2,712	2,918	2,830
26,050	26,100	2,924	2,718	2,924	2,836
26,100	26,150	2,930	2,724	2,930	2,842
26,150	26,200	2,936	2,730	2,936	2,848
26,200	26,250	2,942	2,736	2,942	2,854
26,250	26,300	2,948	2,742	2,948	2,860
26,300	26,350	2,954	2,748	2,954	2,866
26,350	26,400	2,960	2,754	2,960	2,872
26,400	26,450	2,966	2,760	2,966	2,878
26,450	26,500	2,972	2,766	2,972	2,884
26,500	26,550	2,978	2,772	2,978	2,890
26,550	26,600	2,984	2,778	2,984	2,896
26,600	26,650	2,990	2,784	2,990	2,902
26,650	26,700	2,996	2,790	2,996	2,908
26,700	26,750	3,002	2,796	3,002	2,914
26,750	26,800	3,008	2,802	3,008	2,920
26,800	26,850	3,014	2,808	3,014	2,926
26,850	26,900	3,020	2,814	3,020	2,932
26,900	26,950	3,026	2,820	3,026	2,938
26,950	27,000	3,032	2,826	3,032	2,944
27,000					
27,000	27,050	3,038	2,832	3,038	2,950
27,050	27,100	3,044	2,838	3,044	2,956
27,100	27,150	3,050	2,844	3,050	2,962
27,150	27,200	3,056	2,850	3,056	2,968
27,200	27,250	3,062	2,856	3,062	2,974
27,250	27,300	3,068	2,862	3,068	2,980
27,300	27,350	3,074	2,868	3,074	2,986
27,350	27,400	3,080	2,874	3,080	2,992
27,400	27,450	3,086	2,880	3,086	2,998
27,450	27,500	3,092	2,886	3,092	3,004
27,500	27,550	3,098	2,892	3,098	3,010
27,550	27,600	3,104	2,898	3,104	3,016
27,600	27,650	3,110	2,904	3,110	3,022
27,650	27,700	3,116	2,910	3,116	3,028
27,700	27,750	3,122	2,916	3,122	3,034
27,750	27,800	3,128	2,922	3,128	3,040
27,800	27,850	3,134	2,928	3,134	3,046
27,850	27,900	3,140	2,934	3,140	3,052
27,900	27,950	3,146	2,940	3,146	3,058
27,950	28,000	3,152	2,946	3,152	3,064
28,000					
28,000	28,050	3,158	2,952	3,158	3,070
28,050	28,100	3,164	2,958	3,164	3,076
28,100	28,150	3,170	2,964	3,170	3,082
28,150	28,200	3,176	2,970	3,176	3,088
28,200	28,250	3,182	2,976	3,182	3,094
28,250	28,300	3,188	2,982	3,188	3,100
28,300	28,350	3,194	2,988	3,194	3,106
28,350	28,400	3,200	2,994	3,200	3,112
28,400	28,450	3,206	3,000	3,206	3,118
28,450	28,500	3,212	3,006	3,212	3,124
28,500	28,550	3,218	3,012	3,218	3,130
28,550	28,600	3,224	3,018	3,224	3,136
28,600	28,650	3,230	3,024	3,230	3,142
28,650	28,700	3,236	3,030	3,236	3,148
28,700	28,750	3,242	3,036	3,242	3,154
28,750	28,800	3,248	3,042	3,248	3,160
28,800	28,850	3,254	3,048	3,254	3,166
28,850	28,900	3,260	3,054	3,260	3,172
28,900	28,950	3,266	3,060	3,266	3,178
28,950	29,000	3,272	3,066	3,272	3,184
29,000					
29,000	29,050	3,278	3,072	3,278	3,190
29,050	29,100	3,284	3,078	3,284	3,196
29,100	29,150	3,290	3,084	3,290	3,202
29,150	29,200	3,296	3,090	3,296	3,208
29,200	29,250	3,302	3,096	3,302	3,214
29,250	29,300	3,308	3,102	3,308	3,220
29,300	29,350	3,314	3,108	3,314	3,226
29,350	29,400	3,320	3,114	3,320	3,232
29,400	29,450	3,326	3,120	3,326	3,238
29,450	29,500	3,332	3,126	3,332	3,244
29,500	29,550	3,338	3,132	3,338	3,250
29,550	29,600	3,344	3,138	3,344	3,256
29,600	29,650	3,350	3,144	3,350	3,262
29,650	29,700	3,356	3,150	3,356	3,268
29,700	29,750	3,362	3,156	3,362	3,274
29,750	29,800	3,368	3,162	3,368	3,280
29,800	29,850	3,374	3,168	3,374	3,286
29,850	29,900	3,380	3,174	3,380	3,292
29,900	29,950	3,386	3,180	3,386	3,298
29,950	30,000	3,392	3,186	3,392	3,304

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
30,000					
30,000	**30,050**	3,398	3,192	3,398	3,310
30,050	**30,100**	3,404	3,198	3,404	3,316
30,100	**30,150**	3,410	3,204	3,410	3,322
30,150	**30,200**	3,416	3,210	3,416	3,328
30,200	**30,250**	3,422	3,216	3,422	3,334
30,250	**30,300**	3,428	3,222	3,428	3,340
30,300	**30,350**	3,434	3,228	3,434	3,346
30,350	**30,400**	3,440	3,234	3,440	3,352
30,400	**30,450**	3,446	3,240	3,446	3,358
30,450	**30,500**	3,452	3,246	3,452	3,364
30,500	**30,550**	3,458	3,252	3,458	3,370
30,550	**30,600**	3,464	3,258	3,464	3,376
30,600	**30,650**	3,470	3,264	3,470	3,382
30,650	**30,700**	3,476	3,270	3,476	3,388
30,700	**30,750**	3,482	3,276	3,482	3,394
30,750	**30,800**	3,488	3,282	3,488	3,400
30,800	**30,850**	3,494	3,288	3,494	3,406
30,850	**30,900**	3,500	3,294	3,500	3,412
30,900	**30,950**	3,506	3,300	3,506	3,418
30,950	**31,000**	3,512	3,306	3,512	3,424
31,000					
31,000	**31,050**	3,518	3,312	3,518	3,430
31,050	**31,100**	3,524	3,318	3,524	3,436
31,100	**31,150**	3,530	3,324	3,530	3,442
31,150	**31,200**	3,536	3,330	3,536	3,448
31,200	**31,250**	3,542	3,336	3,542	3,454
31,250	**31,300**	3,548	3,342	3,548	3,460
31,300	**31,350**	3,554	3,348	3,554	3,466
31,350	**31,400**	3,560	3,354	3,560	3,472
31,400	**31,450**	3,566	3,360	3,566	3,478
31,450	**31,500**	3,572	3,366	3,572	3,484
31,500	**31,550**	3,578	3,372	3,578	3,490
31,550	**31,600**	3,584	3,378	3,584	3,496
31,600	**31,650**	3,590	3,384	3,590	3,502
31,650	**31,700**	3,596	3,390	3,596	3,508
31,700	**31,750**	3,602	3,396	3,602	3,514
31,750	**31,800**	3,608	3,402	3,608	3,520
31,800	**31,850**	3,614	3,408	3,614	3,526
31,850	**31,900**	3,620	3,414	3,620	3,532
31,900	**31,950**	3,626	3,420	3,626	3,538
31,950	**32,000**	3,632	3,426	3,632	3,544
32,000					
32,000	**32,050**	3,638	3,432	3,638	3,550
32,050	**32,100**	3,644	3,438	3,644	3,556
32,100	**32,150**	3,650	3,444	3,650	3,562
32,150	**32,200**	3,656	3,450	3,656	3,568
32,200	**32,250**	3,662	3,456	3,662	3,574
32,250	**32,300**	3,668	3,462	3,668	3,580
32,300	**32,350**	3,674	3,468	3,674	3,586
32,350	**32,400**	3,680	3,474	3,680	3,592
32,400	**32,450**	3,686	3,480	3,686	3,598
32,450	**32,500**	3,692	3,486	3,692	3,604
32,500	**32,550**	3,698	3,492	3,698	3,610
32,550	**32,600**	3,704	3,498	3,704	3,616
32,600	**32,650**	3,710	3,504	3,710	3,622
32,650	**32,700**	3,716	3,510	3,716	3,628
32,700	**32,750**	3,722	3,516	3,722	3,634
32,750	**32,800**	3,728	3,522	3,728	3,640
32,800	**32,850**	3,734	3,528	3,734	3,646
32,850	**32,900**	3,740	3,534	3,740	3,652
32,900	**32,950**	3,746	3,540	3,746	3,658
32,950	**33,000**	3,752	3,546	3,752	3,664
33,000					
33,000	**33,050**	3,758	3,552	3,758	3,670
33,050	**33,100**	3,764	3,558	3,764	3,676
33,100	**33,150**	3,770	3,564	3,770	3,682
33,150	**33,200**	3,776	3,570	3,776	3,688
33,200	**33,250**	3,782	3,576	3,782	3,694
33,250	**33,300**	3,788	3,582	3,788	3,700
33,300	**33,350**	3,794	3,588	3,794	3,706
33,350	**33,400**	3,800	3,594	3,800	3,712
33,400	**33,450**	3,806	3,600	3,806	3,718
33,450	**33,500**	3,812	3,606	3,812	3,724
33,500	**33,550**	3,818	3,612	3,818	3,730
33,550	**33,600**	3,824	3,618	3,824	3,736
33,600	**33,650**	3,830	3,624	3,830	3,742
33,650	**33,700**	3,836	3,630	3,836	3,748
33,700	**33,750**	3,842	3,636	3,842	3,754
33,750	**33,800**	3,848	3,642	3,848	3,760
33,800	**33,850**	3,854	3,648	3,854	3,766
33,850	**33,900**	3,860	3,654	3,860	3,772
33,900	**33,950**	3,866	3,660	3,866	3,778
33,950	**34,000**	3,872	3,666	3,872	3,784
34,000					
34,000	**34,050**	3,878	3,672	3,878	3,790
34,050	**34,100**	3,884	3,678	3,884	3,796
34,100	**34,150**	3,890	3,684	3,890	3,802
34,150	**34,200**	3,896	3,690	3,896	3,808
34,200	**34,250**	3,902	3,696	3,902	3,814
34,250	**34,300**	3,908	3,702	3,908	3,820
34,300	**34,350**	3,914	3,708	3,914	3,826
34,350	**34,400**	3,920	3,714	3,920	3,832
34,400	**34,450**	3,926	3,720	3,926	3,838
34,450	**34,500**	3,932	3,726	3,932	3,844
34,500	**34,550**	3,938	3,732	3,938	3,850
34,550	**34,600**	3,944	3,738	3,944	3,856
34,600	**34,650**	3,950	3,744	3,950	3,862
34,650	**34,700**	3,956	3,750	3,956	3,868
34,700	**34,750**	3,962	3,756	3,962	3,874
34,750	**34,800**	3,968	3,762	3,968	3,880
34,800	**34,850**	3,974	3,768	3,974	3,886
34,850	**34,900**	3,980	3,774	3,980	3,892
34,900	**34,950**	3,986	3,780	3,986	3,898
34,950	**35,000**	3,992	3,786	3,992	3,904
35,000					
35,000	**35,050**	3,998	3,792	3,998	3,910
35,050	**35,100**	4,004	3,798	4,004	3,916
35,100	**35,150**	4,010	3,804	4,010	3,922
35,150	**35,200**	4,016	3,810	4,016	3,928
35,200	**35,250**	4,022	3,816	4,022	3,934
35,250	**35,300**	4,028	3,822	4,028	3,940
35,300	**35,350**	4,034	3,828	4,034	3,946
35,350	**35,400**	4,040	3,834	4,040	3,952
35,400	**35,450**	4,046	3,840	4,046	3,958
35,450	**35,500**	4,052	3,846	4,052	3,964
35,500	**35,550**	4,058	3,852	4,058	3,970
35,550	**35,600**	4,064	3,858	4,064	3,976
35,600	**35,650**	4,070	3,864	4,070	3,982
35,650	**35,700**	4,076	3,870	4,076	3,988
35,700	**35,750**	4,082	3,876	4,082	3,994
35,750	**35,800**	4,088	3,882	4,088	4,000
35,800	**35,850**	4,094	3,888	4,094	4,006
35,850	**35,900**	4,100	3,894	4,100	4,012
35,900	**35,950**	4,106	3,900	4,106	4,018
35,950	**36,000**	4,112	3,906	4,112	4,024
36,000					
36,000	**36,050**	4,118	3,912	4,118	4,030
36,050	**36,100**	4,124	3,918	4,124	4,036
36,100	**36,150**	4,130	3,924	4,130	4,042
36,150	**36,200**	4,136	3,930	4,136	4,048
36,200	**36,250**	4,142	3,936	4,142	4,054
36,250	**36,300**	4,148	3,942	4,148	4,060
36,300	**36,350**	4,154	3,948	4,154	4,066
36,350	**36,400**	4,160	3,954	4,160	4,072
36,400	**36,450**	4,166	3,960	4,166	4,078
36,450	**36,500**	4,172	3,966	4,172	4,084
36,500	**36,550**	4,178	3,972	4,178	4,090
36,550	**36,600**	4,184	3,978	4,184	4,096
36,600	**36,650**	4,190	3,984	4,190	4,102
36,650	**36,700**	4,196	3,990	4,196	4,108
36,700	**36,750**	4,202	3,996	4,202	4,114
36,750	**36,800**	4,208	4,002	4,208	4,120
36,800	**36,850**	4,214	4,008	4,214	4,126
36,850	**36,900**	4,220	4,014	4,220	4,132
36,900	**36,950**	4,226	4,020	4,226	4,138
36,950	**37,000**	4,232	4,026	4,232	4,144
37,000					
37,000	**37,050**	4,238	4,032	4,238	4,150
37,050	**37,100**	4,244	4,038	4,244	4,156
37,100	**37,150**	4,250	4,044	4,250	4,162
37,150	**37,200**	4,256	4,050	4,256	4,168
37,200	**37,250**	4,262	4,056	4,262	4,174
37,250	**37,300**	4,268	4,062	4,268	4,180
37,300	**37,350**	4,274	4,068	4,274	4,186
37,350	**37,400**	4,280	4,074	4,280	4,192
37,400	**37,450**	4,286	4,080	4,286	4,198
37,450	**37,500**	4,292	4,086	4,292	4,204
37,500	**37,550**	4,298	4,092	4,298	4,210
37,550	**37,600**	4,304	4,098	4,304	4,216
37,600	**37,650**	4,310	4,104	4,310	4,222
37,650	**37,700**	4,316	4,110	4,316	4,228
37,700	**37,750**	4,322	4,116	4,322	4,234
37,750	**37,800**	4,328	4,122	4,328	4,240
37,800	**37,850**	4,334	4,128	4,334	4,246
37,850	**37,900**	4,340	4,134	4,340	4,252
37,900	**37,950**	4,346	4,140	4,346	4,258
37,950	**38,000**	4,352	4,146	4,352	4,264
38,000					
38,000	**38,050**	4,358	4,152	4,358	4,270
38,050	**38,100**	4,364	4,158	4,364	4,276
38,100	**38,150**	4,370	4,164	4,370	4,282
38,150	**38,200**	4,376	4,170	4,376	4,288
38,200	**38,250**	4,382	4,176	4,382	4,294
38,250	**38,300**	4,388	4,182	4,388	4,300
38,300	**38,350**	4,394	4,188	4,394	4,306
38,350	**38,400**	4,400	4,194	4,400	4,312
38,400	**38,450**	4,406	4,200	4,406	4,318
38,450	**38,500**	4,412	4,206	4,412	4,324
38,500	**38,550**	4,418	4,212	4,418	4,330
38,550	**38,600**	4,424	4,218	4,424	4,336
38,600	**38,650**	4,430	4,224	4,430	4,342
38,650	**38,700**	4,436	4,230	4,436	4,348
38,700	**38,750**	4,442	4,236	4,442	4,354
38,750	**38,800**	4,448	4,242	4,448	4,360
38,800	**38,850**	4,454	4,248	4,454	4,366
38,850	**38,900**	4,460	4,254	4,460	4,372
38,900	**38,950**	4,466	4,260	4,466	4,378
38,950	**39,000**	4,472	4,266	4,472	4,384

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
39,000					
39,000	**39,050**	4,478	4,272	4,478	4,390
39,050	**39,100**	4,484	4,278	4,484	4,396
39,100	**39,150**	4,490	4,284	4,490	4,402
39,150	**39,200**	4,496	4,290	4,496	4,408
39,200	**39,250**	4,502	4,296	4,502	4,414
39,250	**39,300**	4,508	4,302	4,508	4,420
39,300	**39,350**	4,514	4,308	4,514	4,426
39,350	**39,400**	4,520	4,314	4,520	4,432
39,400	**39,450**	4,526	4,320	4,526	4,438
39,450	**39,500**	4,532	4,326	4,532	4,444
39,500	**39,550**	4,538	4,332	4,538	4,450
39,550	**39,600**	4,544	4,338	4,544	4,456
39,600	**39,650**	4,550	4,344	4,550	4,462
39,650	**39,700**	4,556	4,350	4,556	4,468
39,700	**39,750**	4,562	4,356	4,562	4,474
39,750	**39,800**	4,568	4,362	4,568	4,480
39,800	**39,850**	4,574	4,368	4,574	4,486
39,850	**39,900**	4,580	4,374	4,580	4,492
39,900	**39,950**	4,586	4,380	4,586	4,498
39,950	**40,000**	4,592	4,386	4,592	4,504
40,000					
40,000	**40,050**	4,598	4,392	4,598	4,510
40,050	**40,100**	4,604	4,398	4,604	4,516
40,100	**40,150**	4,610	4,404	4,610	4,522
40,150	**40,200**	4,616	4,410	4,616	4,528
40,200	**40,250**	4,622	4,416	4,622	4,534
40,250	**40,300**	4,628	4,422	4,628	4,540
40,300	**40,350**	4,634	4,428	4,634	4,546
40,350	**40,400**	4,640	4,434	4,640	4,552
40,400	**40,450**	4,646	4,440	4,646	4,558
40,450	**40,500**	4,652	4,446	4,652	4,564
40,500	**40,550**	4,658	4,452	4,658	4,570
40,550	**40,600**	4,664	4,458	4,664	4,576
40,600	**40,650**	4,670	4,464	4,670	4,582
40,650	**40,700**	4,676	4,470	4,676	4,588
40,700	**40,750**	4,682	4,476	4,682	4,594
40,750	**40,800**	4,688	4,482	4,688	4,600
40,800	**40,850**	4,694	4,488	4,694	4,606
40,850	**40,900**	4,700	4,494	4,700	4,612
40,900	**40,950**	4,706	4,500	4,706	4,618
40,950	**41,000**	4,712	4,506	4,712	4,624
41,000					
41,000	**41,050**	4,718	4,512	4,718	4,630
41,050	**41,100**	4,724	4,518	4,724	4,636
41,100	**41,150**	4,730	4,524	4,730	4,642
41,150	**41,200**	4,736	4,530	4,736	4,648
41,200	**41,250**	4,742	4,536	4,742	4,654
41,250	**41,300**	4,748	4,542	4,748	4,660
41,300	**41,350**	4,754	4,548	4,754	4,666
41,350	**41,400**	4,760	4,554	4,760	4,672
41,400	**41,450**	4,766	4,560	4,766	4,678
41,450	**41,500**	4,772	4,566	4,772	4,684
41,500	**41,550**	4,778	4,572	4,778	4,690
41,550	**41,600**	4,784	4,578	4,784	4,696
41,600	**41,650**	4,790	4,584	4,790	4,702
41,650	**41,700**	4,796	4,590	4,796	4,708
41,700	**41,750**	4,802	4,596	4,802	4,714
41,750	**41,800**	4,808	4,602	4,808	4,720
41,800	**41,850**	4,819	4,608	4,819	4,726
41,850	**41,900**	4,830	4,614	4,830	4,732
41,900	**41,950**	4,841	4,620	4,841	4,738
41,950	**42,000**	4,852	4,626	4,852	4,744

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
42,000					
42,000	**42,050**	4,863	4,632	4,863	4,750
42,050	**42,100**	4,874	4,638	4,874	4,756
42,100	**42,150**	4,885	4,644	4,885	4,762
42,150	**42,200**	4,896	4,650	4,896	4,768
42,200	**42,250**	4,907	4,656	4,907	4,774
42,250	**42,300**	4,918	4,662	4,918	4,780
42,300	**42,350**	4,929	4,668	4,929	4,786
42,350	**42,400**	4,940	4,674	4,940	4,792
42,400	**42,450**	4,951	4,680	4,951	4,798
42,450	**42,500**	4,962	4,686	4,962	4,804
42,500	**42,550**	4,973	4,692	4,973	4,810
42,550	**42,600**	4,984	4,698	4,984	4,816
42,600	**42,650**	4,995	4,704	4,995	4,822
42,650	**42,700**	5,006	4,710	5,006	4,828
42,700	**42,750**	5,017	4,716	5,017	4,834
42,750	**42,800**	5,028	4,722	5,028	4,840
42,800	**42,850**	5,039	4,728	5,039	4,846
42,850	**42,900**	5,050	4,734	5,050	4,852
42,900	**42,950**	5,061	4,740	5,061	4,858
42,950	**43,000**	5,072	4,746	5,072	4,864
43,000					
43,000	**43,050**	5,083	4,752	5,083	4,870
43,050	**43,100**	5,094	4,758	5,094	4,876
43,100	**43,150**	5,105	4,764	5,105	4,882
43,150	**43,200**	5,116	4,770	5,116	4,888
43,200	**43,250**	5,127	4,776	5,127	4,894
43,250	**43,300**	5,138	4,782	5,138	4,900
43,300	**43,350**	5,149	4,788	5,149	4,906
43,350	**43,400**	5,160	4,794	5,160	4,912
43,400	**43,450**	5,171	4,800	5,171	4,918
43,450	**43,500**	5,182	4,806	5,182	4,924
43,500	**43,550**	5,193	4,812	5,193	4,930
43,550	**43,600**	5,204	4,818	5,204	4,936
43,600	**43,650**	5,215	4,824	5,215	4,942
43,650	**43,700**	5,226	4,830	5,226	4,948
43,700	**43,750**	5,237	4,836	5,237	4,954
43,750	**43,800**	5,248	4,842	5,248	4,960
43,800	**43,850**	5,259	4,848	5,259	4,966
43,850	**43,900**	5,270	4,854	5,270	4,972
43,900	**43,950**	5,281	4,860	5,281	4,978
43,950	**44,000**	5,292	4,866	5,292	4,984
44,000					
44,000	**44,050**	5,303	4,872	5,303	4,990
44,050	**44,100**	5,314	4,878	5,314	4,996
44,100	**44,150**	5,325	4,884	5,325	5,002
44,150	**44,200**	5,336	4,890	5,336	5,008
44,200	**44,250**	5,347	4,896	5,347	5,014
44,250	**44,300**	5,358	4,902	5,358	5,020
44,300	**44,350**	5,369	4,908	5,369	5,026
44,350	**44,400**	5,380	4,914	5,380	5,032
44,400	**44,450**	5,391	4,920	5,391	5,038
44,450	**44,500**	5,402	4,926	5,402	5,044
44,500	**44,550**	5,413	4,932	5,413	5,050
44,550	**44,600**	5,424	4,938	5,424	5,056
44,600	**44,650**	5,435	4,944	5,435	5,062
44,650	**44,700**	5,446	4,950	5,446	5,068
44,700	**44,750**	5,457	4,956	5,457	5,074
44,750	**44,800**	5,468	4,962	5,468	5,080
44,800	**44,850**	5,479	4,968	5,479	5,086
44,850	**44,900**	5,490	4,974	5,490	5,092
44,900	**44,950**	5,501	4,980	5,501	5,098
44,950	**45,000**	5,512	4,986	5,512	5,104

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
45,000					
45,000	**45,050**	5,523	4,992	5,523	5,110
45,050	**45,100**	5,534	4,998	5,534	5,116
45,100	**45,150**	5,545	5,004	5,545	5,122
45,150	**45,200**	5,556	5,010	5,556	5,128
45,200	**45,250**	5,567	5,016	5,567	5,134
45,250	**45,300**	5,578	5,022	5,578	5,140
45,300	**45,350**	5,589	5,028	5,589	5,146
45,350	**45,400**	5,600	5,034	5,600	5,152
45,400	**45,450**	5,611	5,040	5,611	5,158
45,450	**45,500**	5,622	5,046	5,622	5,164
45,500	**45,550**	5,633	5,052	5,633	5,170
45,550	**45,600**	5,644	5,058	5,644	5,176
45,600	**45,650**	5,655	5,064	5,655	5,182
45,650	**45,700**	5,666	5,070	5,666	5,188
45,700	**45,750**	5,677	5,076	5,677	5,194
45,750	**45,800**	5,688	5,082	5,688	5,200
45,800	**45,850**	5,699	5,088	5,699	5,206
45,850	**45,900**	5,710	5,094	5,710	5,212
45,900	**45,950**	5,721	5,100	5,721	5,218
45,950	**46,000**	5,732	5,106	5,732	5,224
46,000					
46,000	**46,050**	5,743	5,112	5,743	5,230
46,050	**46,100**	5,754	5,118	5,754	5,236
46,100	**46,150**	5,765	5,124	5,765	5,242
46,150	**46,200**	5,776	5,130	5,776	5,248
46,200	**46,250**	5,787	5,136	5,787	5,254
46,250	**46,300**	5,798	5,142	5,798	5,260
46,300	**46,350**	5,809	5,148	5,809	5,266
46,350	**46,400**	5,820	5,154	5,820	5,272
46,400	**46,450**	5,831	5,160	5,831	5,278
46,450	**46,500**	5,842	5,166	5,842	5,284
46,500	**46,550**	5,853	5,172	5,853	5,290
46,550	**46,600**	5,864	5,178	5,864	5,296
46,600	**46,650**	5,875	5,184	5,875	5,302
46,650	**46,700**	5,886	5,190	5,886	5,308
46,700	**46,750**	5,897	5,196	5,897	5,314
46,750	**46,800**	5,908	5,202	5,908	5,320
46,800	**46,850**	5,919	5,208	5,919	5,326
46,850	**46,900**	5,930	5,214	5,930	5,332
46,900	**46,950**	5,941	5,220	5,941	5,338
46,950	**47,000**	5,952	5,226	5,952	5,344
47,000					
47,000	**47,050**	5,963	5,232	5,963	5,350
47,050	**47,100**	5,974	5,238	5,974	5,356
47,100	**47,150**	5,985	5,244	5,985	5,362
47,150	**47,200**	5,996	5,250	5,996	5,368
47,200	**47,250**	6,007	5,256	6,007	5,374
47,250	**47,300**	6,018	5,262	6,018	5,380
47,300	**47,350**	6,029	5,268	6,029	5,386
47,350	**47,400**	6,040	5,274	6,040	5,392
47,400	**47,450**	6,051	5,280	6,051	5,398
47,450	**47,500**	6,062	5,286	6,062	5,404
47,500	**47,550**	6,073	5,292	6,073	5,410
47,550	**47,600**	6,084	5,298	6,084	5,416
47,600	**47,650**	6,095	5,304	6,095	5,422
47,650	**47,700**	6,106	5,310	6,106	5,428
47,700	**47,750**	6,117	5,316	6,117	5,434
47,750	**47,800**	6,128	5,322	6,128	5,440
47,800	**47,850**	6,139	5,328	6,139	5,446
47,850	**47,900**	6,150	5,334	6,150	5,452
47,900	**47,950**	6,161	5,340	6,161	5,458
47,950	**48,000**	6,172	5,346	6,172	5,464

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
48,000					
48,000	48,050	6,183	5,352	6,183	5,470
48,050	48,100	6,194	5,358	6,194	5,476
48,100	48,150	6,205	5,364	6,205	5,482
48,150	48,200	6,216	5,370	6,216	5,488
48,200	48,250	6,227	5,376	6,227	5,494
48,250	48,300	6,238	5,382	6,238	5,500
48,300	48,350	6,249	5,388	6,249	5,506
48,350	48,400	6,260	5,394	6,260	5,512
48,400	48,450	6,271	5,400	6,271	5,518
48,450	48,500	6,282	5,406	6,282	5,524
48,500	48,550	6,293	5,412	6,293	5,530
48,550	48,600	6,304	5,418	6,304	5,536
48,600	48,650	6,315	5,424	6,315	5,542
48,650	48,700	6,326	5,430	6,326	5,548
48,700	48,750	6,337	5,436	6,337	5,554
48,750	48,800	6,348	5,442	6,348	5,560
48,800	48,850	6,359	5,448	6,359	5,566
48,850	48,900	6,370	5,454	6,370	5,572
48,900	48,950	6,381	5,460	6,381	5,578
48,950	49,000	6,392	5,466	6,392	5,584
49,000					
49,000	49,050	6,403	5,472	6,403	5,590
49,050	49,100	6,414	5,478	6,414	5,596
49,100	49,150	6,425	5,484	6,425	5,602
49,150	49,200	6,436	5,490	6,436	5,608
49,200	49,250	6,447	5,496	6,447	5,614
49,250	49,300	6,458	5,502	6,458	5,620
49,300	49,350	6,469	5,508	6,469	5,626
49,350	49,400	6,480	5,514	6,480	5,632
49,400	49,450	6,491	5,520	6,491	5,638
49,450	49,500	6,502	5,526	6,502	5,644
49,500	49,550	6,513	5,532	6,513	5,650
49,550	49,600	6,524	5,538	6,524	5,656
49,600	49,650	6,535	5,544	6,535	5,662
49,650	49,700	6,546	5,550	6,546	5,668
49,700	49,750	6,557	5,556	6,557	5,674
49,750	49,800	6,568	5,562	6,568	5,680
49,800	49,850	6,579	5,568	6,579	5,686
49,850	49,900	6,590	5,574	6,590	5,692
49,900	49,950	6,601	5,580	6,601	5,698
49,950	50,000	6,612	5,586	6,612	5,704
50,000					
50,000	50,050	6,623	5,592	6,623	5,710
50,050	50,100	6,634	5,598	6,634	5,716
50,100	50,150	6,645	5,604	6,645	5,722
50,150	50,200	6,656	5,610	6,656	5,728
50,200	50,250	6,667	5,616	6,667	5,734
50,250	50,300	6,678	5,622	6,678	5,740
50,300	50,350	6,689	5,628	6,689	5,746
50,350	50,400	6,700	5,634	6,700	5,752
50,400	50,450	6,711	5,640	6,711	5,758
50,450	50,500	6,722	5,646	6,722	5,764
50,500	50,550	6,733	5,652	6,733	5,770
50,550	50,600	6,744	5,658	6,744	5,776
50,600	50,650	6,755	5,664	6,755	5,782
50,650	50,700	6,766	5,670	6,766	5,788
50,700	50,750	6,777	5,676	6,777	5,794
50,750	50,800	6,788	5,682	6,788	5,800
50,800	50,850	6,799	5,688	6,799	5,806
50,850	50,900	6,810	5,694	6,810	5,812
50,900	50,950	6,821	5,700	6,821	5,818
50,950	51,000	6,832	5,706	6,832	5,824

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
51,000					
51,000	51,050	6,843	5,712	6,843	5,830
51,050	51,100	6,854	5,718	6,854	5,836
51,100	51,150	6,865	5,724	6,865	5,842
51,150	51,200	6,876	5,730	6,876	5,848
51,200	51,250	6,887	5,736	6,887	5,854
51,250	51,300	6,898	5,742	6,898	5,860
51,300	51,350	6,909	5,748	6,909	5,866
51,350	51,400	6,920	5,754	6,920	5,872
51,400	51,450	6,931	5,760	6,931	5,878
51,450	51,500	6,942	5,766	6,942	5,884
51,500	51,550	6,953	5,772	6,953	5,890
51,550	51,600	6,964	5,778	6,964	5,896
51,600	51,650	6,975	5,784	6,975	5,902
51,650	51,700	6,986	5,790	6,986	5,908
51,700	51,750	6,997	5,796	6,997	5,914
51,750	51,800	7,008	5,802	7,008	5,920
51,800	51,850	7,019	5,808	7,019	5,926
51,850	51,900	7,030	5,814	7,030	5,932
51,900	51,950	7,041	5,820	7,041	5,938
51,950	52,000	7,052	5,826	7,052	5,944
52,000					
52,000	52,050	7,063	5,832	7,063	5,950
52,050	52,100	7,074	5,838	7,074	5,956
52,100	52,150	7,085	5,844	7,085	5,962
52,150	52,200	7,096	5,850	7,096	5,968
52,200	52,250	7,107	5,856	7,107	5,974
52,250	52,300	7,118	5,862	7,118	5,980
52,300	52,350	7,129	5,868	7,129	5,986
52,350	52,400	7,140	5,874	7,140	5,992
52,400	52,450	7,151	5,880	7,151	5,998
52,450	52,500	7,162	5,886	7,162	6,004
52,500	52,550	7,173	5,892	7,173	6,010
52,550	52,600	7,184	5,898	7,184	6,016
52,600	52,650	7,195	5,904	7,195	6,022
52,650	52,700	7,206	5,910	7,206	6,028
52,700	52,750	7,217	5,916	7,217	6,034
52,750	52,800	7,228	5,922	7,228	6,040
52,800	52,850	7,239	5,928	7,239	6,046
52,850	52,900	7,250	5,934	7,250	6,052
52,900	52,950	7,261	5,940	7,261	6,058
52,950	53,000	7,272	5,946	7,272	6,064
53,000					
53,000	53,050	7,283	5,952	7,283	6,070
53,050	53,100	7,294	5,958	7,294	6,076
53,100	53,150	7,305	5,964	7,305	6,082
53,150	53,200	7,316	5,970	7,316	6,088
53,200	53,250	7,327	5,976	7,327	6,094
53,250	53,300	7,338	5,982	7,338	6,100
53,300	53,350	7,349	5,988	7,349	6,106
53,350	53,400	7,360	5,994	7,360	6,112
53,400	53,450	7,371	6,000	7,371	6,118
53,450	53,500	7,382	6,006	7,382	6,124
53,500	53,550	7,393	6,012	7,393	6,130
53,550	53,600	7,404	6,018	7,404	6,136
53,600	53,650	7,415	6,024	7,415	6,142
53,650	53,700	7,426	6,030	7,426	6,148
53,700	53,750	7,437	6,036	7,437	6,154
53,750	53,800	7,448	6,042	7,448	6,160
53,800	53,850	7,459	6,048	7,459	6,166
53,850	53,900	7,470	6,054	7,470	6,172
53,900	53,950	7,481	6,060	7,481	6,178
53,950	54,000	7,492	6,066	7,492	6,184

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
54,000					
54,000	54,050	7,503	6,072	7,503	6,190
54,050	54,100	7,514	6,078	7,514	6,196
54,100	54,150	7,525	6,084	7,525	6,202
54,150	54,200	7,536	6,090	7,536	6,208
54,200	54,250	7,547	6,096	7,547	6,214
54,250	54,300	7,558	6,102	7,558	6,220
54,300	54,350	7,569	6,108	7,569	6,226
54,350	54,400	7,580	6,114	7,580	6,232
54,400	54,450	7,591	6,120	7,591	6,238
54,450	54,500	7,602	6,126	7,602	6,244
54,500	54,550	7,613	6,132	7,613	6,250
54,550	54,600	7,624	6,138	7,624	6,256
54,600	54,650	7,635	6,144	7,635	6,262
54,650	54,700	7,646	6,150	7,646	6,268
54,700	54,750	7,657	6,156	7,657	6,274
54,750	54,800	7,668	6,162	7,668	6,280
54,800	54,850	7,679	6,168	7,679	6,286
54,850	54,900	7,690	6,174	7,690	6,292
54,900	54,950	7,701	6,180	7,701	6,298
54,950	55,000	7,712	6,186	7,712	6,304
55,000					
55,000	55,050	7,723	6,192	7,723	6,310
55,050	55,100	7,734	6,198	7,734	6,316
55,100	55,150	7,745	6,204	7,745	6,322
55,150	55,200	7,756	6,210	7,756	6,328
55,200	55,250	7,767	6,216	7,767	6,334
55,250	55,300	7,778	6,222	7,778	6,340
55,300	55,350	7,789	6,228	7,789	6,346
55,350	55,400	7,800	6,234	7,800	6,352
55,400	55,450	7,811	6,240	7,811	6,358
55,450	55,500	7,822	6,246	7,822	6,364
55,500	55,550	7,833	6,252	7,833	6,370
55,550	55,600	7,844	6,258	7,844	6,376
55,600	55,650	7,855	6,264	7,855	6,382
55,650	55,700	7,866	6,270	7,866	6,388
55,700	55,750	7,877	6,276	7,877	6,394
55,750	55,800	7,888	6,282	7,888	6,400
55,800	55,850	7,899	6,288	7,899	6,406
55,850	55,900	7,910	6,294	7,910	6,412
55,900	55,950	7,921	6,300	7,921	6,421
55,950	56,000	7,932	6,306	7,932	6,432
56,000					
56,000	56,050	7,943	6,312	7,943	6,443
56,050	56,100	7,954	6,318	7,954	6,454
56,100	56,150	7,965	6,324	7,965	6,465
56,150	56,200	7,976	6,330	7,976	6,476
56,200	56,250	7,987	6,336	7,987	6,487
56,250	56,300	7,998	6,342	7,998	6,498
56,300	56,350	8,009	6,348	8,009	6,509
56,350	56,400	8,020	6,354	8,020	6,520
56,400	56,450	8,031	6,360	8,031	6,531
56,450	56,500	8,042	6,366	8,042	6,542
56,500	56,550	8,053	6,372	8,053	6,553
56,550	56,600	8,064	6,378	8,064	6,564
56,600	56,650	8,075	6,384	8,075	6,575
56,650	56,700	8,086	6,390	8,086	6,586
56,700	56,750	8,097	6,396	8,097	6,597
56,750	56,800	8,108	6,402	8,108	6,608
56,800	56,850	8,119	6,408	8,119	6,619
56,850	56,900	8,130	6,414	8,130	6,630
56,900	56,950	8,141	6,420	8,141	6,641
56,950	57,000	8,152	6,426	8,152	6,652

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
57,000					
57,000	**57,050**	8,163	6,432	8,163	6,663
57,050	**57,100**	8,174	6,438	8,174	6,674
57,100	**57,150**	8,185	6,444	8,185	6,685
57,150	**57,200**	8,196	6,450	8,196	6,696
57,200	**57,250**	8,207	6,456	8,207	6,707
57,250	**57,300**	8,218	6,462	8,218	6,718
57,300	**57,350**	8,229	6,468	8,229	6,729
57,350	**57,400**	8,240	6,474	8,240	6,740
57,400	**57,450**	8,251	6,480	8,251	6,751
57,450	**57,500**	8,262	6,486	8,262	6,762
57,500	**57,550**	8,273	6,492	8,273	6,773
57,550	**57,600**	8,284	6,498	8,284	6,784
57,600	**57,650**	8,295	6,504	8,295	6,795
57,650	**57,700**	8,306	6,510	8,306	6,806
57,700	**57,750**	8,317	6,516	8,317	6,817
57,750	**57,800**	8,328	6,522	8,328	6,828
57,800	**57,850**	8,339	6,528	8,339	6,839
57,850	**57,900**	8,350	6,534	8,350	6,850
57,900	**57,950**	8,361	6,540	8,361	6,861
57,950	**58,000**	8,372	6,546	8,372	6,872
58,000					
58,000	**58,050**	8,383	6,552	8,383	6,883
58,050	**58,100**	8,394	6,558	8,394	6,894
58,100	**58,150**	8,405	6,564	8,405	6,905
58,150	**58,200**	8,416	6,570	8,416	6,916
58,200	**58,250**	8,427	6,576	8,427	6,927
58,250	**58,300**	8,438	6,582	8,438	6,938
58,300	**58,350**	8,449	6,588	8,449	6,949
58,350	**58,400**	8,460	6,594	8,460	6,960
58,400	**58,450**	8,471	6,600	8,471	6,971
58,450	**58,500**	8,482	6,606	8,482	6,982
58,500	**58,550**	8,493	6,612	8,493	6,993
58,550	**58,600**	8,504	6,618	8,504	7,004
58,600	**58,650**	8,515	6,624	8,515	7,015
58,650	**58,700**	8,526	6,630	8,526	7,026
58,700	**58,750**	8,537	6,636	8,537	7,037
58,750	**58,800**	8,548	6,642	8,548	7,048
58,800	**58,850**	8,559	6,648	8,559	7,059
58,850	**58,900**	8,570	6,654	8,570	7,070
58,900	**58,950**	8,581	6,660	8,581	7,081
58,950	**59,000**	8,592	6,666	8,592	7,092
59,000					
59,000	**59,050**	8,603	6,672	8,603	7,103
59,050	**59,100**	8,614	6,678	8,614	7,114
59,100	**59,150**	8,625	6,684	8,625	7,125
59,150	**59,200**	8,636	6,690	8,636	7,136
59,200	**59,250**	8,647	6,696	8,647	7,147
59,250	**59,300**	8,658	6,702	8,658	7,158
59,300	**59,350**	8,669	6,708	8,669	7,169
59,350	**59,400**	8,680	6,714	8,680	7,180
59,400	**59,450**	8,691	6,720	8,691	7,191
59,450	**59,500**	8,702	6,726	8,702	7,202
59,500	**59,550**	8,713	6,732	8,713	7,213
59,550	**59,600**	8,724	6,738	8,724	7,224
59,600	**59,650**	8,735	6,744	8,735	7,235
59,650	**59,700**	8,746	6,750	8,746	7,246
59,700	**59,750**	8,757	6,756	8,757	7,257
59,750	**59,800**	8,768	6,762	8,768	7,268
59,800	**59,850**	8,779	6,768	8,779	7,279
59,850	**59,900**	8,790	6,774	8,790	7,290
59,900	**59,950**	8,801	6,780	8,801	7,301
59,950	**60,000**	8,812	6,786	8,812	7,312

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
60,000					
60,000	**60,050**	8,823	6,792	8,823	7,323
60,050	**60,100**	8,834	6,798	8,834	7,334
60,100	**60,150**	8,845	6,804	8,845	7,345
60,150	**60,200**	8,856	6,810	8,856	7,356
60,200	**60,250**	8,867	6,816	8,867	7,367
60,250	**60,300**	8,878	6,822	8,878	7,378
60,300	**60,350**	8,889	6,828	8,889	7,389
60,350	**60,400**	8,900	6,834	8,900	7,400
60,400	**60,450**	8,911	6,840	8,911	7,411
60,450	**60,500**	8,922	6,846	8,922	7,422
60,500	**60,550**	8,933	6,852	8,933	7,433
60,550	**60,600**	8,944	6,858	8,944	7,444
60,600	**60,650**	8,955	6,864	8,955	7,455
60,650	**60,700**	8,966	6,870	8,966	7,466
60,700	**60,750**	8,977	6,876	8,977	7,477
60,750	**60,800**	8,988	6,882	8,988	7,488
60,800	**60,850**	8,999	6,888	8,999	7,499
60,850	**60,900**	9,010	6,894	9,010	7,510
60,900	**60,950**	9,021	6,900	9,021	7,521
60,950	**61,000**	9,032	6,906	9,032	7,532
61,000					
61,000	**61,050**	9,043	6,912	9,043	7,543
61,050	**61,100**	9,054	6,918	9,054	7,554
61,100	**61,150**	9,065	6,924	9,065	7,565
61,150	**61,200**	9,076	6,930	9,076	7,576
61,200	**61,250**	9,087	6,936	9,087	7,587
61,250	**61,300**	9,098	6,942	9,098	7,598
61,300	**61,350**	9,109	6,948	9,109	7,609
61,350	**61,400**	9,120	6,954	9,120	7,620
61,400	**61,450**	9,131	6,960	9,131	7,631
61,450	**61,500**	9,142	6,966	9,142	7,642
61,500	**61,550**	9,153	6,972	9,153	7,653
61,550	**61,600**	9,164	6,978	9,164	7,664
61,600	**61,650**	9,175	6,984	9,175	7,675
61,650	**61,700**	9,186	6,990	9,186	7,686
61,700	**61,750**	9,197	6,996	9,197	7,697
61,750	**61,800**	9,208	7,002	9,208	7,708
61,800	**61,850**	9,219	7,008	9,219	7,719
61,850	**61,900**	9,230	7,014	9,230	7,730
61,900	**61,950**	9,241	7,020	9,241	7,741
61,950	**62,000**	9,252	7,026	9,252	7,752
62,000					
62,000	**62,050**	9,263	7,032	9,263	7,763
62,050	**62,100**	9,274	7,038	9,274	7,774
62,100	**62,150**	9,285	7,044	9,285	7,785
62,150	**62,200**	9,296	7,050	9,296	7,796
62,200	**62,250**	9,307	7,056	9,307	7,807
62,250	**62,300**	9,318	7,062	9,318	7,818
62,300	**62,350**	9,329	7,068	9,329	7,829
62,350	**62,400**	9,340	7,074	9,340	7,840
62,400	**62,450**	9,351	7,080	9,351	7,851
62,450	**62,500**	9,362	7,086	9,362	7,862
62,500	**62,550**	9,373	7,092	9,373	7,873
62,550	**62,600**	9,384	7,098	9,384	7,884
62,600	**62,650**	9,395	7,104	9,395	7,895
62,650	**62,700**	9,406	7,110	9,406	7,906
62,700	**62,750**	9,417	7,116	9,417	7,917
62,750	**62,800**	9,428	7,122	9,428	7,928
62,800	**62,850**	9,439	7,128	9,439	7,939
62,850	**62,900**	9,450	7,134	9,450	7,950
62,900	**62,950**	9,461	7,140	9,461	7,961
62,950	**63,000**	9,472	7,146	9,472	7,972

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
63,000					
63,000	**63,050**	9,483	7,152	9,483	7,983
63,050	**63,100**	9,494	7,158	9,494	7,994
63,100	**63,150**	9,505	7,164	9,505	8,005
63,150	**63,200**	9,516	7,170	9,516	8,016
63,200	**63,250**	9,527	7,176	9,527	8,027
63,250	**63,300**	9,538	7,182	9,538	8,038
63,300	**63,350**	9,549	7,188	9,549	8,049
63,350	**63,400**	9,560	7,194	9,560	8,060
63,400	**63,450**	9,571	7,200	9,571	8,071
63,450	**63,500**	9,582	7,206	9,582	8,082
63,500	**63,550**	9,593	7,212	9,593	8,093
63,550	**63,600**	9,604	7,218	9,604	8,104
63,600	**63,650**	9,615	7,224	9,615	8,115
63,650	**63,700**	9,626	7,230	9,626	8,126
63,700	**63,750**	9,637	7,236	9,637	8,137
63,750	**63,800**	9,648	7,242	9,648	8,148
63,800	**63,850**	9,659	7,248	9,659	8,159
63,850	**63,900**	9,670	7,254	9,670	8,170
63,900	**63,950**	9,681	7,260	9,681	8,181
63,950	**64,000**	9,692	7,266	9,692	8,192
64,000					
64,000	**64,050**	9,703	7,272	9,703	8,203
64,050	**64,100**	9,714	7,278	9,714	8,214
64,100	**64,150**	9,725	7,284	9,725	8,225
64,150	**64,200**	9,736	7,290	9,736	8,236
64,200	**64,250**	9,747	7,296	9,747	8,247
64,250	**64,300**	9,758	7,302	9,758	8,258
64,300	**64,350**	9,769	7,308	9,769	8,269
64,350	**64,400**	9,780	7,314	9,780	8,280
64,400	**64,450**	9,791	7,320	9,791	8,291
64,450	**64,500**	9,802	7,326	9,802	8,302
64,500	**64,550**	9,813	7,332	9,813	8,313
64,550	**64,600**	9,824	7,338	9,824	8,324
64,600	**64,650**	9,835	7,344	9,835	8,335
64,650	**64,700**	9,846	7,350	9,846	8,346
64,700	**64,750**	9,857	7,356	9,857	8,357
64,750	**64,800**	9,868	7,362	9,868	8,368
64,800	**64,850**	9,879	7,368	9,879	8,379
64,850	**64,900**	9,890	7,374	9,890	8,390
64,900	**64,950**	9,901	7,380	9,901	8,401
64,950	**65,000**	9,912	7,386	9,912	8,412
65,000					
65,000	**65,050**	9,923	7,392	9,923	8,423
65,050	**65,100**	9,934	7,398	9,934	8,434
65,100	**65,150**	9,945	7,404	9,945	8,445
65,150	**65,200**	9,956	7,410	9,956	8,456
65,200	**65,250**	9,967	7,416	9,967	8,467
65,250	**65,300**	9,978	7,422	9,978	8,478
65,300	**65,350**	9,989	7,428	9,989	8,489
65,350	**65,400**	10,000	7,434	10,000	8,500
65,400	**65,450**	10,011	7,440	10,011	8,511
65,450	**65,500**	10,022	7,446	10,022	8,522
65,500	**65,550**	10,033	7,452	10,033	8,533
65,550	**65,600**	10,044	7,458	10,044	8,544
65,600	**65,650**	10,055	7,464	10,055	8,555
65,650	**65,700**	10,066	7,470	10,066	8,566
65,700	**65,750**	10,077	7,476	10,077	8,577
65,750	**65,800**	10,088	7,482	10,088	8,588
65,800	**65,850**	10,099	7,488	10,099	8,599
65,850	**65,900**	10,110	7,494	10,110	8,610
65,900	**65,950**	10,121	7,500	10,121	8,621
65,950	**66,000**	10,132	7,506	10,132	8,632

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
66,000					
66,000	**66,050**	10,143	7,512	10,143	8,643
66,050	**66,100**	10,154	7,518	10,154	8,654
66,100	**66,150**	10,165	7,524	10,165	8,665
66,150	**66,200**	10,176	7,530	10,176	8,676
66,200	**66,250**	10,187	7,536	10,187	8,687
66,250	**66,300**	10,198	7,542	10,198	8,698
66,300	**66,350**	10,209	7,548	10,209	8,709
66,350	**66,400**	10,220	7,554	10,220	8,720
66,400	**66,450**	10,231	7,560	10,231	8,731
66,450	**66,500**	10,242	7,566	10,242	8,742
66,500	**66,550**	10,253	7,572	10,253	8,753
66,550	**66,600**	10,264	7,578	10,264	8,764
66,600	**66,650**	10,275	7,584	10,275	8,775
66,650	**66,700**	10,286	7,590	10,286	8,786
66,700	**66,750**	10,297	7,596	10,297	8,797
66,750	**66,800**	10,308	7,602	10,308	8,808
66,800	**66,850**	10,319	7,608	10,319	8,819
66,850	**66,900**	10,330	7,614	10,330	8,830
66,900	**66,950**	10,341	7,620	10,341	8,841
66,950	**67,000**	10,352	7,626	10,352	8,852
67,000					
67,000	**67,050**	10,363	7,632	10,363	8,863
67,050	**67,100**	10,374	7,638	10,374	8,874
67,100	**67,150**	10,385	7,644	10,385	8,885
67,150	**67,200**	10,396	7,650	10,396	8,896
67,200	**67,250**	10,407	7,656	10,407	8,907
67,250	**67,300**	10,418	7,662	10,418	8,918
67,300	**67,350**	10,429	7,668	10,429	8,929
67,350	**67,400**	10,440	7,674	10,440	8,940
67,400	**67,450**	10,451	7,680	10,451	8,951
67,450	**67,500**	10,462	7,686	10,462	8,962
67,500	**67,550**	10,473	7,692	10,473	8,973
67,550	**67,600**	10,484	7,698	10,484	8,984
67,600	**67,650**	10,495	7,704	10,495	8,995
67,650	**67,700**	10,506	7,710	10,506	9,006
67,700	**67,750**	10,517	7,716	10,517	9,017
67,750	**67,800**	10,528	7,722	10,528	9,028
67,800	**67,850**	10,539	7,728	10,539	9,039
67,850	**67,900**	10,550	7,734	10,550	9,050
67,900	**67,950**	10,561	7,740	10,561	9,061
67,950	**68,000**	10,572	7,746	10,572	9,072
68,000					
68,000	**68,050**	10,583	7,752	10,583	9,083
68,050	**68,100**	10,594	7,758	10,594	9,094
68,100	**68,150**	10,605	7,764	10,605	9,105
68,150	**68,200**	10,616	7,770	10,616	9,116
68,200	**68,250**	10,627	7,776	10,627	9,127
68,250	**68,300**	10,638	7,782	10,638	9,138
68,300	**68,350**	10,649	7,788	10,649	9,149
68,350	**68,400**	10,660	7,794	10,660	9,160
68,400	**68,450**	10,671	7,800	10,671	9,171
68,450	**68,500**	10,682	7,806	10,682	9,182
68,500	**68,550**	10,693	7,812	10,693	9,193
68,550	**68,600**	10,704	7,818	10,704	9,204
68,600	**68,650**	10,715	7,824	10,715	9,215
68,650	**68,700**	10,726	7,830	10,726	9,226
68,700	**68,750**	10,737	7,836	10,737	9,237
68,750	**68,800**	10,748	7,842	10,748	9,248
68,800	**68,850**	10,759	7,848	10,759	9,259
68,850	**68,900**	10,770	7,854	10,770	9,270
68,900	**68,950**	10,781	7,860	10,781	9,281
68,950	**69,000**	10,792	7,866	10,792	9,292

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
69,000					
69,000	**69,050**	10,803	7,872	10,803	9,303
69,050	**69,100**	10,814	7,878	10,814	9,314
69,100	**69,150**	10,825	7,884	10,825	9,325
69,150	**69,200**	10,836	7,890	10,836	9,336
69,200	**69,250**	10,847	7,896	10,847	9,347
69,250	**69,300**	10,858	7,902	10,858	9,358
69,300	**69,350**	10,869	7,908	10,869	9,369
69,350	**69,400**	10,880	7,914	10,880	9,380
69,400	**69,450**	10,891	7,920	10,891	9,391
69,450	**69,500**	10,902	7,926	10,902	9,402
69,500	**69,550**	10,913	7,932	10,913	9,413
69,550	**69,600**	10,924	7,938	10,924	9,424
69,600	**69,650**	10,935	7,944	10,935	9,435
69,650	**69,700**	10,946	7,950	10,946	9,446
69,700	**69,750**	10,957	7,956	10,957	9,457
69,750	**69,800**	10,968	7,962	10,968	9,468
69,800	**69,850**	10,979	7,968	10,979	9,479
69,850	**69,900**	10,990	7,974	10,990	9,490
69,900	**69,950**	11,001	7,980	11,001	9,501
69,950	**70,000**	11,012	7,986	11,012	9,512
70,000					
70,000	**70,050**	11,023	7,992	11,023	9,523
70,050	**70,100**	11,034	7,998	11,034	9,534
70,100	**70,150**	11,045	8,004	11,045	9,545
70,150	**70,200**	11,056	8,010	11,056	9,556
70,200	**70,250**	11,067	8,016	11,067	9,567
70,250	**70,300**	11,078	8,022	11,078	9,578
70,300	**70,350**	11,089	8,028	11,089	9,589
70,350	**70,400**	11,100	8,034	11,100	9,600
70,400	**70,450**	11,111	8,040	11,111	9,611
70,450	**70,500**	11,122	8,046	11,122	9,622
70,500	**70,550**	11,133	8,052	11,133	9,633
70,550	**70,600**	11,144	8,058	11,144	9,644
70,600	**70,650**	11,155	8,064	11,155	9,655
70,650	**70,700**	11,166	8,070	11,166	9,666
70,700	**70,750**	11,177	8,076	11,177	9,677
70,750	**70,800**	11,188	8,082	11,188	9,688
70,800	**70,850**	11,199	8,088	11,199	9,699
70,850	**70,900**	11,210	8,094	11,210	9,710
70,900	**70,950**	11,221	8,100	11,221	9,721
70,950	**71,000**	11,232	8,106	11,232	9,732
71,000					
71,000	**71,050**	11,243	8,112	11,243	9,743
71,050	**71,100**	11,254	8,118	11,254	9,754
71,100	**71,150**	11,265	8,124	11,265	9,765
71,150	**71,200**	11,276	8,130	11,276	9,776
71,200	**71,250**	11,287	8,136	11,287	9,787
71,250	**71,300**	11,298	8,142	11,298	9,798
71,300	**71,350**	11,309	8,148	11,309	9,809
71,350	**71,400**	11,320	8,154	11,320	9,820
71,400	**71,450**	11,331	8,160	11,331	9,831
71,450	**71,500**	11,342	8,166	11,342	9,842
71,500	**71,550**	11,353	8,172	11,353	9,853
71,550	**71,600**	11,364	8,178	11,364	9,864
71,600	**71,650**	11,375	8,184	11,375	9,875
71,650	**71,700**	11,386	8,190	11,386	9,886
71,700	**71,750**	11,397	8,196	11,397	9,897
71,750	**71,800**	11,408	8,202	11,408	9,908
71,800	**71,850**	11,419	8,208	11,419	9,919
71,850	**71,900**	11,430	8,214	11,430	9,930
71,900	**71,950**	11,441	8,220	11,441	9,941
71,950	**72,000**	11,452	8,226	11,452	9,952

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing sepa-rately	Head of a house-hold
		Your tax is—			
72,000					
72,000	**72,050**	11,463	8,232	11,463	9,963
72,050	**72,100**	11,474	8,238	11,474	9,974
72,100	**72,150**	11,485	8,244	11,485	9,985
72,150	**72,200**	11,496	8,250	11,496	9,996
72,200	**72,250**	11,507	8,256	11,507	10,007
72,250	**72,300**	11,518	8,262	11,518	10,018
72,300	**72,350**	11,529	8,268	11,529	10,029
72,350	**72,400**	11,540	8,274	11,540	10,040
72,400	**72,450**	11,551	8,280	11,551	10,051
72,450	**72,500**	11,562	8,286	11,562	10,062
72,500	**72,550**	11,573	8,292	11,573	10,073
72,550	**72,600**	11,584	8,298	11,584	10,084
72,600	**72,650**	11,595	8,304	11,595	10,095
72,650	**72,700**	11,606	8,310	11,606	10,106
72,700	**72,750**	11,617	8,316	11,617	10,117
72,750	**72,800**	11,628	8,322	11,628	10,128
72,800	**72,850**	11,639	8,328	11,639	10,139
72,850	**72,900**	11,650	8,334	11,650	10,150
72,900	**72,950**	11,661	8,340	11,661	10,161
72,950	**73,000**	11,672	8,346	11,672	10,172
73,000					
73,000	**73,050**	11,683	8,352	11,683	10,183
73,050	**73,100**	11,694	8,358	11,694	10,194
73,100	**73,150**	11,705	8,364	11,705	10,205
73,150	**73,200**	11,716	8,370	11,716	10,216
73,200	**73,250**	11,727	8,376	11,727	10,227
73,250	**73,300**	11,738	8,382	11,738	10,238
73,300	**73,350**	11,749	8,388	11,749	10,249
73,350	**73,400**	11,760	8,394	11,760	10,260
73,400	**73,450**	11,771	8,400	11,771	10,271
73,450	**73,500**	11,782	8,406	11,782	10,282
73,500	**73,550**	11,793	8,412	11,793	10,293
73,550	**73,600**	11,804	8,418	11,804	10,304
73,600	**73,650**	11,815	8,424	11,815	10,315
73,650	**73,700**	11,826	8,430	11,826	10,326
73,700	**73,750**	11,837	8,436	11,837	10,337
73,750	**73,800**	11,848	8,442	11,848	10,348
73,800	**73,850**	11,859	8,448	11,859	10,359
73,850	**73,900**	11,870	8,454	11,870	10,370
73,900	**73,950**	11,881	8,460	11,881	10,381
73,950	**74,000**	11,892	8,466	11,892	10,392
74,000					
74,000	**74,050**	11,903	8,472	11,903	10,403
74,050	**74,100**	11,914	8,478	11,914	10,414
74,100	**74,150**	11,925	8,484	11,925	10,425
74,150	**74,200**	11,936	8,490	11,936	10,436
74,200	**74,250**	11,947	8,496	11,947	10,447
74,250	**74,300**	11,958	8,502	11,958	10,458
74,300	**74,350**	11,969	8,508	11,969	10,469
74,350	**74,400**	11,980	8,514	11,980	10,480
74,400	**74,450**	11,991	8,520	11,991	10,491
74,450	**74,500**	12,002	8,526	12,002	10,502
74,500	**74,550**	12,013	8,532	12,013	10,513
74,550	**74,600**	12,024	8,538	12,024	10,524
74,600	**74,650**	12,035	8,544	12,035	10,535
74,650	**74,700**	12,046	8,550	12,046	10,546
74,700	**74,750**	12,057	8,556	12,057	10,557
74,750	**74,800**	12,068	8,562	12,068	10,568
74,800	**74,850**	12,079	8,568	12,079	10,579
74,850	**74,900**	12,090	8,574	12,090	10,590
74,900	**74,950**	12,101	8,580	12,101	10,601
74,950	**75,000**	12,112	8,586	12,112	10,612

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
75,000					
75,000	**75,050**	12,123	8,592	12,123	10,623
75,050	**75,100**	12,134	8,598	12,134	10,634
75,100	**75,150**	12,145	8,604	12,145	10,645
75,150	**75,200**	12,156	8,610	12,156	10,656
75,200	**75,250**	12,167	8,616	12,167	10,667
75,250	**75,300**	12,178	8,622	12,178	10,678
75,300	**75,350**	12,189	8,628	12,189	10,689
75,350	**75,400**	12,200	8,634	12,200	10,700
75,400	**75,450**	12,211	8,640	12,211	10,711
75,450	**75,500**	12,222	8,646	12,222	10,722
75,500	**75,550**	12,233	8,652	12,233	10,733
75,550	**75,600**	12,244	8,658	12,244	10,744
75,600	**75,650**	12,255	8,664	12,255	10,755
75,650	**75,700**	12,266	8,670	12,266	10,766
75,700	**75,750**	12,277	8,676	12,277	10,777
75,750	**75,800**	12,288	8,682	12,288	10,788
75,800	**75,850**	12,299	8,688	12,299	10,799
75,850	**75,900**	12,310	8,694	12,310	10,810
75,900	**75,950**	12,321	8,700	12,321	10,821
75,950	**76,000**	12,332	8,706	12,332	10,832
76,000					
76,000	**76,050**	12,343	8,712	12,343	10,843
76,050	**76,100**	12,354	8,718	12,354	10,854
76,100	**76,150**	12,365	8,724	12,365	10,865
76,150	**76,200**	12,376	8,730	12,376	10,876
76,200	**76,250**	12,387	8,736	12,387	10,887
76,250	**76,300**	12,398	8,742	12,398	10,898
76,300	**76,350**	12,409	8,748	12,409	10,909
76,350	**76,400**	12,420	8,754	12,420	10,920
76,400	**76,450**	12,431	8,760	12,431	10,931
76,450	**76,500**	12,442	8,766	12,442	10,942
76,500	**76,550**	12,453	8,772	12,453	10,953
76,550	**76,600**	12,464	8,778	12,464	10,964
76,600	**76,650**	12,475	8,784	12,475	10,975
76,650	**76,700**	12,486	8,790	12,486	10,986
76,700	**76,750**	12,497	8,796	12,497	10,997
76,750	**76,800**	12,508	8,802	12,508	11,008
76,800	**76,850**	12,519	8,808	12,519	11,019
76,850	**76,900**	12,530	8,814	12,530	11,030
76,900	**76,950**	12,541	8,820	12,541	11,041
76,950	**77,000**	12,552	8,826	12,552	11,052
77,000					
77,000	**77,050**	12,563	8,832	12,563	11,063
77,050	**77,100**	12,574	8,838	12,574	11,074
77,100	**77,150**	12,585	8,844	12,585	11,085
77,150	**77,200**	12,596	8,850	12,596	11,096
77,200	**77,250**	12,607	8,856	12,607	11,107
77,250	**77,300**	12,618	8,862	12,618	11,118
77,300	**77,350**	12,629	8,868	12,629	11,129
77,350	**77,400**	12,640	8,874	12,640	11,140
77,400	**77,450**	12,651	8,880	12,651	11,151
77,450	**77,500**	12,662	8,886	12,662	11,162
77,500	**77,550**	12,673	8,892	12,673	11,173
77,550	**77,600**	12,684	8,898	12,684	11,184
77,600	**77,650**	12,695	8,904	12,695	11,195
77,650	**77,700**	12,706	8,910	12,706	11,206
77,700	**77,750**	12,717	8,916	12,717	11,217
77,750	**77,800**	12,728	8,922	12,728	11,228
77,800	**77,850**	12,739	8,928	12,739	11,239
77,850	**77,900**	12,750	8,934	12,750	11,250
77,900	**77,950**	12,761	8,940	12,761	11,261
77,950	**78,000**	12,772	8,946	12,772	11,272

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
78,000					
78,000	**78,050**	12,783	8,952	12,783	11,283
78,050	**78,100**	12,794	8,958	12,794	11,294
78,100	**78,150**	12,805	8,964	12,805	11,305
78,150	**78,200**	12,816	8,970	12,816	11,316
78,200	**78,250**	12,827	8,976	12,827	11,327
78,250	**78,300**	12,838	8,982	12,838	11,338
78,300	**78,350**	12,849	8,988	12,849	11,349
78,350	**78,400**	12,860	8,994	12,860	11,360
78,400	**78,450**	12,871	9,000	12,871	11,371
78,450	**78,500**	12,882	9,006	12,882	11,382
78,500	**78,550**	12,893	9,012	12,893	11,393
78,550	**78,600**	12,904	9,018	12,904	11,404
78,600	**78,650**	12,915	9,024	12,915	11,415
78,650	**78,700**	12,926	9,030	12,926	11,426
78,700	**78,750**	12,937	9,036	12,937	11,437
78,750	**78,800**	12,948	9,042	12,948	11,448
78,800	**78,850**	12,959	9,048	12,959	11,459
78,850	**78,900**	12,970	9,054	12,970	11,470
78,900	**78,950**	12,981	9,060	12,981	11,481
78,950	**79,000**	12,992	9,066	12,992	11,492
79,000					
79,000	**79,050**	13,003	9,072	13,003	11,503
79,050	**79,100**	13,014	9,078	13,014	11,514
79,100	**79,150**	13,025	9,084	13,025	11,525
79,150	**79,200**	13,036	9,090	13,036	11,536
79,200	**79,250**	13,047	9,096	13,047	11,547
79,250	**79,300**	13,058	9,102	13,058	11,558
79,300	**79,350**	13,069	9,108	13,069	11,569
79,350	**79,400**	13,080	9,114	13,080	11,580
79,400	**79,450**	13,091	9,120	13,091	11,591
79,450	**79,500**	13,102	9,126	13,102	11,602
79,500	**79,550**	13,113	9,132	13,113	11,613
79,550	**79,600**	13,124	9,138	13,124	11,624
79,600	**79,650**	13,135	9,144	13,135	11,635
79,650	**79,700**	13,146	9,150	13,146	11,646
79,700	**79,750**	13,157	9,156	13,157	11,657
79,750	**79,800**	13,168	9,162	13,168	11,668
79,800	**79,850**	13,179	9,168	13,179	11,679
79,850	**79,900**	13,190	9,174	13,190	11,690
79,900	**79,950**	13,201	9,180	13,201	11,701
79,950	**80,000**	13,212	9,186	13,212	11,712
80,000					
80,000	**80,050**	13,223	9,192	13,223	11,723
80,050	**80,100**	13,234	9,198	13,234	11,734
80,100	**80,150**	13,245	9,204	13,245	11,745
80,150	**80,200**	13,256	9,210	13,256	11,756
80,200	**80,250**	13,267	9,216	13,267	11,767
80,250	**80,300**	13,278	9,222	13,278	11,778
80,300	**80,350**	13,289	9,228	13,289	11,789
80,350	**80,400**	13,300	9,234	13,300	11,800
80,400	**80,450**	13,311	9,240	13,311	11,811
80,450	**80,500**	13,322	9,246	13,322	11,822
80,500	**80,550**	13,333	9,252	13,333	11,833
80,550	**80,600**	13,344	9,258	13,344	11,844
80,600	**80,650**	13,355	9,264	13,355	11,855
80,650	**80,700**	13,366	9,270	13,366	11,866
80,700	**80,750**	13,377	9,276	13,377	11,877
80,750	**80,800**	13,388	9,282	13,388	11,888
80,800	**80,850**	13,399	9,288	13,399	11,899
80,850	**80,900**	13,410	9,294	13,410	11,910
80,900	**80,950**	13,421	9,300	13,421	11,921
80,950	**81,000**	13,432	9,306	13,432	11,932

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
81,000					
81,000	**81,050**	13,443	9,312	13,443	11,943
81,050	**81,100**	13,454	9,318	13,454	11,954
81,100	**81,150**	13,465	9,324	13,465	11,965
81,150	**81,200**	13,476	9,330	13,476	11,976
81,200	**81,250**	13,487	9,336	13,487	11,987
81,250	**81,300**	13,498	9,342	13,498	11,998
81,300	**81,350**	13,509	9,348	13,509	12,009
81,350	**81,400**	13,520	9,354	13,520	12,020
81,400	**81,450**	13,531	9,360	13,531	12,031
81,450	**81,500**	13,542	9,366	13,542	12,042
81,500	**81,550**	13,553	9,372	13,553	12,053
81,550	**81,600**	13,564	9,378	13,564	12,064
81,600	**81,650**	13,575	9,384	13,575	12,075
81,650	**81,700**	13,586	9,390	13,586	12,086
81,700	**81,750**	13,597	9,396	13,597	12,097
81,750	**81,800**	13,608	9,402	13,608	12,108
81,800	**81,850**	13,619	9,408	13,619	12,119
81,850	**81,900**	13,630	9,414	13,630	12,130
81,900	**81,950**	13,641	9,420	13,641	12,141
81,950	**82,000**	13,652	9,426	13,652	12,152
82,000					
82,000	**82,050**	13,663	9,432	13,663	12,163
82,050	**82,100**	13,674	9,438	13,674	12,174
82,100	**82,150**	13,685	9,444	13,685	12,185
82,150	**82,200**	13,696	9,450	13,696	12,196
82,200	**82,250**	13,707	9,456	13,707	12,207
82,250	**82,300**	13,718	9,462	13,718	12,218
82,300	**82,350**	13,729	9,468	13,729	12,229
82,350	**82,400**	13,740	9,474	13,740	12,240
82,400	**82,450**	13,751	9,480	13,751	12,251
82,450	**82,500**	13,762	9,486	13,762	12,262
82,500	**82,550**	13,773	9,492	13,773	12,273
82,550	**82,600**	13,784	9,498	13,784	12,284
82,600	**82,650**	13,795	9,504	13,795	12,295
82,650	**82,700**	13,806	9,510	13,806	12,306
82,700	**82,750**	13,817	9,516	13,817	12,317
82,750	**82,800**	13,828	9,522	13,828	12,328
82,800	**82,850**	13,839	9,528	13,839	12,339
82,850	**82,900**	13,850	9,534	13,850	12,350
82,900	**82,950**	13,861	9,540	13,861	12,361
82,950	**83,000**	13,872	9,546	13,872	12,372
83,000					
83,000	**83,050**	13,883	9,552	13,883	12,383
83,050	**83,100**	13,894	9,558	13,894	12,394
83,100	**83,150**	13,905	9,564	13,905	12,405
83,150	**83,200**	13,916	9,570	13,916	12,416
83,200	**83,250**	13,927	9,576	13,927	12,427
83,250	**83,300**	13,938	9,582	13,938	12,438
83,300	**83,350**	13,949	9,588	13,949	12,449
83,350	**83,400**	13,960	9,594	13,960	12,460
83,400	**83,450**	13,971	9,600	13,971	12,471
83,450	**83,500**	13,982	9,606	13,982	12,482
83,500	**83,550**	13,993	9,612	13,993	12,493
83,550	**83,600**	14,004	9,621	14,004	12,504
83,600	**83,650**	14,015	9,632	14,015	12,515
83,650	**83,700**	14,026	9,643	14,026	12,526
83,700	**83,750**	14,037	9,654	14,037	12,537
83,750	**83,800**	14,048	9,665	14,048	12,548
83,800	**83,850**	14,059	9,676	14,059	12,559
83,850	**83,900**	14,070	9,687	14,070	12,570
83,900	**83,950**	14,081	9,698	14,081	12,581
83,950	**84,000**	14,092	9,709	14,092	12,592

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
84,000					
84,000	84,050	14,103	9,720	14,103	12,603
84,050	84,100	14,114	9,731	14,114	12,614
84,100	84,150	14,125	9,742	14,125	12,625
84,150	84,200	14,136	9,753	14,136	12,636
84,200	84,250	14,147	9,764	14,147	12,647
84,250	84,300	14,158	9,775	14,158	12,658
84,300	84,350	14,169	9,786	14,169	12,669
84,350	84,400	14,180	9,797	14,180	12,680
84,400	84,450	14,191	9,808	14,191	12,691
84,450	84,500	14,202	9,819	14,202	12,702
84,500	84,550	14,213	9,830	14,213	12,713
84,550	84,600	14,224	9,841	14,224	12,724
84,600	84,650	14,235	9,852	14,235	12,735
84,650	84,700	14,246	9,863	14,246	12,746
84,700	84,750	14,257	9,874	14,257	12,757
84,750	84,800	14,268	9,885	14,268	12,768
84,800	84,850	14,279	9,896	14,279	12,779
84,850	84,900	14,290	9,907	14,290	12,790
84,900	84,950	14,301	9,918	14,301	12,801
84,950	85,000	14,312	9,929	14,312	12,812
85,000					
85,000	85,050	14,323	9,940	14,323	12,823
85,050	85,100	14,334	9,951	14,334	12,834
85,100	85,150	14,345	9,962	14,345	12,845
85,150	85,200	14,356	9,973	14,356	12,856
85,200	85,250	14,367	9,984	14,367	12,867
85,250	85,300	14,378	9,995	14,378	12,878
85,300	85,350	14,389	10,006	14,389	12,889
85,350	85,400	14,400	10,017	14,400	12,900
85,400	85,450	14,411	10,028	14,411	12,911
85,450	85,500	14,422	10,039	14,422	12,922
85,500	85,550	14,433	10,050	14,433	12,933
85,550	85,600	14,444	10,061	14,444	12,944
85,600	85,650	14,455	10,072	14,455	12,955
85,650	85,700	14,466	10,083	14,466	12,966
85,700	85,750	14,477	10,094	14,477	12,977
85,750	85,800	14,488	10,105	14,488	12,988
85,800	85,850	14,499	10,116	14,499	12,999
85,850	85,900	14,510	10,127	14,510	13,010
85,900	85,950	14,521	10,138	14,521	13,021
85,950	86,000	14,532	10,149	14,532	13,032
86,000					
86,000	86,050	14,543	10,160	14,543	13,043
86,050	86,100	14,554	10,171	14,554	13,054
86,100	86,150	14,565	10,182	14,565	13,065
86,150	86,200	14,576	10,193	14,576	13,076
86,200	86,250	14,587	10,204	14,587	13,087
86,250	86,300	14,598	10,215	14,598	13,098
86,300	86,350	14,609	10,226	14,609	13,109
86,350	86,400	14,620	10,237	14,620	13,120
86,400	86,450	14,631	10,248	14,631	13,131
86,450	86,500	14,642	10,259	14,642	13,142
86,500	86,550	14,653	10,270	14,653	13,153
86,550	86,600	14,664	10,281	14,664	13,164
86,600	86,650	14,675	10,292	14,675	13,175
86,650	86,700	14,686	10,303	14,686	13,186
86,700	86,750	14,697	10,314	14,697	13,197
86,750	86,800	14,708	10,325	14,708	13,208
86,800	86,850	14,719	10,336	14,719	13,219
86,850	86,900	14,730	10,347	14,730	13,230
86,900	86,950	14,741	10,358	14,741	13,241
86,950	87,000	14,752	10,369	14,752	13,252
87,000					
87,000	87,050	14,763	10,380	14,763	13,263
87,050	87,100	14,774	10,391	14,774	13,274
87,100	87,150	14,785	10,402	14,785	13,285
87,150	87,200	14,796	10,413	14,796	13,296
87,200	87,250	14,807	10,424	14,807	13,307
87,250	87,300	14,818	10,435	14,818	13,318
87,300	87,350	14,829	10,446	14,829	13,329
87,350	87,400	14,840	10,457	14,840	13,340
87,400	87,450	14,851	10,468	14,851	13,351
87,450	87,500	14,862	10,479	14,862	13,362
87,500	87,550	14,873	10,490	14,873	13,373
87,550	87,600	14,884	10,501	14,884	13,384
87,600	87,650	14,895	10,512	14,895	13,395
87,650	87,700	14,906	10,523	14,906	13,406
87,700	87,750	14,917	10,534	14,917	13,417
87,750	87,800	14,928	10,545	14,928	13,428
87,800	87,850	14,939	10,556	14,939	13,439
87,850	87,900	14,950	10,567	14,950	13,450
87,900	87,950	14,961	10,578	14,961	13,461
87,950	88,000	14,972	10,589	14,972	13,472
88,000					
88,000	88,050	14,983	10,600	14,983	13,483
88,050	88,100	14,994	10,611	14,994	13,494
88,100	88,150	15,005	10,622	15,005	13,505
88,150	88,200	15,016	10,633	15,016	13,516
88,200	88,250	15,027	10,644	15,027	13,527
88,250	88,300	15,038	10,655	15,038	13,538
88,300	88,350	15,049	10,666	15,049	13,549
88,350	88,400	15,060	10,677	15,060	13,560
88,400	88,450	15,071	10,688	15,071	13,571
88,450	88,500	15,082	10,699	15,082	13,582
88,500	88,550	15,093	10,710	15,093	13,593
88,550	88,600	15,104	10,721	15,104	13,604
88,600	88,650	15,115	10,732	15,115	13,615
88,650	88,700	15,126	10,743	15,126	13,626
88,700	88,750	15,137	10,754	15,137	13,637
88,750	88,800	15,148	10,765	15,148	13,648
88,800	88,850	15,159	10,776	15,159	13,659
88,850	88,900	15,170	10,787	15,170	13,670
88,900	88,950	15,181	10,798	15,181	13,681
88,950	89,000	15,192	10,809	15,192	13,692
89,000					
89,000	89,050	15,203	10,820	15,203	13,703
89,050	89,100	15,214	10,831	15,214	13,714
89,100	89,150	15,226	10,842	15,226	13,726
89,150	89,200	15,238	10,853	15,238	13,738
89,200	89,250	15,250	10,864	15,250	13,750
89,250	89,300	15,262	10,875	15,262	13,762
89,300	89,350	15,274	10,886	15,274	13,774
89,350	89,400	15,286	10,897	15,286	13,786
89,400	89,450	15,298	10,908	15,298	13,798
89,450	89,500	15,310	10,919	15,310	13,810
89,500	89,550	15,322	10,930	15,322	13,822
89,550	89,600	15,334	10,941	15,334	13,834
89,600	89,650	15,346	10,952	15,346	13,846
89,650	89,700	15,358	10,963	15,358	13,858
89,700	89,750	15,370	10,974	15,370	13,870
89,750	89,800	15,382	10,985	15,382	13,882
89,800	89,850	15,394	10,996	15,394	13,894
89,850	89,900	15,406	11,007	15,406	13,906
89,900	89,950	15,418	11,018	15,418	13,918
89,950	90,000	15,430	11,029	15,430	13,930
90,000					
90,000	90,050	15,442	11,040	15,442	13,942
90,050	90,100	15,454	11,051	15,454	13,954
90,100	90,150	15,466	11,062	15,466	13,966
90,150	90,200	15,478	11,073	15,478	13,978
90,200	90,250	15,490	11,084	15,490	13,990
90,250	90,300	15,502	11,095	15,502	14,002
90,300	90,350	15,514	11,106	15,514	14,014
90,350	90,400	15,526	11,117	15,526	14,026
90,400	90,450	15,538	11,128	15,538	14,038
90,450	90,500	15,550	11,139	15,550	14,050
90,500	90,550	15,562	11,150	15,562	14,062
90,550	90,600	15,574	11,161	15,574	14,074
90,600	90,650	15,586	11,172	15,586	14,086
90,650	90,700	15,598	11,183	15,598	14,098
90,700	90,750	15,610	11,194	15,610	14,110
90,750	90,800	15,622	11,205	15,622	14,122
90,800	90,850	15,634	11,216	15,634	14,134
90,850	90,900	15,646	11,227	15,646	14,146
90,900	90,950	15,658	11,238	15,658	14,158
90,950	91,000	15,670	11,249	15,670	14,170
91,000					
91,000	91,050	15,682	11,260	15,682	14,182
91,050	91,100	15,694	11,271	15,694	14,194
91,100	91,150	15,706	11,282	15,706	14,206
91,150	91,200	15,718	11,293	15,718	14,218
91,200	91,250	15,730	11,304	15,730	14,230
91,250	91,300	15,742	11,315	15,742	14,242
91,300	91,350	15,754	11,326	15,754	14,254
91,350	91,400	15,766	11,337	15,766	14,266
91,400	91,450	15,778	11,348	15,778	14,278
91,450	91,500	15,790	11,359	15,790	14,290
91,500	91,550	15,802	11,370	15,802	14,302
91,550	91,600	15,814	11,381	15,814	14,314
91,600	91,650	15,826	11,392	15,826	14,326
91,650	91,700	15,838	11,403	15,838	14,338
91,700	91,750	15,850	11,414	15,850	14,350
91,750	91,800	15,862	11,425	15,862	14,362
91,800	91,850	15,874	11,436	15,874	14,374
91,850	91,900	15,886	11,447	15,886	14,386
91,900	91,950	15,898	11,458	15,898	14,398
91,950	92,000	15,910	11,469	15,910	14,410
92,000					
92,000	92,050	15,922	11,480	15,922	14,422
92,050	92,100	15,934	11,491	15,934	14,434
92,100	92,150	15,946	11,502	15,946	14,446
92,150	92,200	15,958	11,513	15,958	14,458
92,200	92,250	15,970	11,524	15,970	14,470
92,250	92,300	15,982	11,535	15,982	14,482
92,300	92,350	15,994	11,546	15,994	14,494
92,350	92,400	16,006	11,557	16,006	14,506
92,400	92,450	16,018	11,568	16,018	14,518
92,450	92,500	16,030	11,579	16,030	14,530
92,500	92,550	16,042	11,590	16,042	14,542
92,550	92,600	16,054	11,601	16,054	14,554
92,600	92,650	16,066	11,612	16,066	14,566
92,650	92,700	16,078	11,623	16,078	14,578
92,700	92,750	16,090	11,634	16,090	14,590
92,750	92,800	16,102	11,645	16,102	14,602
92,800	92,850	16,114	11,656	16,114	14,614
92,850	92,900	16,126	11,667	16,126	14,626
92,900	92,950	16,138	11,678	16,138	14,638
92,950	93,000	16,150	11,689	16,150	14,650

(Continued)

* This column must also be used by a qualifying surviving spouse.

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
93,000					
93,000	**93,050**	16,162	11,700	16,162	14,662
93,050	**93,100**	16,174	11,711	16,174	14,674
93,100	**93,150**	16,186	11,722	16,186	14,686
93,150	**93,200**	16,198	11,733	16,198	14,698
93,200	**93,250**	16,210	11,744	16,210	14,710
93,250	**93,300**	16,222	11,755	16,222	14,722
93,300	**93,350**	16,234	11,766	16,234	14,734
93,350	**93,400**	16,246	11,777	16,246	14,746
93,400	**93,450**	16,258	11,788	16,258	14,758
93,450	**93,500**	16,270	11,799	16,270	14,770
93,500	**93,550**	16,282	11,810	16,282	14,782
93,550	**93,600**	16,294	11,821	16,294	14,794
93,600	**93,650**	16,306	11,832	16,306	14,806
93,650	**93,700**	16,318	11,843	16,318	14,818
93,700	**93,750**	16,330	11,854	16,330	14,830
93,750	**93,800**	16,342	11,865	16,342	14,842
93,800	**93,850**	16,354	11,876	16,354	14,854
93,850	**93,900**	16,366	11,887	16,366	14,866
93,900	**93,950**	16,378	11,898	16,378	14,878
93,950	**94,000**	16,390	11,909	16,390	14,890
94,000					
94,000	**94,050**	16,402	11,920	16,402	14,902
94,050	**94,100**	16,414	11,931	16,414	14,914
94,100	**94,150**	16,426	11,942	16,426	14,926
94,150	**94,200**	16,438	11,953	16,438	14,938
94,200	**94,250**	16,450	11,964	16,450	14,950
94,250	**94,300**	16,462	11,975	16,462	14,962
94,300	**94,350**	16,474	11,986	16,474	14,974
94,350	**94,400**	16,486	11,997	16,486	14,986
94,400	**94,450**	16,498	12,008	16,498	14,998
94,450	**94,500**	16,510	12,019	16,510	15,010
94,500	**94,550**	16,522	12,030	16,522	15,022
94,550	**94,600**	16,534	12,041	16,534	15,034
94,600	**94,650**	16,546	12,052	16,546	15,046
94,650	**94,700**	16,558	12,063	16,558	15,058
94,700	**94,750**	16,570	12,074	16,570	15,070
94,750	**94,800**	16,582	12,085	16,582	15,082
94,800	**94,850**	16,594	12,096	16,594	15,094
94,850	**94,900**	16,606	12,107	16,606	15,106
94,900	**94,950**	16,618	12,118	16,618	15,118
94,950	**95,000**	16,630	12,129	16,630	15,130
95,000					
95,000	**95,050**	16,642	12,140	16,642	15,142
95,050	**95,100**	16,654	12,151	16,654	15,154
95,100	**95,150**	16,666	12,162	16,666	15,166
95,150	**95,200**	16,678	12,173	16,678	15,178
95,200	**95,250**	16,690	12,184	16,690	15,190
95,250	**95,300**	16,702	12,195	16,702	15,202
95,300	**95,350**	16,714	12,206	16,714	15,214
95,350	**95,400**	16,726	12,217	16,726	15,226
95,400	**95,450**	16,738	12,228	16,738	15,238
95,450	**95,500**	16,750	12,239	16,750	15,250
95,500	**95,550**	16,762	12,250	16,762	15,262
95,550	**95,600**	16,774	12,261	16,774	15,274
95,600	**95,650**	16,786	12,272	16,786	15,286
95,650	**95,700**	16,798	12,283	16,798	15,298
95,700	**95,750**	16,810	12,294	16,810	15,310
95,750	**95,800**	16,822	12,305	16,822	15,322
95,800	**95,850**	16,834	12,316	16,834	15,334
95,850	**95,900**	16,846	12,327	16,846	15,346
95,900	**95,950**	16,858	12,338	16,858	15,358
95,950	**96,000**	16,870	12,349	16,870	15,370

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
96,000					
96,000	**96,050**	16,882	12,360	16,882	15,382
96,050	**96,100**	16,894	12,371	16,894	15,394
96,100	**96,150**	16,906	12,382	16,906	15,406
96,150	**96,200**	16,918	12,393	16,918	15,418
96,200	**96,250**	16,930	12,404	16,930	15,430
96,250	**96,300**	16,942	12,415	16,942	15,442
96,300	**96,350**	16,954	12,426	16,954	15,454
96,350	**96,400**	16,966	12,437	16,966	15,466
96,400	**96,450**	16,978	12,448	16,978	15,478
96,450	**96,500**	16,990	12,459	16,990	15,490
96,500	**96,550**	17,002	12,470	17,002	15,502
96,550	**96,600**	17,014	12,481	17,014	15,514
96,600	**96,650**	17,026	12,492	17,026	15,526
96,650	**96,700**	17,038	12,503	17,038	15,538
96,700	**96,750**	17,050	12,514	17,050	15,550
96,750	**96,800**	17,062	12,525	17,062	15,562
96,800	**96,850**	17,074	12,536	17,074	15,574
96,850	**96,900**	17,086	12,547	17,086	15,586
96,900	**96,950**	17,098	12,558	17,098	15,598
96,950	**97,000**	17,110	12,569	17,110	15,610
97,000					
97,000	**97,050**	17,122	12,580	17,122	15,622
97,050	**97,100**	17,134	12,591	17,134	15,634
97,100	**97,150**	17,146	12,602	17,146	15,646
97,150	**97,200**	17,158	12,613	17,158	15,658
97,200	**97,250**	17,170	12,624	17,170	15,670
97,250	**97,300**	17,182	12,635	17,182	15,682
97,300	**97,350**	17,194	12,646	17,194	15,694
97,350	**97,400**	17,206	12,657	17,206	15,706
97,400	**97,450**	17,218	12,668	17,218	15,718
97,450	**97,500**	17,230	12,679	17,230	15,730
97,500	**97,550**	17,242	12,690	17,242	15,742
97,550	**97,600**	17,254	12,701	17,254	15,754
97,600	**97,650**	17,266	12,712	17,266	15,766
97,650	**97,700**	17,278	12,723	17,278	15,778
97,700	**97,750**	17,290	12,734	17,290	15,790
97,750	**97,800**	17,302	12,745	17,302	15,802
97,800	**97,850**	17,314	12,756	17,314	15,814
97,850	**97,900**	17,326	12,767	17,326	15,826
97,900	**97,950**	17,338	12,778	17,338	15,838
97,950	**98,000**	17,350	12,789	17,350	15,850
98,000					
98,000	**98,050**	17,362	12,800	17,362	15,862
98,050	**98,100**	17,374	12,811	17,374	15,874
98,100	**98,150**	17,386	12,822	17,386	15,886
98,150	**98,200**	17,398	12,833	17,398	15,898
98,200	**98,250**	17,410	12,844	17,410	15,910
98,250	**98,300**	17,422	12,855	17,422	15,922
98,300	**98,350**	17,434	12,866	17,434	15,934
98,350	**98,400**	17,446	12,877	17,446	15,946
98,400	**98,450**	17,458	12,888	17,458	15,958
98,450	**98,500**	17,470	12,899	17,470	15,970
98,500	**98,550**	17,482	12,910	17,482	15,982
98,550	**98,600**	17,494	12,921	17,494	15,994
98,600	**98,650**	17,506	12,932	17,506	16,006
98,650	**98,700**	17,518	12,943	17,518	16,018
98,700	**98,750**	17,530	12,954	17,530	16,030
98,750	**98,800**	17,542	12,965	17,542	16,042
98,800	**98,850**	17,554	12,976	17,554	16,054
98,850	**98,900**	17,566	12,987	17,566	16,066
98,900	**98,950**	17,578	12,998	17,578	16,078
98,950	**99,000**	17,590	13,009	17,590	16,090

If line 15 (taxable income) is—		And you are—			
At least	But less than	Single	Married filing jointly *	Married filing separately	Head of a household
		Your tax is—			
99,000					
99,000	**99,050**	17,602	13,020	17,602	16,102
99,050	**99,100**	17,614	13,031	17,614	16,114
99,100	**99,150**	17,626	13,042	17,626	16,126
99,150	**99,200**	17,638	13,053	17,638	16,138
99,200	**99,250**	17,650	13,064	17,650	16,150
99,250	**99,300**	17,662	13,075	17,662	16,162
99,300	**99,350**	17,674	13,086	17,674	16,174
99,350	**99,400**	17,686	13,097	17,686	16,186
99,400	**99,450**	17,698	13,108	17,698	16,198
99,450	**99,500**	17,710	13,119	17,710	16,210
99,500	**99,550**	17,722	13,130	17,722	16,222
99,550	**99,600**	17,734	13,141	17,734	16,234
99,600	**99,650**	17,746	13,152	17,746	16,246
99,650	**99,700**	17,758	13,163	17,758	16,258
99,700	**99,750**	17,770	13,174	17,770	16,270
99,750	**99,800**	17,782	13,185	17,782	16,282
99,800	**99,850**	17,794	13,196	17,794	16,294
99,850	**99,900**	17,806	13,207	17,806	16,306
99,900	**99,950**	17,818	13,218	17,818	16,318
99,950	**100,000**	17,830	13,229	17,830	16,330

$100,000
or over
use the Tax
Computation
Worksheet

* This column must also be used by a qualifying surviving spouse.

2022 Tax Computation Worksheet—Line 16

See Line 16 *in the Instructions for Form 1040 to see if you must use the worksheet below to figure your tax.*

Note. If you're required to use this worksheet to figure the tax on an amount from another form or worksheet, such as the Qualified Dividends and Capital Gain Tax Worksheet, the Schedule D Tax Worksheet, Schedule J, Form 8615, or the Foreign Earned Income Tax Worksheet, enter the amount from that form or worksheet in column (a) of the row that applies to the amount you're looking up. Enter the result on the appropriate line of the form or worksheet that you're completing.

Section A—Use if your filing status is **Single.** Complete the row below that applies to you.

Taxable income. If line 15 is—	**(a)** Enter the amount from line 15	**(b)** Multiplication amount	**(c)** Multiply (a) by (b)	**(d)** Subtraction amount	**Tax.** Subtract (d) from (c). Enter the result here and on Form 1040 or 1040-SR, line 16
At least $100,000 but not over $170,050	$	× 24% (0.24)	$	$ 6,164.50	$
Over $170,050 but not over $215,950	$	× 32% (0.32)	$	$ 19,768.50	$
Over $215,950 but not over $539,900	$	× 35% (0.35)	$	$ 26,247.00	$
Over $539,900	$	× 37% (0.37)	$	$ 37,045.00	$

Section B—Use if your filing status is **Married filing jointly** or **Qualifying surviving spouse.** Complete the row below that applies to you.

Taxable income. If line 15 is—	**(a)** Enter the amount from line 15	**(b)** Multiplication amount	**(c)** Multiply (a) by (b)	**(d)** Subtraction amount	**Tax.** Subtract (d) from (c). Enter the result here and on Form 1040 or 1040-SR, line 16
At least $100,000 but not over $178,150	$	× 22% (0.22)	$	$ 8,766.00	$
Over $178,150 but not over $340,100	$	× 24% (0.24)	$	$ 12,329.00	$
Over $340,100 but not over $431,900	$	× 32% (0.32)	$	$ 39,537.00	$
Over $431,900 but not over $647,850	$	× 35% (0.35)	$	$ 52,494.00	$
Over $647,850	$	× 37% (0.37)	$	$ 65,451.00	$

Section C—Use if your filing status is **Married filing separately.** Complete the row below that applies to you.

Taxable income. If line 15 is—	**(a)** Enter the amount from line 15	**(b)** Multiplication amount	**(c)** Multiply (a) by (b)	**(d)** Subtraction amount	**Tax.** Subtract (d) from (c). Enter the result here and on Form 1040 or 1040-SR, line 16
At least $100,000 but not over $170,050	$	× 24% (0.24)	$	$ 6,164.50	$
Over $170,050 but not over $215,950	$	× 32% (0.32)	$	$ 19,768.50	$
Over $215,950 but not over $323,925	$	× 35% (0.35)	$	$ 26,247.00	$
Over $323,925	$	× 37% (0.37)	$	$ 32,725.50	$

Section D—Use if your filing status is **Head of household.** Complete the row below that applies to you.

Taxable income. If line 15 is—	**(a)** Enter the amount from line 15	**(b)** Multiplication amount	**(c)** Multiply (a) by (b)	**(d)** Subtraction amount	**Tax.** Subtract (d) from (c). Enter the result here and on Form 1040 or 1040-SR, line 16
At least $100,000 but not over $170,050	$	× 24% (0.24)	$	$ 7,664.00	$
Over $170,050 but not over $215,950	$	× 32% (0.32)	$	$ 21,268.00	$
Over $215,950 but not over $539,900	$	× 35% (0.35)	$	$ 27,746.50	$
Over $539,900	$	× 37% (0.37)	$	$ 38,544.50	$

2022 Tax Rate Schedules

The Tax Rate Schedules are shown so you can see the tax rate that applies to all levels of taxable income. Don't use them to figure your tax. Instead, see Chapter 13.

Schedule X —If your filing status is Single

If your taxable income is: Over—	But not over—	The tax is:	of the amount over—
$0	$10,275	**- - - - - - - 10%**	**$0**
10,275	41,775	**$1,027.50 + 12%**	**10,275**
41,775	89,075	**4,807.50 + 22%**	**41,775**
89,075	170,050	**15,213.50 + 24%**	**89,075**
170,050	215,950	**34,647.50 + 32%**	**170,050**
215,950	539,900	**49,335.50 + 35%**	**215,950**
539,900	- - - - - - -	**162,718.00 + 37%**	**539,900**

Schedule Y-1 —If your filing status is Married filing jointly or Qualifying surviving spouse

If your taxable income is: Over—	But not over—	The tax is:	of the amount over—
$0	$20,550	**- - - - - - - 10%**	**$0**
20,550	83,550	**$2,055.00 + 12%**	**20,550**
83,550	178,150	**9,615.00 + 22%**	**83,550**
178,150	340,100	**30,427.00 + 24%**	**178,150**
340,100	431,900	**69,295.00 + 32%**	**340,100**
431,900	647,850	**98,671.00 + 35%**	**431,900**
647,850	- - - - - - -	**174,253.50 + 37%**	**647,850**

Schedule Y-2 —If your filing status is Married filing separately

If your taxable income is: Over—	But not over—	The tax is:	of the amount over—
$0	$10,275	**- - - - - - - 10%**	**$0**
10,275	41,775	**$1,027.50 + 12%**	**10,275**
41,775	89,075	**4,807.50 + 22%**	**41,775**
89,075	170,050	**15,213.50 + 24%**	**89,075**
170,050	215,950	**34,647.50 + 32%**	**170,050**
215,950	323,925	**49,335.50 + 35%**	**215,950**
323,925	- - - - - - -	**87,126.75 + 37%**	**323,925**

Schedule Z —If your filing status is Head of household

If your taxable income is: Over—	But not over—	The tax is:	of the amount over—
$0	$14,650	**- - - - - - - 10%**	**$0**
14,650	55,900	**$1,465.00 + 12%**	**14,650**
55,900	89,050	**6,415.00 + 22%**	**55,900**
89,050	170,050	**13,708.00 + 24%**	**89,050**
170,050	215,950	**33,148.00 + 32%**	**170,050**
215,950	539,900	**47,836.00 + 35%**	**215,950**
539,900	- - - - - - -	**161,218.50 + 37%**	**539,900**

Your Rights as a Taxpayer

This section explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds.

The Taxpayer Bill of Rights

1. The Right to Be Informed. Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service. Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax. Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard. Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum. Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the IRS Independent Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality. Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy. Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality. Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation. Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System. Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

By mail. We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

By interview. If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

Repeat examinations. If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to the IRS Independent Office of Appeals. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree, and Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

If you do not wish to use the IRS Independent Office of Appeals or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Collections

Publication 594, The IRS Collection Process, explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.
- IRS certification to the State Department of a seriously delinquent tax debt, which will generally result in denial of a passport application and may lead to revocation of a passport.

Your collection appeal rights are explained in detail in Publication 1660, Collection Appeal Rights.

Innocent spouse relief. Generally, both you and your spouse are each responsible for paying the full

amount of tax, interest, and penalties due on your joint return. However, if you qualify for innocent spouse relief, you may be relieved of part or all of the joint liability. To request relief, you must file Form 8857, Request for Innocent Spouse Relief. For more information on innocent spouse relief, see Publication 971, Innocent Spouse Relief, and Form 8857.

Potential third party contacts. Generally, the IRS will deal directly with you or your duly authorized representative. However, we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received. If we do contact other persons, such as a neighbor, bank, employer, or employees, we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity in your case. If we do contact other persons, you have a right to request a list of those contacted. Your request can be made by telephone, in writing, or during a personal interview.

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, has more information on refunds.

If you were due a refund but you did not file a return, you generally must file your return within 3 years from the date the return was due (including extensions) to get that refund.

Taxpayer Advocate Service

TAS is an ***independent*** organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit *TaxpayerAdvocate.IRS.gov* or call 1-877-777-4778.

Tax Information

The IRS provides the following sources for forms, publications, and additional information.

- *Internet*: IRS.gov.
- *Tax Questions*: *IRS.gov/help/tax-law-questions* and *How To Get Tax Help*.
- *Forms and Publications*: *IRS.gov/Forms* and *IRS.gov/OrderForms*.
- *Small Business Ombudsman*: A small business entity can participate in the regulatory process and comment on enforcement actions of the IRS by calling 1-888-REG-FAIR.
- *Treasury Inspector General for Tax Administration*: You can confidentially report misconduct, waste, fraud, or abuse by an IRS employee by calling 1-800-366-4484. People who are deaf, hard of hearing, or have a speech disability and who have access to TTY/TDD equipment can call 1-800-877-8339. You can remain anonymous.

How To Get Tax Help

If you have questions about a tax issue; need help preparing your tax return; or want to download free publications, forms, or instructions, go to *IRS.gov* to find resources that can help you right away.

Preparing and filing your tax return. After receiving all your wage and earnings statements (Forms W-2, W-2G, 1099-R, 1099-MISC, 1099-NEC, etc.); unemployment compensation statements (by mail or in a digital format) or other government payment statements (Form 1099-G); and interest, dividend, and retirement statements from banks and investment firms (Forms 1099), you have several options to choose from to prepare and file your tax return. You can prepare the tax return yourself, see if you qualify for free tax preparation, or hire a tax professional to prepare your return.

Free options for tax preparation. Go to *IRS.gov* to see your options for preparing and filing your return online or in your local community, if you qualify, which include the following.

- **Free File.** This program lets you prepare and file your federal individual income tax return for free using brand-name tax-preparation-and-filing software or Free File fillable forms. However, state tax preparation may not be available through Free File. Go to *IRS.gov/FreeFile* to see if you qualify for free online federal tax preparation, e-filing, and direct deposit or payment options.
- **VITA.** The Volunteer Income Tax Assistance (VITA) program offers free tax help to people with low-to-moderate incomes, persons with disabilities, and limited-English-speaking taxpayers who need help preparing their own tax returns. Go to *IRS.gov/VITA*, download the free IRS2Go app, or call 800-906-9887 for information on free tax return preparation.
- **TCE.** The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors. Go to *IRS.gov/TCE*, download the free IRS2Go app, or call 888-227-7669 for information on free tax return preparation.
- **MilTax.** Members of the U.S. Armed Forces and qualified veterans may use MilTax, a free tax service offered by the Department of Defense through Military OneSource. For more information, go to *MilitaryOneSource* (*MilitaryOneSource.mil/MilTax*).

  Also, the IRS offers Free Fillable Forms, which can be completed online and then filed electronically regardless of income.

Using online tools to help prepare your return. Go to *IRS.gov/Tools* for the following.

- The *Earned Income Tax Credit Assistant* (*IRS.gov/EITCAssistant*) determines if you're eligible for the earned income credit (EIC).
- The *Online EIN Application* (*IRS.gov/EIN*) helps you get an employer identification number (EIN) at no cost.
- The *Tax Withholding Estimator* (*IRS.gov/W4app*) makes it easier for you to estimate the federal income tax you want your employer to withhold from your paycheck. This is tax withholding. See how your withholding affects your refund, take-home pay, or tax due.
- The *First-Time Homebuyer Credit Account Look-up* (*IRS.gov/HomeBuyer*) tool provides information on your repayments and account balance.
- The *Sales Tax Deduction Calculator* (*IRS.gov/SalesTax*) figures the amount you can claim if you itemize deductions on Schedule A (Form 1040).

Getting answers to your tax questions. On IRS.gov, you can get up-to-date information on current events and changes in tax law.

- *IRS.gov/Help*: A variety of tools to help you get answers to some of the most common tax questions.
- *IRS.gov/ITA*: The Interactive Tax Assistant, a tool that will ask you questions and, based on your input, provide answers on a number of tax law topics.
- *IRS.gov/Forms*: Find forms, instructions, and publications. You will find details on the most recent tax changes and interactive links to help you find answers to your questions.

You may also be able to access tax law information in your electronic filing software.

Need someone to prepare your tax return? There are various types of tax return preparers, including enrolled agents, certified public accountants (CPAs),

accountants, and many others who don't have professional credentials. If you choose to have someone prepare your tax return, choose that preparer wisely. A paid tax preparer is:

- Primarily responsible for the overall substantive accuracy of your return,
- Required to sign the return, and
- Required to include their preparer tax identification number (PTIN).

Although the tax preparer always signs the return, you're ultimately responsible for providing all the information required for the preparer to accurately prepare your return. Anyone paid to prepare tax returns for others should have a thorough understanding of tax matters. For more information on how to choose a tax preparer, go to *Tips for Choosing a Tax Preparer* on IRS.gov.

Coronavirus. Go to *IRS.gov/Coronavirus* for links to information on the impact of the coronavirus, as well as tax relief available for individuals and families, small and large businesses, and tax-exempt organizations.

Employers can register to use Business Services Online. The Social Security Administration (SSA) offers online service at *SSA.gov/employer* for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Form W-2, Wage and Tax Statement, and Form W-2c, Corrected Wage and Tax Statement.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are our highest priority. We use these tools to share public information with you. **Don't** post your social security number (SSN) or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingua*.
- *Youtube.com/irsvideosASL*.

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Online tax information in other languages. You can find information on *IRS.gov/MyLanguage* if English isn't your native language.

Free Over-the-Phone Interpreter (OPI) Service. The IRS is committed to serving our multilingual customers by offering OPI services. The OPI Service is a federally funded program and is available at Taxpayer Assistance Centers (TACs), other IRS offices, and every VITA/TCE return site. The OPI Service is accessible in more than 350 languages.

Accessibility Helpline available for taxpayers with disabilities. Taxpayers who need information about accessibility services can call 833-690-0598. The Accessibility Helpline can answer questions related to current and future accessibility products and services available in alternative media formats (for example, braille, large print, audio, etc.). The Accessibility Helpline does not have access to your IRS account. For help with tax law, refunds, or account-related issues, go to *IRS.gov/LetUsHelp*.

Note. Form 9000, Alternative Media Preference, or Form 9000(SP) allows you to elect to receive certain types of written correspondence in the following formats.

- Standard Print.
- Large Print.
- Braille.
- Audio (MP3).
- Plain Text File (TXT).
- Braille Ready File (BRF).

Disasters. Go to *Disaster Assistance and Emergency Relief for Individuals and Businesses* to review the available disaster tax relief.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print all the forms, instructions, and publications you may need. Or, you can go to *IRS.gov/OrderForms* to place an order.

Getting tax publications and instructions in eBook format. You can also download and view popular tax publications and instructions (including the Instructions for Form 1040) on mobile devices as eBooks at *IRS.gov/eBooks*.

Note. IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven't been tested on other dedicated eBook readers, and eBook functionality may not operate as intended.

Access your online account (individual taxpayers only). Go to *IRS.gov/Account* to securely access information about your federal tax account.

- View the amount you owe and a breakdown by tax year.
- See payment plan details or apply for a new payment plan.
- Make a payment or view 5 years of payment history and any pending or scheduled payments.
- Access your tax records, including key data from your most recent tax return, and transcripts.
- View digital copies of select notices from the IRS.
- Approve or reject authorization requests from tax professionals.
- View your address on file or manage your communication preferences.

Tax Pro Account. This tool lets your tax professional submit an authorization request to access your individual taxpayer *IRS online account*. For more information, go to *IRS.gov/TaxProAccount*.

Using direct deposit. The fastest way to receive a tax refund is to file electronically and choose direct deposit, which securely and electronically transfers your refund directly into your financial account. Direct deposit also avoids the possibility that your check could be lost, stolen, destroyed, or returned undeliverable to the IRS. Eight in 10 taxpayers use direct deposit to receive their refunds. If you don't have a bank account, go to *IRS.gov/DirectDeposit* for more information on where to find a bank or credit union that can open an account online.

Getting a transcript of your return. The quickest way to get a copy of your tax transcript is to go to *IRS.gov/Transcripts*. Click on either "Get Transcript Online" or "Get Transcript by Mail" to order a free copy of your transcript. If you prefer, you can order your transcript by calling 800-908-9946.

Reporting and resolving your tax-related identity theft issues.

- Tax-related identity theft happens when someone steals your personal information to commit tax fraud. Your taxes can be affected if your SSN is used to file a fraudulent return or to claim a refund or credit.
- The IRS doesn't initiate contact with taxpayers by email, text messages (including shortened links), telephone calls, or social media channels to request or verify personal or financial information. This includes requests for personal identification numbers (PINs), passwords, or similar information for credit cards, banks, or other financial accounts.
- Go to *IRS.gov/IdentityTheft*, the IRS Identity Theft Central webpage, for information on identity theft and data security protection for taxpayers, tax professionals, and businesses. If your SSN has been lost or stolen or you suspect you're a victim of tax-related identity theft, you can learn what steps you should take.
- Get an Identity Protection PIN (IP PIN). IP PINs are six-digit numbers assigned to taxpayers to help prevent the misuse of their SSNs on fraudulent federal income tax returns. When you have an IP PIN, it prevents someone else from filing a tax return with your SSN. To learn more, go to *IRS.gov/IPPIN*.

Ways to check on the status of your refund.

- Go to *IRS.gov/Refunds*.
- Download the official IRS2Go app to your mobile device to check your refund status.
- Call the automated refund hotline at 800-829-1954.

Note. The IRS can't issue refunds before mid-February for returns that claimed the EIC or the additional child tax credit (ACTC). This applies to the entire refund, not just the portion associated with these credits.

Making a tax payment. Go to *IRS.gov/Payments* for information on how to make a payment using any of the following options.

- *IRS Direct Pay*: Pay your individual tax bill or estimated tax payment directly from your checking or savings account at no cost to you.
- *Debit or Credit Card*: Choose an approved payment processor to pay online or by phone.
- *Electronic Funds Withdrawal*: Schedule a payment when filing your federal taxes using

tax return preparation software or through a tax professional.

- *Electronic Federal Tax Payment System*: Best option for businesses. Enrollment is required.
- *Check or Money Order*: Mail your payment to the address listed on the notice or instructions.
- *Cash*: You may be able to pay your taxes with cash at a participating retail store.
- *Same-Day Wire*: You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and time frames.

Note. The IRS uses the latest encryption technology to ensure that the electronic payments you make online, by phone, or from a mobile device using the IRS2Go app are safe and secure. Paying electronically is quick, easy, and faster than mailing in a check or money order.

What if I can't pay now? Go to *IRS.gov/Payments* for more information about your options.

- Apply for an *online payment agreement* (*IRS.gov/OPA*) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the *Offer in Compromise Pre-Qualifier* to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to *IRS.gov/OIC*.

Filing an amended return. Go to *IRS.gov/Form1040X* for information and updates.

Checking the status of your amended return. Go to *IRS.gov/WMAR* to track the status of Form 1040-X amended returns.

Note. It can take up to 3 weeks from the date you filed your amended return for it to show up in our system, and processing it can take up to 16 weeks.

Understanding an IRS notice or letter you've received. Go to *IRS.gov/Notices* to find additional information about responding to an IRS notice or letter.

Note. You can use Schedule LEP (Form 1040), Request for Change in Language Preference, to state a preference to receive notices, letters, or other written communications from the IRS in an alternative language. You may not immediately receive written communications in the requested language. The IRS's commitment to LEP taxpayers is part of a multi-year timeline that is scheduled to begin providing translations in 2023. You will continue to receive communications, including notices and letters in English until they are translated to your preferred language.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS TAC. Go to *IRS.gov/LetUsHelp* for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment, so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to *IRS.gov/TACLocator* to find the nearest TAC and to check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is TAS?

TAS is an ***independent*** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to *TaxpayerAdvocate.IRS.gov* to help you understand what these rights mean to you and how they apply. These are ***your*** rights. Know them. Use them.

What Can TAS Do for You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them at 877-777-4778.

How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, report it to them at *IRS.gov/SAMS*.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

Low Income Taxpayer Clinics (LITCs)

LITCs are independent from the IRS. LITCs represent individuals whose income is below a certain level and need to resolve tax problems with the IRS, such as audits, appeals, and tax collection disputes. In addition, LITCs can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Services are offered for free or a small fee for eligible taxpayers. To find an LITC near you, go to *TaxpayerAdvocate.IRS.gov/about-us/Low-Income-Taxpayer-Clinics-LITC* or see IRS Pub. 4134, *Low Income Taxpayer Clinic List*.

■

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To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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Where To File

Mail your return to the address shown below that applies to you. If you want to use a private delivery service, see *Private delivery services* in chapter 1.

TIP

Envelopes without enough postage will be returned to you by the post office. Your envelope may need additional postage if it contains more than five pages or is oversized (for example, it is over 1/4 inch thick). Also, include your complete return address.

IF you live in...	THEN send your return to the address below if you are requesting a refund or are NOT enclosing a payment...	OR send your return to the address below if you ARE enclosing a payment (check or money order)...
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Alaska, California, Colorado, Hawaii, Idaho, Kansas, Michigan, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wyoming	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0002	Internal Revenue Service P.O. Box 802501 Cincinnati, OH 45280-2501
Arkansas, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, Oklahoma, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0002	Internal Revenue Service P.O. Box 931000 Louisville, KY 40293-1000
Arizona, New Mexico	Department of the Treasury Internal Revenue Service Austin, TX 73301-0002	Internal Revenue Service P.O. Box 802501 Cincinnati, OH 45280-2501
Pennsylvania	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0002	Internal Revenue Service P.O. Box 802501 Cincinnati, OH 45280-2501
Florida, Louisiana, Mississippi, Texas	Department of the Treasury Internal Revenue Service Austin, TX 73301-0002	Internal Revenue Service P.O. Box 1214 Charlotte, NC 28201-1214
A foreign country, U.S. possession or territory*, or use an APO or FPO address, or file Form 2555 or 4563, or are a dual-status alien	Department of the Treasury Internal Revenue Service Austin, TX 73301-0215	Internal Revenue Service P.O. Box 1303 Charlotte, NC 28201-1303
*If you live in American Samoa, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands, see Pub. 570.		

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October 18, 2023

AMBT Planning Considerations

2023 National Conference

on Special Needs Planning and Special Needs Trusts

Applicable Multi Beneficiary Trusts

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Applicable Multi-Beneficiary Trusts

by

Bradley J. Frigon, LLM, CELA

1. Introduction

SECURE Act adopted new rules for multi-beneficiary trusts (referred to as applicable multi-beneficiary trust (AMBTs)), which are trusts that have multiple beneficiaries (all of whom are individuals) and at least one of the trust beneficiaries is disabled or chronically ill, as such terms are defined by the SECURE Act. Such trusts were created by the SECURE Act to assist beneficiaries in maintaining their eligibility in certain means-tested programs such as Supplemental Security Income and Medicaid.

Under the SECURE Act, the proposed regulations provide guidance on a particular type of see-through trust defined in section 401(a)(9)(H)(v) as an applicable multi-beneficiary trust. Specifically, these proposed regulations define two types of applicable multi-beneficiary trusts. A Type I applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that the trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary (as described in section 401(a)(9)(H)(iv)(I)). A Type II applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that no individual other than a disabled or chronically ill eligible designated beneficiary has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust (as described in section 401(a)(9)(H)(iv)(II)).

With respect to Type I AMBT, the separate trusts applicable to the disabled or chronically ill individuals can take advantage of the life expectancy rule, as such beneficiaries are eligible designated beneficiaries. With respect to Type II AMBT, the proposed regulations set forth a special rule whereby the beneficiaries of such trust are treated as eligible designated beneficiaries without regard as to whether any of the other trust beneficiaries are not eligible designated beneficiaries. As such, the stretch rules can continue to apply to the disabled/chronically ill beneficiary (and would be based on the oldest beneficiary if there are multiple disabled/chronically ill beneficiaries).

When dividing a Type I applicable multi-beneficiary trust, one of the separate trusts could be a Type II applicable multi-beneficiary trust. Thus, if a Type I applicable multi-beneficiary trust is divided into separate trusts and one of the separate trusts satisfies the requirements to be a Type II applicable multi-beneficiary trust, then the beneficiaries of that separate trust who are not disabled or chronically ill are disregarded as beneficiaries of the employee for purposes of section 401(a)(9) and these regulations. However, for any separate trust that does not satisfy the requirements to be a Type II applicable multi-beneficiary trust, the beneficiaries of that separate trust are treated as beneficiaries of the employee for purposes of section 401(a)(9) and these regulations.

The Treasury Department and the IRS have been made aware of concerns related to the application of the amendments made by Section 401 of the SECURE Act to section 401(a)(9) of the Code in the case of a trust with terms intended to ensure that a disabled individual who is a beneficiary of the trust remains eligible for means-tested government benefits. The Treasury Department and the IRS have requested comments on whether under applicable law a trust for a disabled individual (for example, a supplemental needs trust) could include terms providing that the disabled individual would lose the individual's interest in the trust in the event the interest would disqualify

the individual for means tested government benefits and still satisfy the requirements under the Code to be a Type II applicable multi-beneficiary trust. Specifically, comments are requested on whether this Type of provision may be included in a trust (thereby allowing a disabled individual to continue to qualify for means-tested government benefits), while not providing for trust payments to any other beneficiary until the death of the disabled individual.

II. Special Rules for Multiple Designated Beneficiaries

The proposed regulations provide a general rule under which, if an employee has more than one designated beneficiary, and at least one of them is not an eligible designated beneficiary, then for purposes of section 401(a)(9), the employee is treated as not having an eligible designated beneficiary. As a result, the employee's interest must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death.

The proposed regulations include two exceptions to this general rule that allow an eligible designated beneficiary to use the life expectancy rule even if there is another designated beneficiary who is not an eligible designated beneficiary. The first exception is that if any of the employee's designated beneficiaries is a child of the employee who, as of the date of the employee's death, has not yet reached the age of majority, then the employee is still treated as having an eligible designated beneficiary (which allows payments to continue until 10 years after the child reaches the age of majority even if there are other designated beneficiaries who are not eligible designated beneficiaries). The second exception is if the see-through trust is a Type II applicable multi-beneficiary trust, then the beneficiaries who either are disabled or chronically ill are treated as eligible designated beneficiaries without regard to whether any of the other trust beneficiaries are not eligible designated beneficiaries.

To illustrate these rules:

Example One:

Father dies on or after his RBD having named his revocable living trust (RLT) as the beneficiary of his IRA. Father has three adult children, Frank (eldest), Gail, and Henry (youngest). Gail is disabled at the time of father's death. The terms of father's RLT provide that, upon his death, the RLT will be divided into three separate see-through trusts, one for each child. Because the RLT requires division at father's death into separate see-through trusts and Gail is disabled, the RLT is a Type I AMBT.

Each child is the sole Primary Beneficiary of that child's trust. Frank is the oldest child and Henry is the youngest child. The separate see-through trusts for Frank and Henry are Accumulation Trusts. The separate see-through trust for Gail is a Type II AMBT. Frank and Henry are the remainder beneficiaries of Gail's trust. No beneficiary of Gail's trust is entitled to the father's IRA during Gail's lifetime.

Gail's life expectancy will be used to determine the RMDs payable to Gail's Type II AMBT over her lifetime even though the other trust beneficiaries (Frank and Henry) are not EDBs.

Because father died on or after his RBD, the trustee of Frank's and Henry's separate trusts, as DBs, will be required to begin taking RMDs in the calendar year following the calendar year of Father's death, subject to the 10-year limit. Therefore, the trustee will use Frank's life expectancy to determine the RMDs payable to Frank's trust for the first nine years after father's death, and Henry's life expectancy to determine the RMDs payable to Henry's trust, for the first nine years after Father's death.

Example 2:

Same facts except at father's death, Frank is age 28, Gail is age 20 and Henry is age 14. Frank is the Primary Beneficiary of his trust, which is an Accumulation Trust that will continue for Frank's lifetime. The trustee of Frank's trust has complete discretion to distribute to Frank or accumulate RMDs and other withdrawals from father's IRA payable to Frank's trust. Gail is the Primary Beneficiary of a Type II AMBT. Henry is the Primary Beneficiary of a trust that terminates at age 31. Upon Henry attaining age 31, the remaining IRA benefits and any trust accumulations derived from the IRA benefits will be distributed to Henry.

Because Father's Trust is a Type I AMBT, each sub-trust can be divided with respect to the separate interests of each beneficiary. Frank is an adult at the time of father's death, and is treated as a DB. Accordingly, by December 31 of the year that includes the tenth anniversary of father's death, the trustee of Frank's trust must take a distribution of the entire balance of the IRA that is payable to Frank's trust.

Henry is a minor EDB. Therefore, the trustee will determine the RMD for Henry's trust using Henry's life expectancy until the year when Henry attains age 31. By December 31 of the year that Henry attains age 31, all of the remaining IRA benefits payable to Henry's trust must be distributed from the IRA to Henry, including any accumulated income derived from the IRA.

The Type II AMBT for Gail will use Gail's life expectancy to determine the RMDs payable to Gail's trust throughout her lifetime even if Frank and Henry are designated as remainder beneficiaries of her trust.

Example 3.

Mother dies having designated a trust as the beneficiary of her IRA. The sole Primary Beneficiaries of the trust are her twin sons, Sam and Tim, who were disabled at the time of her death. Sam and Tim receive SSI and Medicaid. The remainder beneficiaries of the trust are her other two children, Ann and Barbara who are not disabled.

The trust is a see-through trust and qualifies as a Type II AMBT. The trust terms provide that only Sam and Tim are entitled to any of the Plan benefits during their lifetimes. Since Sam and Tim are the only beneficiaries of the trust who are disabled, the trust qualifies as a Type II AMBT. If Sam was older than Tim, Sam's life expectancy would be used to determine RMDs.

III. Disabled Spouse.

If a spouse is the Primary Beneficiary of a Conduit Trust, the spouse is treated as the sole beneficiary of the trust and the remainder beneficiaries of the trust are disregarded for purposes of determining the RMDs. In that case, the spouse, as the deemed sole beneficiary of the trust, may start taking RMDs at 73 or wait until the deceased spouse would have reached the RBD to begin taking RMDs. Once distributions to the trust begin, the spouse's life expectancy is redetermined each year to determine the applicable denominator for that year's RMD.

The proposed regulations are not clear if the spouse is the sole disabled or chronically ill beneficiary of a Type II AMBT: Under Proposed § 1.401(a)(9)-5(f)(1)(ii), only the life expectancies of the disabled or chronically ill beneficiaries of a Type II AMBT are taken into account in determining the oldest beneficiary of the trust. Because all non-EDB beneficiaries of the Type II AMBT are disregarded during the life of the disabled or chronically ill EDB, the account owner's disabled or chronically ill spouse would be the sole Primary Beneficiary of the

Type II AMBT. Accordingly, the trustee should be able to delay the start of RMDs to the end of the calendar year in which the account owner would have reached age 73 as provided in § 1.401(a)(9)-3(d).

Example:

John dies in 2023 at age 65. John's wife Mary, age 63, was chronically ill at the time of John's death. John established a Type II AMBT that is the beneficiary of his IRA. Mary is the sole current beneficiary of the Type II AMBT.

Because Mary is the only beneficiary taken into account in determining the trust's RMDs, the trustee of the Type II AMBT may wait until December 31, 2030 to begin taking RMDs. 2030 would have been John's first distribution calendar year (age 73). In addition, because Mary is the sole beneficiary of the Type II AMBT, the trustee may redetermined Mary's life expectancy each year.

If a Type II AMBT is drafted in such a way that it also functions as a third-party special needs trust, the trust will not be considered an available asset for the spouse in determining the availability of governmental benefits. For that reason, a Type II AMBT may be necessary in many states that would require the surviving spouse, absent a Type II AMBT, to "spend down" the Plan benefits in order to be eligible for Medicaid long-term care benefits.

IV. Under Consideration by IRS and Treasury.

1. Clarify How the Division of a Type I AMBT Works. What does "immediately" mean for the division of plan benefits and must the trust contain specific provisions to comply with the division of plan benefits among sub trusts.

2. Clarify that "Entitled to Benefits" in Type II AMBT definition means "plan benefits" not government benefits.
3. Clarify if spouse is sole disabled or chronically ill beneficiary of a Type II AMBT, can spouse delay RMDs until the year the account owner would have attained age 73, and can spouse recalculate life expectancy each year?
4. Clarify that incidental benefits paid to others, including family members, for services, does not disqualify an AMBT.
5. Clarify if a trust established pursuant to the holdings of PLRs PLR 200620025 and PLR 201116005 will qualify as a Type ll AMBT.

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Applicable Multi-Beneficiary Trusts

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Presenter's Bio

Bradley J. Frigon
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- 38 years practicing attorney
- Focus in the elder law arena
- Extensive experience across estate planning, estate and probate litigation, special needs planning, guardianship and conservatorship matters, Medicaid, and taxation
- Nationally recognized expert in special needs planning and tax issues

Associations:

- Past-President of the National Academy of Elder Law Attorneys (NAELA), NAELA fellow
- Appointed member of the Special Needs Alliance, special counsel for the Colorado Fund for People with Disabilities
- Fellow of the American College of Trust and Estate Counsel (ACTEC)
- Certified Elder Law Attorney (CELA)
- Member of the Council of Advanced Practitioners (CAP)
- Adjunct Professor at Stetson University College of Law
- Member of True Link Financial Investment Committee

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Eligible Designated Beneficiaries (EDBs)

- SECURE provides that only an "eligible designated beneficiary" (EDB) is entitled to the "life expectancy payout exception. There are five types of EDBs. Prop. Reg. § 1.401(a)(9)-4.
- Account owner's surviving spouse;
- Account **owner's** minor child;
- Disabled individual;
- Chronically ill individual; and
- Individual not more than 10 years younger than the participant.
- SECURE further provides that after the death of the EDB the life expectancy payout terminates and 100% distribution is required, 10 years after such EDB's death; and in the case of a minor child of the participant, EDB status ends upon reaching majority so the payout must end 10 years after the earlier of such child's death or the minor's 21st birthday.

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Designated Beneficiary/Non Designated Beneficiary

SECURE mandates different RMDs for the beneficiary who inherits a retirement account based on whether the beneficiary is or is not a “designated beneficiary,” A “designated beneficiary” (DB) is any individual who is not an “eligible designated beneficiary” or a non designated beneficiary. Ten year rule applies.

Non designated beneficiary (NDB) – Non qualified trust – charity –estate or other entity. Five year rule applies.

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Designated Beneficiary- Ten Year Rule

- Who are DBs? – Individuals who are identifiable in the beneficiary designation, as a class of beneficiaries, or under the plan or IRA (e.g., a default beneficiary).
- Account must be paid out within ten years. 10 years ends on December 31st of the tenth year following the account owner’s year of death. E.g., 12/31/2033 if death occurs in 2023.
- If account owner died before his or her required beginning date (now 73, post SECURE), then account must be paid out by the end of the ten year period. No requirement to make any distributions during the ten year period.
- If account owner died after his or her required beginning date, then DB must take distributions during the ten year period “as least as rapidly” as the account owner. Account must be fully distributed by the end of the ten year period.

5

See-Through Trust

- For a Trust to be a DB, the trust must be a qualified Trust. This is called a “see-through trust.” If the Trust is not a see-through trust, then the trust is a non-designated beneficiary and the five year rule or the account owner’s ghost life expectancy applies. Does not matter if the beneficiary of the trust is a DB or EDB. If the trust is a see-through trust then must determine the type of trust – Conduit or Accumulation.
- To be a See-through Trust, the Trust must:
  - Be valid under state law.
  - Be irrevocable or becomes irrevocable at participant’s date of death. (Third Party Stand Alone SNT problem).
  - All beneficiaries are identifiable under the terms of the trust (i.e., identifiable individuals).
  - A copy of the trust document is provided to the plan administrator or IRA custodian by no later than October 31 of the calendar year after the death of the participant.
  - A qualified “see through trust” is either a conduit trust or an accumulation trust.

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Conduit Trust

A **Conduit Trust** is a see-through trust that provides, with respect to the deceased participant's interest in the retirement account, that "all distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified beneficiaries." This definition of conduit trust has not changed from the existing regulations or common understanding. For the first time, this definition provides official recognition that a conduit trust can be for more than one designated beneficiary, a question considered unresolved prior to the new proposed regulations. It also confirms that payments may be "for the benefit of" the conduit trust beneficiary or beneficiaries.

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Conduit Trust

- A Conduit trust by the terms of the governing instrument, to distribute all RMDs and additional withdrawals from the qualified plan or IRA to the beneficiary of the trust on a current basis so that no amounts distributed from the qualified plan or IRA during the current beneficiary's lifetime is accumulated for the benefit of subsequent beneficiaries. The trustee has no power to hold or retain in trust *any* plan distribution made during the lifetime of the conduit trust beneficiary.
- A trust that directs the trustee to distribute all income does not qualify as a conduit trust. To qualify as a conduit trust, the terms of the trust must require that all RMDs and additional withdrawals be distributed on a current basis. Qualified Plan accounts are principal for fiduciary accounting purposes.

8

Accumulation Trust

An **Accumulation Trust** is "any trust that is not a conduit trust." A discretionary trust is an accumulation trust. No special language is required. The terms of the trust allow the trustee to "accumulate" RMDs.

Example: "My Trustee shall be responsible for determining what discretionary distributions shall be made from this trust. My Trustee may provide for the benefit of Stephanie that amount of net income which will not cause Stephanie to be ineligible for governmental financial assistance benefits, in the event Stephanie is receiving such benefits. Any undistributed income shall be added to principal. My Trustee may distribute discretionary amounts of principal to or for the benefit of Stephanie for those supplemental needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services."

9

Tiered Beneficiary Rules

- **First tier:** "Any beneficiary who could receive amounts in the trust representing the owner's interest in the plan that are neither contingent upon, nor delayed until, the death of another trust beneficiary...".
- **Second tier:** a beneficiary "that could receive amounts in the trust representing the owner's interest in the plan that were not distributed to the beneficiaries described above -i.e., the first-tier beneficiaries.
- **Third tier:** a beneficiary who could receive amounts from the trust that represent the owner's interest in the plan solely because of the death of another beneficiary- i.e, only after the death of a second-tier beneficiary.

10

Identifying Measuring Life for RMDs- Who to Count

- First tier beneficiaries ALWAYS count. Third tier beneficiaries appear to never count. But, if the third tier beneficiary may also be a first tier beneficiary, then the third tier beneficiary may count. E.g., Remainder beneficiaries are descendants but siblings if no descendants
- For a conduit trust, first tier beneficiaries are the ONLY ones that count—second tier beneficiaries do NOT count.
- For an accumulation trust for an EDB, first AND second tier beneficiaries count. Is the first tier beneficiary an EDB and second tier beneficiaries all DBs? If all of the second tier beneficiaries are DBs then EDB's life beneficiary is used to calculate RMDs.
- Always disregard beneficiaries who predeceased the participant. Even if the individual is named in the trust instrument, he or she is disregarded if he/she predeceased the participant. For example, if the trust says "Pay income to my spouse for life, then upon the death of the survivor of my spouse, distribute remaining trust assets to my then living children," if the spouse predeceased the participant then the children are the "first tier" beneficiaries. *A predeceased beneficiary is not a beneficiary at all, he/she is completely disregarded!*

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Multiple Beneficiaries and the Separate Account Rule

- If you can divide each beneficiary's share into a separate account then the classification rules as a NDB, DB or EDB will apply to each beneficiary. You must contact the custodian and physically divide the accounts.
- Prior to SECURE, the Separate Share rule did not apply to any type of trust.

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Example –Separate Account Rule

- Upon the death of the IRA Owner, the beneficiary designation form directs that the IRA passes equally to each of his three children. Each child is designated as a beneficiary on the IRA beneficiary form.
- Father designates his three sons on the IRA beneficiary form as one third equal beneficiaries. All of the sons are DBs. Under the separate share rule, the account owner's IRA can be divided into three separate shares one for each child.
- The IRA account must be divided by December 31 of the year following the account owner's death.
- SECURE did not change this rule except that the ten year rule applies to each beneficiary since they are all DBs.

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Separate Account Rule for Trust Pre Secure

- Upon the death of the IRA Owner, the IRA shall pass to the IRA Account Owner's RLT, to be divided into three equal shares and allocated to A subtrust – B subtrust and C subtrust.
- The foregoing language did not create separate accounts and the lifetime RMDs would be calculated based upon the oldest beneficiary's life expectancy of the three sub-trusts.

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Pre-Secure Example –Separate Account Rule (cont.)

The IRA shall be divided into three separate accounts that are hereby designated respectively to the A subtrust, B subtrust and C subtrust arising at the IRA Owner's death under the IRA Account Owner's RLT.

The difference between the two examples is subtle but critical. Under the first designation, the entire plan goes to the Account Owner's RLT and the division occurs afterwards. Under the second example, the plan assets pass directly to the individual subtrusts.

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Applicable Multiple Beneficiary Trusts

- "What's in a name? That which we call a rose / By any other name would smell as sweet." Romeo and Juliet, by William Shakespeare.
- "If it looks like a duck, walks like a duck and quacks like a duck, then it just may be a duck." A test devised by the US labor leader Walter Reuther.
- "Like two peas in a pod."

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Applicable Multi-beneficiary Trusts (AMBTs)

- Under Secure, Applicable Multi-Beneficiary Trusts (AMBTs) were created to minimize the possibility that a disabled or chronically ill individual's SNT would not receive life expectancy payout if a trust with multiple beneficiaries was designated as a beneficiary of a retirement account. The purpose of "AMBTs," is to allow life expectancy payout for a disabled beneficiary and chronically ill beneficiary of a SNTs even if the disabled or chronically ill beneficiary is not the sole beneficiary of the trust.

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Code definition of AMBT

"For purposes of this subparagraph, the term 'applicable multi-beneficiary trust' means a trust—(I) which has more than one beneficiary, (II) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and (III) at least one of the beneficiaries of which is an eligible designated beneficiary described in subclause (III) [disabled] or (IV) [chronically ill] of subparagraph (E)(ii).§ 401(a)(9)(H)(v)."

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Type I AMBT- Type II AMBT

- An AMBT can be formed in one of two ways: (1) the terms of the trust provide that it is to be immediately divided upon the death of the account owner into separate trusts for each beneficiary (referred to in the proposed regulations as a Type I AMBT), or
- (2) the terms of the trust provide that no beneficiary, other than an EDB eligible (who is either disabled or chronically ill), has a right to the account owner's interest until the death of all of the EDBs, (referred to in the proposed regulations as a Type II AMBT.

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Applicable Multi-beneficiary Trusts (AMBTs) – Type I

- The trust terms provide that it is to be divided immediately upon the death of the account owner into separate trusts for each beneficiary.
  - “Immediately” is not defined anywhere;
  - “Separate trusts” includes separate outright shares;
- A Type I AMBT is a revocable trust or a testamentary trust with multiple beneficiaries at least one of whom is disabled or chronically ill.

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Type I AMBTs Separate Account Rule Exception- 1.401(a)(9)-8(a)(1)(iii)(B)

- Type I AMBTs can use the separate account rule for all Type I trust beneficiaries.
  - Similar to naming beneficiaries in the beneficiary designation and creating separate inherited IRAs by December 31 of the year after the year of the account owner’s death.
  - Each beneficiary uses their own life expectancy or 10-year rule.
  - Must also follow separate *accounting* rules.

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Type I AMBTs – Separate Accounting Rules

- Separate accounting rules:
  - Post-death distributions from retirement account applied proportionally to beneficiaries' shares;
  - Gains and losses earned prior to establishment of separate accounts must be allocated pro rata on a reasonable and consistent basis to the separate accounts;
  - Additional rules that mostly affect plans, not IRAs.

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Type I AMBTs - Planning

- Use a revocable living trust or a testamentary trust
- The trust is the beneficiary of the IRA (or plan benefits);
- The trustee should be able to pick and choose the shares of the retirement accounts payable to the Type I AMBT among the beneficiaries;
- May be able to disproportionately benefit the disabled or chronically ill beneficiary;
- Each beneficiary may use their own situation to determine payout, e.g., other EDBs, and DBs.

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Type I AMBTs – Planning - Continued

- The separate account rules does not seem to require the Type I AMBT to be divided by December 31 of the year following the year of death. Still a best practice.
- If the Type I AMBT includes a pour over from the Type I AMBT to another trust, the pour over trust must exist at the account owner's death and be a see-through trust.

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Type II AMBTs

- One or more beneficiaries who are disabled or chronically ill who are entitled to the plan or IRA benefits during their lifetime; and
- Only disabled or chronically ill beneficiary or beneficiaries are entitled to benefits until the death of the disabled or chronically ill beneficiary or the death of the last disabled or chronically ill beneficiary.
- The ages of the remainder beneficiaries are disregarded.

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Type II AMBTs – Continued

- A Type II AMBT is a classic (third-party) standalone supplemental needs trust.
- It is an accumulation trust.
- A Type II AMBT can be established either:
  - A Type I AMBT revocable living trust or testamentary trust, or
  - As a stand-alone trust.

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Type II AMBTs – Continued

- Consider a trust administrative provision allowing the trustee to modify the trust to add a Type II AMBT/third-party SNT by September 30 of the year following the year of death before funding the share for a disabled or chronically ill beneficiary. Make sure State Medicaid office does not object to converting an outright distribution to a third party SNT
- State in the Type II AMBT the intent to treat the trust as an AMBT.

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Type II AMBT – RMDs - §1.401(a)(9)-5(f)(1)(ii) and (f)(2)(iii)

- The ages of the remainder beneficiaries are disregarded.
  - If there are multiple disabled or chronically ill beneficiaries in the Type II AMBT, the oldest beneficiary's life expectancy will be used.
  - AMBT ends at death of the last surviving disabled or chronically ill beneficiary.
  - If the account owner died after his or her required beginning date, and was younger than the AMBT beneficiary, the rule that would require the retirement account to pay out in the year the older AMBT beneficiary's life expectancy goes to zero does not apply to a Type II AMBT.

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Example One

- Father dies on or after his RBD having named his revocable living trust (RLT), as the beneficiary of his IRA. Father has three adult children, Frank (eldest), Gail, and Henry (youngest). Gail is disabled at the time of father's death. The terms of father's RLT provide that upon his death, the RLT will be divided into three separate see-through trusts, one for each child. Because the RLT requires division at father's death into separate see-through trusts and Gail is disabled, the RLT is a Type I AMBT.
- Each child is the sole Primary Beneficiary of that child's trust. Frank is the oldest child and Henry is the youngest child. The separate see-through trusts for Frank and Henry are Accumulation Trusts. The separate see-through trust for Gail is a Type II AMBT. Frank and Henry are the remainder beneficiaries of Gail's trust. No beneficiary of Gail's trust is entitled to the father's IRA during Gail's lifetime.
- Gail's life expectancy will be used to determine the RMDs payable to Gail's Type II AMBT over her lifetime even though the other trust beneficiaries (Frank and Henry) are not EDBs.
- Because father died on or after his RBD, the trustee of Frank's and Henry's separate trusts, as DBs, will be required to begin taking RMDs in the calendar year following the calendar year of Father's death, subject to the 10 year limit. Therefore, the trustee will use Frank's life expectancy to determine the RMDs payable to Frank's trust for the first nine years after father's death, and Henry's life expectancy to determine the RMDs payable to Henry's trust, for the first nine years after Father's death.

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Example Two

- Same facts except at father's death, Frank is age 28, Gail is age 20 and Henry is age 14. Frank is the Primary Beneficiary of his trust, which is an Accumulation Trust that will continue for Frank's lifetime. The trustee of Frank's trust has complete discretion to distribute to Frank or accumulate RMDs and other withdrawals from father's IRA payable to Frank's trust. Gail is the Primary Beneficiary of a Type II AMBT. Henry is the Primary Beneficiary of a trust that terminates at age 31. Upon Henry attaining age 31, the remaining IRA benefits and any trust accumulations derived from the IRA benefits will be distributed to Henry.
- Because Father's Trust is a Type I AMBT, each sub-trust can be divided with respect to the separate interests of each beneficiary. Frank is an adult at the time of father's death, and is treated as a DB. Accordingly, by December 31 of the year that includes the tenth anniversary of father's death, the trustee of Frank's trust must take a distribution of the entire balance of the IRA that is payable to Frank's trust.
- Henry is a minor EDB. Therefore, the trustee will determine the RMD for Henry's trust using Henry's life expectancy until the year when Henry attains age 31. By December 31 of the year that Henry attains age 31, all of the remaining IRA benefits payable to Henry's trust must be distributed from the IRA to Henry, including any accumulated income derived from the IRA.
- The Type II AMBT for Gail will use Gail's life expectancy to determine the RMDs payable to Gail's trust throughout her lifetime even if Frank and Henry are designated as remainder beneficiaries of her trust.

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Example Three

- Mother dies having designated a trust as the beneficiary of her IRA. The sole Primary Beneficiaries of the trust are her twin sons, Sam and Tim, who were disabled at the time of her death. Sam and Tim receive SSI and Medicaid. The remainder beneficiaries of the trust are her other two children, Ann and Barbara who are not disabled.

- The trust is a see-through trust and qualifies as a Type II AMBT. The trust terms provide that only Sam and Tim are entitled to any of the Plan benefits during their lifetimes. Since Sam and Tim are the only beneficiaries of the trust who are disabled, the trust qualifies as a Type II AMBT. If Sam was older than Tim, Sam's life expectancy would be used to determine RMDs.

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What about PLR 200620025, and PLR 201116005?

- Private Letter Rulings. The holdings of PLR 200620025 and PLR 201116005 allowed a first party SNT to be designated as the owner of an inherited IRA and the disabled individual as the beneficiary.
- The AMBT proposed regulations do not address the fact patterns of PLR 200620025 and 201116005.

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PLR 200620025

- Taxpayer A died at age 68 while owning an Individual Retirement Account (IRA). This IRA named his four sons as beneficiaries through a beneficiary designation. One of his sons was a minor and receiving Medicaid benefits. The mother obtained an order from the State Court authorizing the creation of a special needs trust for her son's benefit. The trust authorized by the court was a First Party Special Needs Trust with a payback provision. The mother was designated as trustee, and the son as the sole lifetime beneficiary of the trust. During the son's life, the trustee may distribute to or apply for his benefit as much of the net income of the trust as advisable in the trustee's sole discretion. Income not distributed must be added to principal.
- Upon the son's death, the State Department of Children and Families will receive reimbursement from the trust assets up to the amount of medical assistance that they paid on the son's behalf during his lifetime.

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Holdings

- Under Rev. Rul. 85-13, a grantor trust and the grantor of the trust are treated as the same taxpayer for federal income tax purposes;
- A transfer of a grantor's assets to a grantor trust is disregarded for federal income tax purposes;
- The SNT was designated as the owner of the IRA. The son was the beneficiary.
- Use son's life expectancy for purposes of calculating RMDs.
- PLR 200620025 and 201116005 only allowed for an inherited IRA.

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Type II AMBT

- One or more beneficiaries who are disabled or chronically ill who are entitled to the plan or IRA benefits during their lifetime; and
- Only disabled or chronically ill beneficiary or beneficiaries are entitled to benefits until the death of the disabled or chronically ill beneficiary or the death of the last disabled or chronically ill beneficiary.
- The trusts referenced in each PLR should qualify as a Type II AMBT. Does the fact the SNT is the owner of the IRA change the results?

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Spouse –Disabled

- If a spouse is the Primary Beneficiary of a Conduit Trust, the spouse is treated as the sole beneficiary of the trust and the remainder beneficiaries of the trust are disregarded for purposes of determining the RMDs. In that case, the spouse, as the deemed sole beneficiary of the trust, may start taking RMDs at 73 or wait until the deceased spouse would have reached the RBD to begin taking RMDs. Once distributions to the trust begin, the spouse's life expectancy is redetermined each year to determine the applicable denominator for that year's RMD.
- The proposed regulations are not clear if the spouse is the sole disabled or chronically ill beneficiary of a Type II AMBT: Under Proposed § 1.401(a)(9)-5(f)(1)(ii), only the life expectancies of the disabled or chronically ill beneficiaries of a Type II AMBT are taken into account in determining the oldest beneficiary of the trust. Because all non-EDB beneficiaries of the Type II AMBT are disregarded during the life of the disabled or chronically ill EDB, the account owner's disabled or chronically ill spouse would be the sole Primary Beneficiary of the Type II AMBT. Accordingly, the trustee should be able to delay the start of RMDs to the end of the calendar year in which the account owner would have reached age 73 as provided in § 1.401(a)(9)-3(d).

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Example- Spouse –Disabled

John dies in 2023 at age 65. John's wife Mary, age 63, was chronically ill at the time of John's death. John established a Type II AMBT that is the beneficiary of his IRA. Mary is the sole current beneficiary of the Type II AMBT.

Because Mary is the only beneficiary taken into account in determining the trust's RMDs, the trustee of the Type II AMBT may wait until December 31, 2030 to begin taking RMDs. 2030 would have been John's first distribution calendar year (age 73). In addition, because Mary is the sole beneficiary of the Type II AMBT, the trustee may redetermined Mary's life expectancy each year.

If a Type II AMBT is drafted in such a way that it also functions as a third-party special needs trust, the trust will not be considered an available asset for the spouse in determining the availability of governmental benefits. For that reason, a Type II AMBT may be necessary in many states that would require the surviving spouse, absent a Type II AMBT, to "spend down" the Plan benefits in order to be eligible for Medicaid long-term care benefits.

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Definition of Disabled

- The definition of "disabled" varies depending on whether at the time of the owner's death, the beneficiary is over age 18 or not. If the beneficiary has already been determined to be disabled for the purposes of qualifying for Social Security disability benefits, the beneficiary does not need to separately convince the IRS or the plan administrator of his or her disability "An individual who, as of the date of the owner's death, **is age 18 or older** is disabled if, as of that date, the individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration." Prop. Reg. § 1.401(a)(9)-4(e)(4)(ii).
- "An individual who, as of the date of the owner's death, **is not age 18 or older** is disabled if, as of that date, that individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration." Prop. Reg. § 1.401(a)(9)-4(e)(4)(iii).
- "If the Commissioner of Social Security has determined that, as of the date of the employee's death, an individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled within the meaning of this paragraph (e)(4)." Prop. Reg. § 1.401(a)(9)-4(e)(4)(iv).

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Definition of Chronically Ill

"An individual is chronically ill if the individual is chronically ill within the definition of section 7702B(c)(2) and satisfies the documentation requirements of paragraph (e)(7) of this paragraph. An individual will be treated as chronically ill under section 7702B(c)(2)(A)(i) only if there is a certification from a licensed health care practitioner that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period which is reasonably expected to be lengthy in nature (and not merely for 90 days)."

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Disabled-Chronically Ill

- Mary must be disabled or chronically ill at the time of John's death in order for her life expectancy to be used for RMDs.
- If the Trust is an accumulation trust and Mary was not disabled or chronically ill at the time of John's death, Mary's life expectancy can be used to calculate RMDs (but not the other special spousal RMD rules) but only if all countable trust beneficiaries are EDBs.
- If the Second Tier Beneficiary is a DB, then 10 year rule will apply.
- Mary will ruin our plan if she lives more than 10 years.

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Type II AMBTs – Poison Pills

- A poison pill that would distribute benefits to another individual or terminate the trust if the AMBT beneficiary loses eligibility for government benefits will disqualify the AMBT or Trust is no longer economical to administer.
- Have the trustee modify or release the power in an existing trust by September 30 of year following the year of death.
  - Can modify the power to allow a distribution to a conservator or guardian for the benefit of the disabled or chronically ill beneficiary.
  - Can release the power and not terminate the trust. The trust will continue to qualify as an AMBT.
  - Decanting –Trust modifications are favored under proposed regulations.
  - Is a release of the power a transfer without consideration?

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Trust Payments to EDB's Family Members

- Mother, Jane, died in 2022 at age 75, survived by her son Brian who was then age 40 and disabled. Jane named a third party SNT for the benefit of Brian as the beneficiary of her IRA. Brian is the sole Primary Beneficiary of the special needs trust for his lifetime. At Brian's death, Jane's daughters, Diana and Elizabeth, receive the balance of Brian special needs trust in equal shares. The trustees of Brian's SNT are given discretion to pay for his travel expenses and that of a companion, including a sibling, a close friend, or a direct support professional, none of whom is disabled or chronically ill, if doing so makes it possible for Brian to travel, attend family gatherings, or go on a family vacation. In addition, Brian's SNT gives the trustee discretion to pay a reasonable fee to such companion to take Brian to necessary appointments. These payments are for Brain's benefit, because without a companion he would be unable to attend family gatherings, go on vacations, or keep necessary appointments. Analysis:
- The proposed regulations do not specifically address this fact pattern for payments being made to remainder beneficiaries for services provided to the SNT. The conclusion should be that if the payments from a SNT to a companion for travel expenses and services for the SNT beneficiary's benefit to enable the beneficiary to travel, attend family gatherings, go on family vacations, or keep necessary appointments are distributions for the benefit of B, and are not distributions to the companion as a trust beneficiary. The SNT would qualify as a Type II AMBT. Code section 401(a)(9)(H)(iv)(II) and § 1.401(a)(9)-4(g)(3)(i)(B).

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AMBTs – ACTEC Comments

- Clarify How the Division of a Type I AMBT Works. What does "immediately" mean for the division of plan benefits and must the trust contain specific provisions to comply with the division of plan benefits among sub trusts.
- Clarify that "Entitled to Benefits" in Type II AMBT definition means "plan benefits" not government benefits
- Clarify if spouse is sole disabled or chronically ill beneficiary of a Type II AMBT, can spouse delay RMDs until the year the account owner would have attained age 73, and can spouse recalculate life expectancy each year?

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AMBTs – ACTEC Comments

- Clarify that incidental benefits paid to others, including family members, for services, does not disqualify an AMBT.
- Clarify if a trust established pursuant to the holdings of PLRs PLR 200620025 and PLR 201116005 will qualify as a Type II AMBT.

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Tax Intensive

Wednesday
October 18, 2023

The "Tax Anatomy" of Powers of Appointment

2023 National Conference on Special Needs Planning and Special Needs Trusts

<u>Tax Intensive</u>:
The "Tax Anatomy" of Powers of Appointment

by

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Wednesday, October 18, 2023
1:45pm to 2:35pm EST

2023 National Conference on
Special Needs Planning and
Special Needs Trusts

<u>Tax Intensive</u>:
The "Tax Anatomy" of
Powers of Appointment

I. What Is A Power Of Appointment?

A. State Law

1. Uniform Powers of Appointment Act.

2. Wisconsin Statutes Chapter 702. Example.

B. Important Definitions.

1. <u>Power of Appointment</u>. A power that enables a "powerholder" acting in a nonfiduciary capacity to designate (or appoint) a recipient of an ownership interest in the "appointive property."

3. <u>Donor</u>. The "person" who creates a power of appointment.

4. <u>Powerholder</u>. The "person" who "holds" a power of appointment created by a Donor. In other words, it is the "person" who can exercise a power of appointment that is created by a Donor. Called a "donee" in Wisconsin.

5. <u>Appointee</u>. The person to whom a powerholder makes an appointment of "appointive property." "<u>Appointive property</u>" is the property or property interest that is subject to a power of appointment.

C. Why Are Powers of Appointment Valuable?

1. Flexibility.

2. Taxes.

4858-0366-8613, v. 1

D. Examples of Powers of Appointment.

1. Mother creates trust for the benefit of Daughter and her descendants. Trust Company is named as trustee. Pursuant to the terms of the trust, Daughter has the ability to appoint trust property to her descendants during her lifetime and upon her death. Daughter is a "powerholder" and each descendants would be an "appointee."

2. Same facts as 1. above, but Daughter can only exercise the power to appoint during her lifetime. In this case, Daughter is a "powerholder" and she holds an "inter vivos" or "living" power of appointment.

3. Same facts as 1. above, but Daughter can only exercise the power to appoint upon her death. In this case, Daughter is a "powerholder" and she holds a "testamentary" power of appointment.

4. Mother creates trust for the benefit of Daughter's descendants and names Daughter as the trustee. Daughter is a "powerholder."

5. Mother creates a third-party special needs trust for the sole benefit of her special needs granddaughter, with remainder to Daughter's other then-living descendants, and names Daughter as trustee. Daughter is a "powerholder."

6. In the world of trusts and estates, fiduciaries, such as trustees, personal representatives, conservators, and attorneys-in-fact are "powerholders."

7. Mother creates a trust for the benefit of Daughter during Daughter's lifetime and for the benefit of Daughter's descendants upon Daughter's death with Trust Company as Trustee, but Daughter has the right to withdraw up to two percent (2%) of the trust's assets during Daughter's lifetime. Daughter is a "powerholder" and is an "appointee." In other words, a "withdrawal right" or the "power to withdraw" is a "power of appointment" and the holder of the withdrawal right is a "powerholder."

II. Taxation Of Powers Of Appointment

A. More Definitions.

1. General Power of Appointment. Please see Internal Revenue Code ("IRC") §§ 2041 (estate tax) and 2514 (gift tax).

a. A power of appointment exercisable in favor of the "possessor" (i.e., the individual possessing the power to appointment or "powerholder"), her creditors, her estate, or the creditors of her estate, but this does not include:

i. A power that is limited by an "ascertainable standard" for health, education, maintenance, and support, or

ii. A power that is only exercisable by the "possessor/powerholder" in conjunction with the "donor" or a person having a substantial interest in the "appointive property" (i.e., the property that is subject to the power of appointment) the exercise of which would be adverse to the "possessor/powerholder."

2. Non-General Power of Appointment. Any power that is not a general power of appointment per IRC §§ 2041 and 2514.

B. Estate Tax.

1. IRC § 2041.

2. Treasury Regulations ("Treas. Regs.") §§ 20.2041-1, 20.2041-2, and 20.2041-3.

3. General rule. "Appointive property" that is subject to a general power of appointment that is not properly limited must be included in the powerholder's "gross estate" for federal estate tax purposes.

a. Bad news. The "appointive property" must be included in the powerholder's "gross estate" for federal estate tax purposes. But, is this really bad news for most individuals?

b. Good news. The "appointive property" is entitled to a "stepped-up basis" upon the powerholder's death if such property is included in the powerholder's estate for estate tax purposes. Please see IRC § 1014(b)(9).

c. Be mindful of IRC § 1014(e).

C. Gift Tax.

1. IRC § 2514.

2. Treas. Reg. §§ 25.2514-1, 25.2514-2, and 25.2514-3.

3. General Rule. The exercise or release of a general power of appointment shall be deemed a transfer of property by the individual possessing such power (i.e., the "powerholder").

a. Exercise. Exercising the power in favor of an appointee who is not the powerholder when the powerholder is also a permissible appointee.

b. Release.

i. Voluntary release. E.g., "Saying I don't want it." An affirmative denial or an express waiver.

ii. Involuntary release. A "***lapse***." In other words, not saying or doing anything.

iii. A "lapse" is a "release," but only to the extent that the amount subject to the lapse is greater than the greater of $5,000 or 5% of the appointive property.

D. Income Tax

1. IRC § 678.

2. Not limited by an "ascertainable standard."

UNIFORM POWERS OF APPOINTMENT ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR
BOSTON, MASSACHUSETTS
JULY 6 - JULY 12, 2013

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 11, 2019

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UNIFORM POWERS OF APPOINTMENT ACT

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UNIFORM POWERS OF APPOINTMENT ACT

PREFATORY NOTE

Professor W. Barton Leach described the power of appointment as "the most efficient dispositive device that the ingenuity of Anglo-American lawyers has ever worked out." 24 A.B.A. J. 807 (1938). Powers of appointment are routinely included in trusts to add flexibility to the arrangement.

A power of appointment is the authority, acting in a nonfiduciary capacity, to designate recipients of beneficial ownership interests in, or powers of appointment over, the appointive property. An owner, of course, has this authority with respect to the owner's property. By creating a power of appointment, the owner typically confers this authority on someone else.

The power of appointment is a staple of modern estate-planning practice. However, many jurisdictions within the United States have very little statutory or case law on powers of appointment.

A comprehensive restatement of the law of powers of appointment was approved in 2010 and published in 2011 by the American Law Institute. See chapters 17-23 of the Restatement Third of Property: Wills and Other Donative Transfers.

This act draws heavily on that Restatement. The aim of this act is to codify the law of powers of appointment, or at least the portions of the law that are most amenable to codification.

The act is divided into six articles. Article 1 contains general provisions. Article 2 contains provisions concerning the creation, revocation, and amendment of a power of appointment. Article 3 addresses the exercise of a power of appointment. Article 4 contains provisions on the disclaimer or release of a power of appointment and on contracts to appoint or not to appoint. Article 5 concerns the rights of the powerholder's creditors in appointive property. Article 6 contains miscellaneous provisions.

After each section, there is a detailed Comment. The Comments explain, and should be read in conjunction with, the statutory text. The Comments also provide information and guidance about best practices in creating and exercising powers of appointment.

UNIFORM POWERS OF APPOINTMENT ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Powers of Appointment Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) "Blanket-exercise clause" means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(A) expressly uses the words "any power" in exercising any power of appointment the powerholder has;

(B) expressly uses the words "any property" in appointing any property over which the powerholder has a power of appointment; or

(C) disposes of all property subject to disposition by the powerholder.

(4) "Donor" means a person that creates a power of appointment.

(5) "Exclusionary power of appointment" means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) "General power of appointment" means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the

powerholder's estate.

(7) "Gift-in-default clause" means a clause identifying a taker in default of appointment.

(8) "Impermissible appointee" means a person that is not a permissible appointee.

(9) "Instrument" means a [writing][record].

(10) "Nongeneral power of appointment" means a power of appointment that is not a general power of appointment.

(11) "Permissible appointee" means a person in whose favor a powerholder may exercise a power of appointment.

(12) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) "Powerholder" means a person in which a donor creates a power of appointment.

(15) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(16) ["Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.]

(17) "Specific-exercise clause" means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(18) "Taker in default of appointment" means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(19) "Terms of the instrument" means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Legislative Note: *A state should choose in paragraph (9) whether to define "instrument" as a writing or as a record. The choice will determine what kind of instruments may be used to create, revoke, amend, or exercise a power of appointment. If a state defines "instrument" as a record, the state should include the definition of "record" as paragraph (16).*

Comment

Paragraph (1) defines an appointee as the person to which a powerholder makes an appointment of appointive property. For the definition of the related term, "permissible appointee," see paragraph 11.

Paragraph (2) defines appointive property as the property or property interest subject to a power of appointment. The effective creation of a power of appointment requires that there be appointive property. See Section 201.

Paragraphs (3) and (17) introduce the distinction between blanket-exercise and specific-exercise clauses. A specific-exercise clause exercises and specifically refers to the particular power of appointment in question, using language such as the following: "I exercise the power of appointment conferred upon me by my father's will as follows: I appoint [fill in details of appointment]." In contrast, a blanket-exercise clause exercises "any" power of appointment the powerholder may have, appoints "any" property over which the powerholder may have a power of appointment, or disposes of all property subject to disposition by the powerholder. The use of specific-exercise clauses is encouraged; the use of blanket-exercise clauses is discouraged. See Section 301 and the accompanying Comment.

Paragraphs (4) and (14) define the donor and the powerholder. The donor is the person who created the power of appointment. The powerholder is the person in whom the power of appointment was conferred or in whom the power was reserved. The traditional, but potentially confusing, term for powerholder is "donee." See Restatement of Property § 319 (1940); Restatement Second of Property: Donative Transfers § 11.2 (1986); Restatement Third of Property: Wills and Other Donative Transfers § 17.2 (2011). In the case of a reserved power, the same person is both the donor and the powerholder.

Paragraph (5) introduces the distinction between exclusionary and nonexclusionary powers of appointment. An exclusionary power is one in which the donor has authorized the powerholder to appoint to any one or more of the permissible appointees to the exclusion of the other permissible appointees. For example, a power to appoint "to such of my descendants as the powerholder may select" is exclusionary, because the powerholder may appoint to any one or more of the donor's descendants to the exclusion of the other descendants. In contrast, a nonexclusionary power is one in which the powerholder cannot make an appointment that excludes any permissible appointee, or one or more designated permissible appointees, from a share of the appointive property. An example of a nonexclusionary power is a power "to appoint to all and every one of my children in such shares and proportions as the powerholder shall select." Here, the powerholder is not under a duty to exercise the power; but, if the powerholder does exercise the power, the appointment must abide by the power's nonexclusionary nature. See Sections 301 and 305. An instrument creating a power of appointment is construed as creating an exclusionary power unless the terms of the instrument manifest a contrary intent. See Section 203. The typical power of appointment is exclusionary. And in fact, only a power of appointment whose permissible appointees are "defined and limited" can be nonexclusionary. For elaboration of the well-accepted term of art "defined and limited," see Section 205 and the accompanying Comment.

Paragraphs (6) and (10) explain the distinction between general and nongeneral powers of appointment. A general power of appointment enables the powerholder to exercise the power in favor of one or more of the following: the powerholder, the powerholder's estate, the creditors of the powerholder, or the creditors of the powerholder's estate, regardless of whether the power is also exercisable in favor of others. A nongeneral power of appointment—sometimes called a "special" power of appointment—cannot be exercised in favor of the powerholder, the powerholder's estate, the creditors of the powerholder, or the creditors of the powerholder's estate. Estate planners often classify nongeneral powers as being either "broad" or "limited," depending on the range of permissible appointees. A power to appoint to anyone in the world except the powerholder, the powerholder's estate, and the creditors of either would be an example of a broad nongeneral power. In contrast, a power in the donor's spouse to appoint among the donor's descendants would be an example of a limited nongeneral power.

An instrument creating a power of appointment is construed as creating a general power unless the terms of the instrument manifest a contrary intent. See Section 203. A power to revoke, amend, or withdraw is a general power of appointment if it is exercisable in favor of the powerholder, the powerholder's estate, or the creditors of either. If the settlor of a trust empowers a trustee or another person to change a power of appointment from a general power into a nongeneral power, or vice versa, the power is either general or nongeneral depending on

the scope of the power at any particular time.

Paragraph (7) defines the gift-in-default clause. In an instrument creating a power of appointment, the clause that identifies the taker in default is called the gift-in-default clause. A gift-in-default clause is not mandatory but is included in a well-drafted instrument.

Paragraphs (8) and (11) explain the distinction between impermissible and permissible appointees. The permissible appointees—known at common law as the "objects" —of a power of appointment may be narrowly defined (for example, "to such of the powerholder's descendants as the powerholder may select"), broadly defined (for example, "to such persons as the powerholder may select, except the powerholder, the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate"), or unlimited (for example, "to such persons as the powerholder may select"). A permissible appointee of a power of appointment does not, in that capacity, have a property interest that can be transferred to another. Otherwise, a permissible appointee could transform an impermissible appointee into a permissible appointee, exceeding the intended scope of the power and thereby violating the donor's intent. An appointment cannot benefit an impermissible appointee. See Section 307.

Paragraph (9) defines the term "instrument" as either a writing or a record, depending on the choice made by the enacting jurisdiction. The drafting committee had no clear preference between the two options. Interestingly, there is no pre-existing Uniform Law definition of "instrument" outside the commercial context. See Uniform Commercial Code §§ 3-104(b), 9-102(a)(47). The term is used without definition in, for example, the Uniform Probate Code, the Uniform Trust Code, and the Uniform Power of Attorney Act.

Paragraphs (12) and (16) contain the definitions of "person" and "record". With one exception, these are standard definitions approved by the Uniform Law Commission. The exception is that the word "trust" has been added to the definition of "person". Trust law in the United States is moving in the direction of viewing the trust as an entity, see Restatement Third of Trusts Introductory Note to Chapter 21, but does not yet do so.

Paragraph (13) defines a power of appointment. A power of appointment is a power enabling the powerholder, acting in a nonfiduciary capacity, to designate recipients of ownership interests in or powers of appointment over the appointive property. (Powers held in a fiduciary capacity, such a trustee's power to "decant" property from one trust to another, are the subject of other uniform legislation.)

A power to revoke or amend a trust or a power to withdraw income or principal from a trust is a power of appointment, whether the power is reserved by the transferor or conferred on another. See Restatement Third of Trusts § 56, Comment b. A power to withdraw income or principal subject to an ascertainable standard is a postponed power, exercisable upon the satisfaction of the ascertainable standard. See the Comment to paragraph (15), below.

A power to direct a trustee to distribute income or principal to another is a power of appointment.

In this act, a fiduciary distributive power is not a power of appointment. Fiduciary distributive powers include a trustee's power to distribute principal to or for the benefit of an income beneficiary, or for some other individual, or to pay income or principal to a designated beneficiary, or to distribute income or principal among a defined group of beneficiaries. Unlike the exercise of a power of appointment, the exercise of a fiduciary distributive power is subject to fiduciary standards. Unlike a power of appointment, a fiduciary distributive power does not lapse upon the death of the fiduciary, but survives in a successor fiduciary. Nevertheless, a fiduciary distributive power, like a power of appointment, cannot be validly exercised in favor of or for the benefit of someone who is not a permissible appointee.

A power over the management of property, sometimes called an administrative power, is not a power of appointment. For example, a power of sale coupled with a power to invest the proceeds of the sale, as commonly held by a trustee of a trust, is not a power of appointment but is an administrative power. A power of sale merely authorizes the person to substitute money for the property sold but does not authorize the person to alter the beneficial interests in the substituted property.

A power to designate or replace a trustee or other fiduciary is not a power of appointment. A power to designate or replace a trustee or other fiduciary involves property management and is a power to designate only the nonbeneficial holder of property.

A power of attorney is not a power of appointment. See Restatement of Property § 318, Comment h: "A power of attorney, in the commonest sense of that term, creates the relationship of principal and agent … and is terminated by the death of the [principal]. In both of these characteristics such a power differs from a power of appointment. The latter does not create an agency relationship and, except in the case of a power reserved in the donor, it is usually expected that it will be exercised after the donor's death." The distinction is carried forward in Restatement Third of Property: Wills and Other Donative Transfers § 17.1, Comment j. See also Uniform Power of Attorney Act §§ 102(7) (defining the holder of a power of attorney as an agent), 110(a)(1) (providing that the principal's death terminates a power of attorney).

A power to create or amend a beneficiary designation, for example with respect to the proceeds of a life insurance policy or of a pension plan, is not a power of appointment. An instrument creating a power of appointment must, among other things, transfer the appointive property. See Section 201; Restatement Third of Property: Wills and Other Donative Transfers § 18.1.

On the authority of a powerholder to exercise the power of appointment by creating a new power of appointment, see Section 305. If a powerholder exercises a power by creating another power, the powerholder of the first power is the donor of the second power, and the powerholder of the second power is the appointee of the first power.

Paragraph (15) introduces the distinctions among powers of appointment based upon when the power can be exercised. (A power is exercised when the instrument of exercise is effective. Thus, a power exercised by deed is exercised when the deed is effective. The law of deeds typically requires, among other things, intent, delivery, and acceptance. A power exercised

by will is exercised when the will is effective—at the testator's death, not when the will is executed.)

There are three categories here: a power of appointment is presently exercisable, postponed, or testamentary.

A power of appointment is presently exercisable if it is exercisable at the time in question. Typically, a presently exercisable power of appointment is exercisable at the time in question during the powerholder's life and also at the powerholder's death, e.g., by the powerholder's will. Thus, a power of appointment that is exercisable "by deed or will" is a presently exercisable power. To take another example, a power of appointment exercisable by the powerholder's last unrevoked instrument in writing is a presently exercisable power, because the powerholder can make a present exercise irrevocable by explicitly so providing in the instrument exercising the power. See Restatement Third of Property: Wills and Other Donative Transfers § 17.4, Comment a.

A power of appointment is presently exercisable even though, at the time in question, the powerholder can only appoint an *interest* that is revocable or subject to a condition. For example, suppose that a trust directs the trustee to pay the income to the powerholder for life, then to distribute the principal by representation to the powerholder's surviving descendants. The trust further provides that, if the powerholder leaves no surviving descendants, the principal is to be distributed "to such individuals as the powerholder shall appoint." The powerholder has a presently exercisable power of appointment, but the appointive property is a remainder interest that is conditioned on the powerholder leaving no surviving descendants.

A power is a postponed power—sometimes known as a deferred power—if it is not yet exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time. A postponed power becomes presently exercisable upon the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified time. The second sentence in paragraph (15) is modeled on Uniform Power of Attorney Act § 102(8).

A power is testamentary if it is not exercisable during the powerholder's life but only in the powerholder's will or in a nontestamentary instrument that is functionally similar to the powerholder's will, such as the powerholder's revocable trust that remains revocable until the powerholder's death. On the ability of a powerholder to exercise a testamentary power of appointment in such a revocable trust, see Section 304 and the accompanying Comment. See also Restatement Third of Property: Wills and Other Donative Transfers § 19.9, Comment b.

Paragraph (18) defines a taker in default of appointment. A taker in default of appointment—often called the "taker in default" —has a property interest that can be transferred to another. If a taker in default transfers the interest to another, the transferee becomes a taker in default.

Paragraph (19) defines the "terms of the instrument" as the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument

or as may be established by other evidence that would be admissible in a legal proceeding. The maker of an instrument creating a power of appointment is the donor. The maker of an instrument exercising a power of appointment is the powerholder. This definition is a slightly modified version of the definition of "terms of a trust" in Uniform Trust Code § 103(18).

The definitions in this section are substantially consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 17.1 to 17.5 and the accompanying Commentary.

SECTION 103. GOVERNING LAW. Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(2) the exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power, is governed by the law of the powerholder's domicile at the relevant time.

Comment

This section provides default rules for determining the law governing the creation and exercise of, and related matters concerning, a power of appointment.

Unless the terms of the instrument creating the power provide otherwise, the actions of the donor—the creation, revocation, or amendment of the power—are governed by the law of the donor's domicile; and the actions of the powerholder—the exercise, release, or disclaimer, or the revocation or amendment thereof—are governed by the law of the powerholder's domicile.

In each case, the domicile is determined *at the relevant time*. For example, a donor's creation of a power is governed by the law of the donor's domicile at the time of the power's creation; and a donor's amendment of a power is governed by the law of the donor's domicile at the time of the amendment. Similarly, a powerholder's exercise of a power is governed by the law of the powerholder's domicile at the time of the exercise.

The standard "public policy" rules of choice of law naturally continue to apply. See, for example, Restatement Second of Conflict of Laws § 187.

Paragraph (2) is a departure from older law. The older position was that the law of the donor's domicile governs acts both of the donor (such as the creation of the power) and of the powerholder (such as the exercise of the power). *See, e.g., Beals v. State Street Bank & Trust Co.*, 326 N.E.2d 896 (Mass. 1975); *Bank of New York v. Black*, 139 A.2d 393 (N.J. 1958).

Paragraph (2) adopts the modern view that acts of the powerholder should be governed by the law of the powerholder's domicile, because that is the law the powerholder (or the powerholder's lawyer) is likely to know. This approach is supported by Restatement Third of Property: Wills and Other Donative Transfers § 19.1, Comment e; Restatement Second of Conflict of Laws § 275, Comment c. It is also supported by *Estate of McMullin*, 417 A.2d 152 (Pa. 1980); *White v. United States*, 680 F.2d 1156 (7th Cir. 1982).

See generally, Restatement Third of Property: Wills and Other Donative Transfers § 19.1, Comment e; Restatement Second of Conflict of Laws § 275, Comment c.

SECTION 104. COMMON LAW AND PRINCIPLES OF EQUITY. The common law and principles of equity supplement this [act], except to the extent modified by this [act] or law of this state other than this [act].

Comment

This act codifies those portions of the law of powers of appointment that are most amenable to codification. The act is supplemented by the common law and principles of equity. To determine the common law and principles of equity in a particular state, a court might look first to prior case law in the state and to more general sources, such as the Restatement Third of Property: Wills and Other Donative Transfers. The common law is not static but includes the contemporary and evolving rules of decision developed by the courts in exercise of their power to adapt the law to new situations and changing conditions. It also includes the traditional and broad equitable jurisdiction of the court, which the act in no way restricts.

The statutory text of the act is also supplemented by these Comments, which, like the Comments to any Uniform Act, may be relied on as a guide for interpretation. *See Stern Oil Co. v. Brown*, 817 N.W.2d 395 (S.D. 2012) (interpreting Uniform Commercial Code); *Isbell v. Commercial Investment Associates, Inc.*, 644 S.E.2d 72 (Va. 2007) (interpreting Uniform Residential Landlord Tenant Act); *Yale University v. Blumenthal*, 621 A.2d 1304, 1307 (Conn. 1993) (interpreting Uniform Management of Institutional Funds Act); *GMAC v. Anaya*, 703 P.2d 169, 172 (N.M. 1985) (interpreting Uniform Commercial Code and describing the Comments as "persuasive" though "not binding"); Jack Davies, Legislative Law and Process in a Nutshell § 59-4 (3d ed. 2007).

The text of and Comment to this section are based on Uniform Trust Code § 106 and its accompanying Comment.

[ARTICLE] 2

CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

SECTION 201. CREATION OF POWER OF APPOINTMENT.

(a) A power of appointment is created only if:

(1) the instrument creating the power:

(A) is valid under applicable law; and

(B) except as otherwise provided in subsection (b), transfers the appointive property; and

(2) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subsection (a)(1)(B) does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Comment

An instrument can only create a power of appointment if, under applicable law, the instrument itself is valid (or partially valid, see the next paragraph). Thus, for example, a *will* creating a power of appointment must be valid under the law—including choice of law (see Section 103)—applicable to wills. An *inter vivos trust* creating a power of appointment must be valid under the law—including choice of law (see Section 103)—applicable to inter vivos trusts. In part, this requirement of validity means that the instrument must be properly executed to the extent other law imposes requirements of execution. In addition, the creator of the instrument must have the capacity to execute the instrument and be free from undue influence and other wrongdoing. On questions of capacity, see Restatement Third of Property: Wills and Other Donative Transfers §§ 8.1 (Mental Capacity) and 8.2 (Minority). On freedom from undue influence and other wrongdoing, see, e.g., Restatement Third of Property §§ 8.3 (Undue Influence, Duress, or Fraud). The ability of an agent or guardian to create a power of

appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The instrument need not be entirely valid. A partially valid instrument creates a power of appointment if the provisions creating the power are valid.

In addition to being valid in the relevant provisions, an instrument creating a power of appointment must transfer the appointive property. The creation of a power of appointment—unlike the creation of a power of attorney—requires a transfer. See Restatement Third of Property: Wills and Other Donative Transfers § 18.1 ("A power of appointment is created by a transfer that manifests an intent to create a power of appointment."). The term "transfer" includes a declaration by an owner of property that the owner holds the property as trustee. Such a declaration necessarily entails a transfer of legal title from the owner-as-owner to the owner-as-trustee; it also entails a transfer of all or some of the equitable interests in the property from the owner to the trust's beneficiaries. See Restatement Third of Property: Wills and Other Donative Transfers § 7.1, Comment a.

The requirement of a transfer presupposes that the donor has the right to transfer the property. An ordinary individual cannot create a power of appointment over the Brooklyn Bridge. Less fancifully, a donor cannot create a power of appointment if doing so would circumvent a valid restriction on the transfer of the property. For example, interests in unincorporated business organizations may have transfer restrictions arising from statute, contract, or both. A donor cannot use the creation of a power of appointment to circumvent a valid restriction on transfer.

The one exception to the requirement of a transfer is stated in subsection (b): by necessity, the requirement of a transfer does not apply to the creation of a power of appointment by the exercise of a power of appointment. On the ability of a powerholder to exercise the power by creating a new power of appointment, see Section 305.

In addition to the aforementioned requirements, an instrument creating a power of appointment must manifest the donor's intent to create in one or more powerholders a power of appointment over appointive property. This manifestation of intent does not require the use of particular words or phrases (such as "power of appointment"), but careful drafting should leave no doubt about the transferor's intent.

Sometimes the instrument is poorly drafted, raising the question whether the donor intended to create a power of appointment. In such a case, determining the donor's intent is a process of construction. On construction generally, see Chapters 10, 11, and 12 of the Restatement Third of Property: Wills and Other Donative Transfers. See also, more specifically, Restatement Third of Property: Wills and Other Donative Transfers § 18.1, Comments b-g, containing many illustrations of language ambiguous about whether a power of appointment was intended and, for each illustration, offering guidance about how to construe the language.

The creation of a power of appointment requires that there be a donor, a powerholder (who may be the same as the donor), and appointive property. There must also be one or more permissible appointees, though these need not be restricted; a powerholder can be authorized to

appoint to anyone. A donor is not required to designate a taker in default of appointment, although a well-drafted instrument will specify one or more takers in default.

Subsection (c) states the well-accepted rule that a power of appointment cannot be created in an individual who is deceased. If the powerholder dies before the effective date of an instrument purporting to confer a power of appointment, the power is not created, and an attempted exercise of the power is ineffective. (The effective date of a power of appointment created in a donor's will is the donor's death, not when the donor executes the will. The effective date of a power of appointment created in a donor's inter vivos trust is the date the trust is established, even if the trust is revocable. See Restatement Third of Property: Wills and Other Donative Transfers § 19.11, Comments b and c.)

Nor is a power of appointment created if all the possible permissible appointees of the power are deceased when the transfer that is intended to create the power becomes legally operative. If all the possible permissible appointees of a power die after the power is created and before the powerholder exercises the power, the power terminates.

A power of appointment is not created if the permissible appointees are so indefinite that it is impossible to identify any person to whom the powerholder can appoint. If the description of the permissible appointees is such that one or more persons are identifiable, but it is not possible to determine whether other persons are within the description, the power is validly created, but an appointment can only be made to persons who can be identified as within the description of the permissible appointees.

Subsection (d) explains that a power of appointment can be conferred on an unborn or unascertained powerholder, subject to any applicable rule against perpetuities. This is a postponed power. The power arises on the powerholder's birth or ascertainment. The language creating the power as well as other factors such as the powerholder's capacity under applicable law determine whether the power is then presently exercisable, postponed, or testamentary.

The rules of this section are consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 18.1 and 19.9 and the accompanying Commentary.

SECTION 202. NONTRANSFERABILITY. A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

Comment

A power of appointment is nontransferable. The powerholder may not transfer the power to another person. (On the ability of the powerholder to exercise the power by conferring on a permissible appointee a new power of appointment over the appointive property, see Section 305.) If the powerholder dies without exercising or releasing the power, the power lapses. (If a power is held by multiple powerholders, which is rare, on the death of one powerholder that individual's power lapses but the power continues to be held by the surviving powerholders.) If

the powerholder partially releases the power and dies without exercising the remaining part, the unexercised part of the power lapses. The power does not pass through the powerholder's estate to the powerholder's successors in interest.

The ability of an agent or guardian to create, revoke, exercise, or revoke the exercise of a power of appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The rule of this section is consistent with, and this Comment draws on, the Restatement Third of Property: Wills and Other Donative Transfers § 17.1, Comment b.

SECTION 203. PRESUMPTION OF UNLIMITED AUTHORITY. Subject to Section 205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in Section 204, general.

Comment

In determining which type of power of appointment is created, the general principle of construction, articulated in this section, is that a power falls into the category giving the powerholder the maximum discretionary authority except to the extent the terms of the instrument creating the power restrict the powerholder's authority. Maximum discretion confers on the powerholder the flexibility to alter the donor's disposition in response to changing conditions.

In accordance with this presumption of unlimited authority, a power is general unless the terms of the creating instrument specify that the powerholder cannot exercise the power in favor of the powerholder, the powerholder's estate, or the creditors of either. A power is presently exercisable unless the terms of the creating instrument specify that the power can only be exercised at some later time or in some document such as a will that only takes effect at some later time. A power is exclusionary unless the terms of the creating instrument specify that a permissible appointee must receive a certain amount or portion of the appointive assets if the power is exercised.

This general principle of construction applies, unless the terms of the instrument creating the power of appointment provide otherwise. A well-drafted instrument intended to create a nongeneral or testamentary or nonexclusionary power will use clear language to achieve the desired objective. Not all instruments are well-drafted, however. A court may have to construe the terms of the instrument to discern the donor's intent. For principles of construction applicable to the creation of a power of appointment, see Restatement Third of Property: Wills and Other

Donative Transfers Chapters 17 and 18, and the accompanying Commentary, containing many examples.

SECTION 204. EXCEPTION TO PRESUMPTION OF UNLIMITED AUTHORITY.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

Comment

This section is designed to remedy a recurring drafting mistake. A testamentary power of appointment created in a defined and limited class that happens to include the powerholder is usually intended to be a nongeneral power. For example, a testamentary power created in one of the donor's descendants (such as the donor's child or grandchild) to appoint among the donor's "descendants" or "issue" is typically intended to be a nongeneral power. See, for example, PLR 201229005 (stating the ruling of the Internal Revenue Service that a testamentary power of appointment in the donor's son, exercisable in favor of the donor's "issue," is a nongeneral power for purposes of 26 U.S.C. § 2041). Accordingly, the presumption of this Section is that such a power is nongeneral.

On the meaning of the well-accepted term of art "defined and limited," see the Comment to Section 205. See also Restatement Third of Property: Wills and Other Donative Transfers § 17.5, Comment c.

SECTION 205. RULES OF CLASSIFICATION.

(a) In this section, "adverse party" means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(b) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Comment

Subsection (b) states a well-accepted and mandatory exception to the presumption of unlimited authority articulated in Section 203. If a power of appointment can be exercised only with the consent or joinder of an adverse party, the power is not a general power. An adverse party is an individual who has a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power in favor of the powerholder, the powerholder's estate, or the creditors of either. In this context, the word "substantial" is not subject to precise definition but must be determined in light of all the facts and circumstances. Consider the following examples.

Example 1. D transferred property in trust, directing the trustee "to pay the income to D's son S for life, remainder in corpus to such person or persons as S, with the joinder of X, shall appoint; in default of appointment, remainder to X." S's power is not a general power because X meets the definition of an adverse party.

Example 2. Same facts as Example 1, except that S's power is exercisable with the joinder of Y rather than with the joinder of X. Y has no property interest that could be adversely affected by the exercise of the power. Because Y is not an adverse party, S's power is general.

Whether the party whose consent or joinder is required is adverse or not is determined at the time in question. Consider the following example.

Example 3. Same facts as Example 2, except that, one month after D's creation of the trust, X transfers the remainder interest to Y. Before the transfer, Y is not an adverse party and S's power is general. After the transfer, Y is an adverse party and S's power is nongeneral.

Subsection (c) also states a longstanding mandatory rule. Only a power of appointment whose permissible appointees are defined and limited can be nonexclusionary. "Defined and limited" in this context is a well-accepted term of art. For elaboration and examples, see Restatement Third of Property: Wills and Other Donative Transfers § 17.5, Comment c. In general, permissible appointees are "defined and limited" if they are defined and limited to a reasonable number. Typically, permissible appointees who are defined and limited are described in class-gift terms: a single-generation class such as "children," "grandchildren," "brothers and sisters," or "nieces and nephews," or a multiple-generation class such as "issue" or "descendants" or "heirs." Permissible appointees need not be described in class-gift terms to be defined and limited, however. The permissible appointees are also defined and limited if one or more permissible appointees are designated by name or otherwise individually identified.

If the permissible appointees are not defined and limited, the power is exclusionary irrespective of the donor's intent. A power exercisable, for example, in favor of "such person or persons other than the powerholder, the powerholder's estate, the creditors of the powerholder, and

the creditors of the powerholder's estate" is an exclusionary power. An attempt by the donor to require the powerholder to appoint at least $X to each permissible appointee of the power is ineffective, because the permissible appointees of the power are so numerous that it would be administratively impossible to carry out the donor's expressed intent. The donor's expressed restriction is disregarded, and the powerholder may exclude any one or more of the permissible appointees in exercising the power.

In contrast, a power to appoint only to the powerholder's creditors or to the creditors of the powerholder's estate is a power in favor of a defined and limited class. Such a power could be nonexclusionary if, for example, the terms of the instrument creating the power provide that the power is a power to appoint "to such of the powerholder's estate creditors as the powerholder shall by will appoint, but if the powerholder exercises the power, the powerholder must appoint $X to a designated estate creditor or must appoint in full satisfaction of the powerholder's debt to a designated estate creditor."

If a power is determined to be nonexclusionary, it is to be inferred that the donor intends to require an appointment to confer a reasonable benefit upon each mandatory appointee. An appointment under which a mandatory appointee receives nothing, or only a nominal sum, violates this requirement and is forbidden. This doctrine is known as the doctrine forbidding illusory appointments. For elaboration, see Restatement Third of Property: Wills and Other Donative Transfers § 17.5, Comment j.

The terms of the instrument creating a power of appointment sometimes provide that no appointee shall receive any share in default of appointment unless the appointee consents to allow the amount of the appointment to be taken into account in calculating the fund to be distributed in default of appointment. This "hotchpot" language is used to minimize unintended inequalities of distribution among permissible appointees. Such a clause does not make the power nonexclusionary, because the terms do not prevent the powerholder from making an appointment that excludes a permissible appointee. See Restatement Third of Property: Wills and Other Donative Transfers § 17.5, Comment k.

The rules of this section are consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 17.3 to 17.5 and the accompanying Introductory Note and Commentary.

SECTION 206. POWER TO REVOKE OR AMEND. A donor may revoke or amend a power of appointment only to the extent that:

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

Comment

The donor of a power of appointment has the authority to revoke or amend the power only to the extent the instrument creating the power is revocable by the donor or the donor reserves a power of revocation or amendment in the instrument creating the power.

For example, the donor's power to revoke or amend a revocable inter vivos trust carries with it the authority to revoke or amend any power of appointment created in the trust. However, to the extent an exercise of the power removes appointive property from the trust, the donor's authority to revoke or amend the power is eliminated, unless the donor expressly reserved authority to revoke or amend any transfer from the trust after the transfer is completed.

If an irrevocable inter vivos trust confers a presently exercisable power on someone who is not the settlor of the trust (the settlor being the donor of the power), the donor lacks authority to revoke or amend the power, except to the extent the donor reserved the authority to do so. If the donor did reserve the authority to revoke or amend the power, that authority is only effective until the powerholder irrevocably exercises the power.

If the same individual is both the donor and the powerholder, the donor in his or her capacity as powerholder can indirectly revoke or amend the power by a partial or total release of the power. See Section 402. After the power has been irrevocably exercised, however, the donor as donor is in no different position in regard to revoking or amending the exercise of the power than the donor would be if the donor and powerholder were different individuals.

The ability of an agent or guardian to revoke or amend a power of appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

Other law of the state may permit the reformation of an otherwise irrevocable instrument. See, for example, Uniform Probate Code § 2-805; Uniform Trust Code § 415.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 18.2 and the accompanying Commentary.

[ARTICLE] 3

EXERCISE OF POWER OF APPOINTMENT

SECTION 301. REQUISITES FOR EXERCISE OF POWER OF APPOINTMENT. A power of appointment is exercised only:

(1) if the instrument exercising the power is valid under applicable law;

(2) if the terms of the instrument exercising the power:

(A) manifest the powerholder's intent to exercise the power; and

(B) subject to Section 304, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

Comment

Paragraph (1) states the fundamental principle that an instrument can only exercise a power of appointment if the instrument, under applicable law, is valid (or partially valid, see the next paragraph). Thus, for example, a *will* exercising a power of appointment must be valid under the law—including choice of law (see Section 103)—applicable to wills. An *inter vivos trust* exercising a power of appointment must be valid under the law—including choice of law (see Section 103)—applicable to inter vivos trusts. In part, this means that the instrument must be properly executed to the extent other law imposes requirements of execution. In addition, the creator of the instrument must have the capacity to execute the instrument and be free from undue influence and other wrongdoing. On questions of capacity, see Restatement Third of Property: Wills and Other Donative Transfers §§ 8.1 (Mental Capacity) and 8.2 (Minority). On freedom from undue influence and other wrongdoing, see, e.g., Restatement Third of Property §§ 8.3 (Undue Influence, Duress, or Fraud). The ability of an agent or guardian to exercise a power of appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The instrument need not be entirely valid. A partially valid instrument can exercise a power of appointment if the provisions exercising the power are valid.

Paragraph (2) requires the terms of the instrument exercising the power of appointment to manifest the powerholder's intent to exercise the power of appointment. Whether a powerholder has manifested an intent to exercise a power of appointment is a question of construction. See generally Restatement Third of Property: Wills and Other Donative Transfers § 19.2. For example, a powerholder's disposition of appointive property may manifest an intent to exercise the power even though the powerholder does not refer to the power. See Restatement Third of Property: Wills and Other Donative Transfers § 19.3. Paragraph (2) also requires that the terms of the instrument exercising the power must, subject to Section 304, satisfy the requirements of exercise, if any, imposed by the donor.

Language expressing an intent to exercise a power is clearest if it makes a specific reference to the creating instrument and exercises the power in unequivocal terms and with careful attention to the requirements of exercise, if any, imposed by the donor.

The recommended method for exercising a power of appointment is by a specific-exercise clause, using language such as the following: "I exercise the power of appointment conferred upon me by [my father's will] as follows: I appoint [fill in details of appointment]."

Not recommended is a blanket-exercise clause, which purports to exercise "any" power of appointment the powerholder may have, using language such as the following: "I exercise any power of appointment I may have as follows: I appoint [fill in details of appointment]." Although a blanket-exercise clause does manifest an intent to exercise any power of appointment the powerholder may have, such a clause raises the often-litigated question of whether it satisfies the requirement of specific reference imposed by the donor in the instrument creating the power.

A blending clause purports to blend the appointive property with the powerholder's own property in a common disposition. The exercise portion of a blending clause can take the form of a specific exercise or, more commonly, a blanket exercise. For example, a clause providing "All the residue of my estate, including the property over which I have a power of appointment under my mother's will, I devise as follows" is a blending clause with a specific exercise. A clause providing "All the residue of my estate, including any property over which I may have a power of appointment, I devise as follows" is a blending clause with a blanket exercise.

This act aims to eliminate any significance attached to the use of a blending clause. A blending clause has traditionally been regarded as significant in the application of the doctrines of "selective allocation" and "capture." This act eliminates the significance of such a clause under those doctrines. See Sections 308 (selective allocation) and 309 (capture). The use of a blending clause is more likely to be the product of the forms used by the powerholder's lawyer than a deliberate decision by the powerholder to facilitate the application of the doctrines of selective allocation or capture.

If the powerholder decides not to exercise a specific power or any power that the powerholder might have, it is important to consider whether to depend on mere silence to produce a nonexercise or to take definitive action to assure a nonexercise. Definitive action can take the form of a release during life (see Section 402) or a nonexercise clause in the powerholder's will or other relevant instrument. A nonexercise clause can take the form of a specific-nonexercise clause (for example, "I do not exercise the power of appointment conferred on me by my father's trust") or the form of a blanket-nonexercise clause (for example, "I do not exercise any power of appointment I may have").

In certain circumstances, different consequences depend on the powerholder's choice. Under Section 302, a residuary clause in the powerholder's will is treated as manifesting an intent to exercise a general power in certain limited circumstances if the powerholder silently failed to exercise the power, but not if the powerholder released the power or refrained in a record from exercising it. Under Section 310, unappointed property passes to the powerholder's estate in certain limited circumstances if the powerholder silently failed to exercise a general power, but passes to the donor or to the donor's successors in interest if the powerholder released the power.

Paragraph (3) provides that the exercise is valid only to the extent the exercise is permissible. On permissible and impermissible exercise, see Sections 305 to 307.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 19.1, 19.8, and 19.9 and the

accompanying Commentary.

SECTION 302. INTENT TO EXERCISE: DETERMINING INTENT FROM RESIDUARY CLAUSE.

(a) In this section:

(1) “Residuary clause” does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(2) “Will” includes a codicil and a testamentary instrument that revises another will.

(b) A residuary clause in a powerholder’s will, or a comparable clause in the powerholder’s revocable trust, manifests the powerholder’s intent to exercise a power of appointment only if:

(1) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(2) the power is a general power exercisable in favor of the powerholder’s estate;

(3) there is no gift-in-default clause or the clause is ineffective; and

(4) the powerholder did not release the power.

Comment

This section addresses a question arising under Section 301(2)(A)—namely, whether the powerholder’s intent to exercise a power of appointment is manifested by a garden-variety residuary clause such as “All the residue of my estate, I devise to ...” or “All of my estate, I devise to ....” (The section also applies to a comparable provision in the powerholder’s revocable trust, such as a provision providing for the distribution of the trust corpus.) This section does not address the effect of a residuary clause that contains a blanket exercise or a specific exercise of a power of appointment. On blanket-exercise and specific-exercise clauses, see the Comment to Section 301.

The rule of this section is that *in most circumstances* a garden-variety residuary clause does *not* manifest an intent to exercise a power of appointment.

Such a clause manifests an intent to exercise a power of appointment only in the rare circumstance when (1) the terms of the instrument containing the residuary clause do not manifest a contrary intent, (2) the power in question is a general power exercisable in favor of the powerholder's estate, (3) there is no gift-in-default clause or it is ineffective, and (4) the powerholder did not release the power.

In a well-planned estate, a power of appointment, whether general or nongeneral, is accompanied by a gift in default. In a less carefully planned estate, on the other hand, there may be no gift-in-default clause. Or, if there is such a clause, the clause may be wholly or partly ineffective. To the extent the donor did not provide for takers in default or the gift-in-default clause is ineffective, it is more efficient to attribute to the powerholder the intent to exercise a general power in favor of the powerholder's residuary devisees. The principal benefit of attributing to the powerholder the intent to exercise a general power is that it allows the property to pass under the powerholder's will instead of as part of the donor's estate. Because the donor's death would normally have occurred before the powerholder died, some of the donor's successors might themselves have predeceased the powerholder. It is more efficient to avoid tracing the interest through multiple estates to determine who are the present successors. Moreover, to the extent the donor did not provide for takers in default, it is also more in accord with the donor's probable intent for the powerholder's residuary clause to be treated as exercising the power.

A gift-in-default clause can be ineffective or partially ineffective for a variety of reasons. The clause might cover only part of the appointive property. The clause might be invalid because it violates a rule against perpetuities or some other rule, or it might be ineffective because it conditioned the interest of the takers in default on an uncertain event that did not happen, the most common of which is an unsatisfied condition of survival.

Under no circumstance does a residuary clause manifest an intent to exercise a *non*general power. A residuary clause disposes of the powerholder's own property, and a nongeneral power is not an ownership-equivalent power. Similarly, a residuary clause does not manifest an intent to exercise a general power which is general only because it is exercisable in favor of the creditors of the powerholder or the creditors of the powerholder's estate.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.4 and the accompanying Commentary.

SECTION 303. INTENT TO EXERCISE: AFTER-ACQUIRED POWER. Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in paragraph (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the

power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

Comment

Nothing in the law prevents a powerholder from exercising an after-acquired power—in other words, from exercising a power in an instrument executed before acquiring the power. The only question is one of construction: whether the powerholder *intended* by the earlier instrument to exercise the after-acquired power. (The term "after-acquired power" in this section refers only to an after-acquired power acquired before the powerholder's death. A power of appointment cannot be conferred on a deceased powerholder. See Section 201.)

If the instrument of exercise specifically identifies the power to be exercised, then the question of construction is readily answered: the specific-exercise clause expresses an intent to exercise the power, whether the power is after-acquired or not. However, if the instrument of exercise uses only a *blanket*-exercise clause, the question of whether the powerholder intended to exercise an after-acquired power is often harder to answer. The presumptions in this section provide default rules of construction on the powerholder's likely intent.

Paragraph (1) states the general rule of this section. Unless the terms of the instrument indicate that the powerholder had a different intent, a blanket-exercise clause extends to a power of appointment acquired after the powerholder executed the instrument containing the blanket-exercise clause. General references to then-present circumstances, such as "all the powers I have" or similar expressions, are not a sufficient indication of an intent to exclude an after-acquired power. In contrast, more precise language, such as "all powers I have at the date of execution of this will," does indicate an intent to exclude an after-acquired power.

It is important to remember that even if the terms of the instrument manifest an intent to exercise an after-acquired power, the intent may be ineffective, for example if the terms of the *donor's* instrument creating the power manifest an intent to preclude such an exercise. In the absence of an indication to the contrary, however, it is inferred that the time of the execution of the powerholder's exercising instrument is immaterial to the donor. Even if the donor declares that the property shall pass to such persons as the powerholder "shall" or "may" appoint, these terms do not suffice to indicate an intent to exclude exercise by an instrument previously executed, because these words may be construed to refer to the time when the exercising document becomes effective.

Paragraph (2) states an exception to the general rule of paragraph (1). If the powerholder is also the donor, a blanket-exercise clause in a preexisting instrument is rebuttably presumed *not* to manifest an intent to exercise a power later reserved in another donative transfer, unless the donor/powerholder did not provide for a taker in default of appointment or the gift-in-default clause is ineffective.

The black-letter of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.6 and the accompanying Commentary.

SECTION 304. SUBSTANTIAL COMPLIANCE WITH DONOR-IMPOSED FORMAL REQUIREMENT. A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

(2) the powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

Comment

This section adopts a substantial-compliance rule for donor-imposed formal requirements. This section only applies to formal requirements imposed *by the donor*. It does not apply to formal requirements imposed by law, such as the requirement that a will must be signed and attested. The section also does not apply to *substantive* requirements imposed by the donor, for example a requirement that the powerholder attain a certain age before the power is exercisable.

Whenever the donor imposes formal requirements with respect to the instrument of appointment that exceed the requirements imposed by law, the donor's purpose in imposing the additional requirements is relevant to whether the powerholder's attempted exercise satisfies the rule of this section. To the extent the powerholder's failure to comply with the additional requirements will not impair the accomplishment of a material purpose of the donor, the powerholder's attempted appointment in a manner that substantially complies with a donor-imposed requirement does not fail for lack of perfect compliance with that requirement.

For example, a donor's formal requirement that the power of appointment is exercisable "by will" may be satisfied by the powerholder's attempted exercise in a nontestamentary instrument that is functionally similar to a will, such as the powerholder's revocable trust that remains revocable until the powerholder's death. See Restatement Third of Property: Wills and Other Donative Transfers § 19.9, Comment b ("Because a revocable trust operates in substance as a will, a power of appointment exercisable "by will" can be exercised in a revocable-trust document, as long as the revocable trust remained revocable at the [powerholder]'s death.").

A formal requirement commonly imposed by the donor is that, in order to be effective, the powerholder's attempted exercise must make specific reference to the power. Specific-reference clauses were a pre-1942 invention designed to prevent an inadvertent exercise of a general power. The federal estate tax law then provided that the value of property subject to a general power was included in the powerholder's gross estate if the general power was exercised.

The idea of requiring specific reference was designed to thwart unintended exercise and, hence, estate taxation.

The federal estate tax law has changed. For a general power created after October 21, 1942, estate tax consequences do not depend on whether the power is exercised.

Nevertheless, donors continue to impose specific-reference requirements. Because the original purpose of the specific-reference requirement was to prevent an inadvertent exercise of the power, it seems reasonable to presume that that this is still the donor's purpose in doing so. Consequently, a specific-reference requirement still overrides any applicable state law that presumes that an ordinary residuary clause was intended to exercise a general power. Put differently: An ordinary residuary clause may manifest the powerholder's *intent to exercise* (under Section 301(2)(A)) but does not satisfy the *requirements of exercise* if the donor imposed a specific-reference requirement (this section and Section 301(2)(B)).

A more difficult question is whether a *blanket-exercise clause* satisfies a specific-reference requirement. If it could be shown that the powerholder had knowledge of and intended to exercise the power, the blanket-exercise clause would be sufficient to exercise the power, unless it could be shown that the donor's intent was not merely to prevent an inadvertent exercise of the power but instead that the donor had a material purpose in insisting on the specific-reference requirement. In such a case, the possibility of applying Uniform Probate Code § 2-805 or Restatement Third of Property: Wills and Other Donative Transfers § 12.1 to reform the powerholder's attempted appointment to insert the required specific reference should be explored.

This rule of this section is consistent with, but an elaboration of, Uniform Probate Code § 2-704: "If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference, to the power or its source, it is presumed that the donor's intent, in requiring that the [powerholder] exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power."

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.10 and the accompanying Commentary.

SECTION 305. PERMISSIBLE APPOINTMENT.

(a) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(b) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(1) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(2) create a general power in a permissible appointee;

(3) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(4) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

Comment

When a donor creates a general power under which an appointment can be made outright to the powerholder or the powerholder's estate, the necessary implication is that the powerholder may accomplish by an appointment to others whatever the powerholder could accomplish by first appointing to himself and then disposing of the property, including a disposition in trust or in the creation of a further power of appointment.

A general power to appoint only to the powerholder (even though it says "and to no one else") does not prevent the powerholder from exercising the power in favor of others. There is no reason to require the powerholder to transform the appointive assets into owned property and then, in a second step, to dispose of the owned property. Likewise, a general power to appoint only to the powerholder's estate (even though it says "and to no one else") does not prevent an exercise of the power by will in favor of others. There is no reason to require the powerholder to transform the appointive assets into estate property and then, in a second step, to dispose of the estate property by will.

Similarly, a general power to appoint to the powerholder may purport to allow only one exercise of the power, but such a restriction is ineffective and does not prevent multiple partial exercises of the power. To take another example, a general power to appoint to the powerholder

or to the powerholder's estate may purport to restrict appointment to outright interests not in trust, but such a restriction is ineffective and does not prevent an appointment in trust.

An additional example will drive home the point. A general power to appoint to the powerholder or to the powerholder's estate may purport to forbid the powerholder from imposing conditions on the enjoyment of the property by the appointee. Such a restriction is ineffective and does not prevent an appointment subject to such conditions.

As stated in subsection (b), however, a general power to appoint only to the powerholder's creditors or the creditors of the powerholder's estate permits an appointment only to those creditors.

Except to the extent the terms of the instrument creating the power manifest a contrary intent, the powerholder of a nongeneral power has the same breadth of discretion in appointment to permissible appointees that the powerholder has in the disposition of the powerholder's owned property to permissible appointees of the power.

Thus, unless the terms of the instrument creating the power manifest a contrary intent, the powerholder of a nongeneral power has the authority to exercise the power by an appointment in trust. In order to manifest a contrary intent, the terms of the instrument creating the power must specifically prohibit an appointment in trust. So, for example, a power to appoint "to" the powerholder's descendants includes the authority to appoint in trust for the benefit of one or more of those descendants.

Similarly, unless the terms of the instrument creating the power manifest a contrary intent, the powerholder of a nongeneral power has the authority to exercise the power by creating a general power in a permissible appointee. The rationale for this rule is a straightforward application of the maxim that the greater includes the lesser. A powerholder of a nongeneral power may appoint outright to a permissible appointee, so the powerholder may instead create in a permissible appointee a general power.

Likewise, unless the terms of the instrument creating the power manifest a contrary intent, the powerholder of a nongeneral power may exercise the power by creating a new nongeneral power in *any* person, whether or not a permissible appointee, to appoint to some or all of the permissible appointees of the original nongeneral power. In order to manifest a contrary intent, the terms of the instrument creating the power must prohibit the creation of such powers. Language merely conferring the power of appointment on the powerholder does not suffice.

And finally, unless the terms of the instrument creating the power manifest a contrary intent, the powerholder of a nongeneral power may exercise the power by creating a new nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include all of the permissible appointees of the original nongeneral power (other than the new powerholder, of course, given that the new power authorized by subsection (c)(4) is nongeneral). Subsection (c)(4), which was added in 2018, is designed to give the holder of the original nongeneral power additional flexibility.

The rules of subsection (c) are default rules. The terms of the instrument creating the power may manifest a contrary intent.

The rules of this section, other than subsection (c)(4), are consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 19.13 and 19.14 and the accompanying Commentary.

2018 Amendment. Subsection (c)(4) was added in 2018 in order to provide additional flexibility to a holder of a nongeneral power. Two jurisdictions that had enacted this section sought additional flexibility by amending the word "general" in subsection (c)(2) to read "general or nongeneral"; see Colo. Stat. §15.2.5-305; Va Code §64.2-2717. However, such an amendment would be too broad and potentially inconsistent with other sections of the act. Instead, the Uniform Law Commission amended this section in 2018 to add subsection (c)(4). This Comment was amended accordingly.

SECTION 306. APPOINTMENT TO DECEASED APPOINTEE OR PERMISSIBLE APPOINTEE'S DESCENDANT.

(a) [Subject to [refer to state law on antilapse], an] [An] appointment to a deceased appointee is ineffective.

(b) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Legislative Note: *A state that has extended antilapse protection to appointees should include the opening clause of subsection (a) ("Subject to…"). A state that has not extended antilapse protection to appointees is strongly encouraged to do so. See, e.g., Uniform Probate Code Sections 2-603(a)(5), 2-603(a)(6), and 2-707(a)(7).*

Comment

Just as property cannot be transferred to an individual who is deceased (see Restatement Third of Property: Wills and Other Donative Transfers § 1.2), a power of appointment cannot be effectively exercised in favor of a deceased appointee.

However, an antilapse statute may apply to trigger the substitution of the deceased appointee's descendants (or other substitute takers), unless the terms of the instrument creating or exercising the power of appointment manifest a contrary intent. Antilapse statutes typically provide, as a default rule of construction, that devises to certain relatives who predecease the

testator pass instead to specified substitute takers, usually the descendants of the predeceased devisee who survive the testator. See generally Restatement Third of Property: Wills and Other Donative Transfers § 5.5.

When an antilapse statute does not expressly address whether it applies to the exercise of a power of appointment, a court should construe it to apply to such an exercise. See Restatement Third of Property: Wills and Other Donative Transfers § 5.5, Comment *l*. The rationale underlying antilapse statutes, that of presumptively attributing to the testator the intent to substitute the descendants of a predeceased devisee, applies equally to the exercise of a power of appointment.

The substitute takers provided by an antilapse statute (typically the descendants of the deceased appointee) are treated as permissible appointees even if the description of permissible appointees provided by the donor does not expressly cover them. This rule corresponds to the rule applying antilapse statutes to class gifts. Antilapse statutes substitute the descendants of deceased class members, even if the class member's descendants are not members of the class. See Restatement Third of Property: Wills and Other Donative Transfers § 19.12, Comment e.

The donor of a power, general or nongeneral, can prohibit the application of an antilapse statute to the powerholder's appointment and, in the case of a nongeneral power, can prohibit an appointment to the descendants of a deceased permissible appointee, but must manifest an intent to do so in the terms of the instrument creating the power of appointment. A traditional gift-in-default clause does not manifest a contrary intent in either case, unless the clause provides that it is to take effect instead of the descendants of a deceased permissible appointee.

Subsection (b) provides that the descendants of a deceased permissible appointee are treated as permissible appointees of a nongeneral power of appointment. This rule is a logical extension of the application of antilapse statutes to appointments. If an antilapse statute can substitute the descendants of a deceased appointee, the powerholder should be allowed to appoint in favor of, or to create a new power of appointment in, a descendant (meaning, one or more descendants; the Uniform Law Commission uses the singular to include the plural) of a deceased permissible appointee.

Who qualifies as a "descendant" is defined by state law. See, for example, Uniform Probate Code §§ 1-201(9), 2-103, 2-115 to 2-122, 2-705.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.12 and the accompanying Commentary.

SECTION 307. IMPERMISSIBLE APPOINTMENT.

(a) Except as otherwise provided in Section 306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Comment

The rules of this section apply to the extent the powerholder attempts to confer a beneficial interest in the appointive property on an impermissible appointee. For example, a nongeneral power may not be exercised in favor of the powerholder. And a nongeneral power in favor of the donor's descendants may not be exercised in favor of the donor's spouse (assuming the usual scenario wherein the spouse is not also a descendant).

To the extent an appointment is ineffective, it is invalid. But it bears emphasizing that an appointment that is partially valid remains partially valid. Partial invalidity does not doom the entire appointment.

The rules of this section do not apply to an appointment of a *non*beneficial interest—for example, the appointment of legal title to a trustee—if the beneficial interest is held by permissible appointees.

Nor do the rules of this section prohibit beneficial appointment to an impermissible appointee if the intent to benefit the impermissible appointee is not the powerholder's but rather is the intent of a permissible appointee in whose favor the powerholder has decided to exercise the power. In other words, if the powerholder makes a decision to exercise the power in favor of a permissible appointee, the permissible appointee may request the powerholder to transfer the appointive assets directly to an impermissible appointee. The appointment directly to the impermissible appointee in this situation is effective, being treated for all purposes as an appointment first to the permissible appointee followed by a transfer by the permissible appointee to the impermissible appointee.

The donor of a power of appointment sets the range of permissible appointees by designating the permissible appointees of the power. The rules of this section are concerned with attempts by the powerholder to exceed that authority. Such an attempt is called a fraud on the power and is ineffective. The term "fraud on the power" is a well-accepted term of art. See Restatement Third of Property: Wills and Other Donative Transfers §§ 19.15 and 19.16.

Among the most common devices employed to commit a fraud on the power are: an appointment conditioned on the appointee conferring a benefit on an impermissible appointee; an appointment subject to a charge in favor of an impermissible appointee; an appointment upon a trust for the benefit of an impermissible appointee; an appointment in consideration of a benefit to an impermissible appointee; and an appointment primarily for the benefit of the permissible appointee's creditor if the creditor is an impermissible appointee. Each of these appointments is impermissible and ineffective.

The rules of this section are consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 19.15 and 19.16 and the

accompanying Commentary.

SECTION 308. SELECTIVE ALLOCATION DOCTRINE. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

Comment

The rule of this section is commonly known as the doctrine of selective allocation. This doctrine applies if the powerholder uses the same instrument to exercise a power of appointment and to dispose of property that the powerholder owns. For purposes of this section, the powerholder's will, any codicils to the powerholder's will, and any revocable trust created by the powerholder that did not become irrevocable before the powerholder's death are treated as the same instrument.

The doctrine of selective allocation provides that the owned property and the appointive property shall be allocated in the permissible manner that best carries out the powerholder's intent.

One situation that often calls for selective allocation is when the powerholder disposes of property to permissible and impermissible appointees. By allocating owned assets to the dispositions favoring impermissible appointees and allocating appointive assets to permissible appointees, the appointment is rendered effective. Consider the following example, drawn from the Restatement Third of Property: Wills and Other Donative Transfers.

Example. D died, leaving a will that devised property worth $100,000 to T in trust. T is directed to pay the net income to S (Donor's son) for life and then "to pay the principal to S's descendants as S shall by will appoint, and in default of appointment to pay the principal by representation to S's descendants then living, and if no descendant of S is then living, to pay the principal to X-Charity." S dies. The property over which S has the nongeneral power is worth $200,000 at his death. S's owned property at his death is worth $800,000. S's will provides as follows: "All property I own or over which I have any power of appointment shall be used first to pay my debts, expenses of administration, and death taxes, and the balance I give outright to my daughters." S's debts plus the death taxes payable on S's death plus the expenses of administering S's estate total $200,000. If S's owned property is allocated ratably to the payment of such $200,000, one-fifth of the $200,000 would be an ineffective appointment, because it would be to impermissible appointees. That one-fifth of $200,000 ($40,000 of the appointive assets) would pass in default of appointment, and the owned property would have to pick up the full payment of the debts, taxes, and expenses of administration. A selective allocation in the first instance of owned assets to the payment of debts, taxes, and expenses of administration leaves the appointive assets appointed only to permissible appointees of the nongeneral power and nothing passes in default of appointment.

The result of applying selective allocation is always one that the powerholder could have provided for in specific language, and one that the powerholder most probably would have provided for had he or she been aware of the difficulties inherent in the dispositive scheme. By the rule of selective allocation, courts undertake to prevent the dispositive plan from being frustrated by the ineptness of the powerholder or the powerholder's lawyer. For an early case adopting selective allocation, see Roe v. Tranmer, 2 Wils. 75, 95 Eng. Rep. 694 (C.P. 1757).

For further discussion of selective allocation, and illustrations of its application to various fact-patterns, see Restatement Third of Property: Wills and Other Donative Transfers § 19.19 and the accompanying Commentary. This rule of this Section is consistent with, and this Comment draws on, that Restatement.

On the distinction between selective allocation (a rule of construction based on the assumed intent of the powerholder) and the process sometimes known as "marshaling" (an outgrowth of general equitable principles), see the Restatement Second of Property: Donative Transfers, especially the Introductory Note to Chapter 22.

SECTION 309. CAPTURE DOCTRINE: DISPOSITION OF INEFFECTIVELY APPOINTED PROPERTY UNDER GENERAL POWER. To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(A) passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(B) if there is no taker under subparagraph (A), passes under a reversionary

interest to the donor or the donor's transferee or successor in interest.

Comment

This section applies when the powerholder of a general power makes an ineffective appointment. This section does not apply when the powerholder of a general power fails to exercise or releases the power. (On such fact-patterns, see instead Section 310.)

Nor does this section apply to an ineffective exercise of a power of revocation, amendment, or withdrawal—in each case, a power pertaining to a trust. To the extent a powerholder of one of these types of powers makes an ineffective appointment, the ineffectively appointed property remains in the trust.

The central rule of this section—in paragraph (1) and subparagraph (2)(A)—is a modern variation of the so-called "capture doctrine" adopted by a small body of case law and followed in Restatement Second of Property: Donative Transfers § 23.2. Under that doctrine, the ineffectively appointed property passed to the powerholder or the powerholder's estate, but only if the ineffective appointment manifested an intent to assume control of the appointive property "for all purposes" and not merely for the limited purpose of giving effect to the attempted appointment. If the ineffective appointment manifested such an intent, the ineffective appointment was treated as an implied alternative appointment to the powerholder or the powerholder's estate, and thus took effect even if the donor provided for takers in default and one or more of the takers in default were otherwise entitled to take.

The capture doctrine was developed at a time when the donor's gift-in-default clause was considered an afterthought, inserted just in case the powerholder failed to exercise the power. Today, the donor's gift-in-default clause is typically carefully drafted and intended to take effect, unless circumstances change that would cause the powerholder to exercise the power. Consequently, if the powerholder exercises the power effectively, the exercise divests the interest of the takers in default. But if the powerholder makes an ineffective appointment, the powerholder's intent regarding the disposition of the ineffectively appointed property is problematic.

Whether or not the ineffective appointment manifested an intent to assume control of the appointive property "for all purposes" often depended on nothing more than whether the ineffective appointment was contained in a blending clause. The use of a blending clause rather than a direct-exercise clause, however, is typically the product of the drafting lawyer's forms rather than a deliberate choice of the powerholder.

This section alters the traditional capture doctrine in two ways: (1) the gift-in-default clause takes precedence over any implied alternative appointment to the powerholder or the powerholder's estate deduced from the use of a blending clause or otherwise; and (2) the ineffectively appointed property passes to the powerholder or the powerholder's estate only if there is no gift-in-default clause or to the extent the gift-in-default clause is ineffective. Nothing turns on whether the powerholder used a blending clause or somehow otherwise manifested an intent to assume control of the appointive property "for all purposes."

Subparagraph (2)(B) addresses the special case of a power of appointment that is general only because it is exercisable in favor of creditors, but not exercisable in favor of the powerholder or the powerholder's estate. This type of general power is sometimes used in generation-skipping transfer tax planning. However, this type of general power should not trigger the capture doctrine, because the powerholder and the powerholder's estate are impermissible appointees. Instead, ineffectively appointed property should pass under the gift-in-default clause (paragraph (1)) or, if there is no gift-in-default clause or it is ineffective, under a reversionary interest to the donor or the donor's transferee or successor in interest (subparagraph (2)(B)).

The rule of this section is essentially consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.21 and the accompanying Commentary.

SECTION 310. DISPOSITION OF UNAPPOINTED PROPERTY UNDER RELEASED OR UNEXERCISED GENERAL POWER. To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective:

(A) except as otherwise provided in subparagraph (B), the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(B) to the extent the powerholder released the power, or if there is no taker under subparagraph (A), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Comment

The rules of this section apply to unappointed property under a general power of

appointment. The rules do *not* apply to unappointed property under a power of revocation, amendment, or withdrawal—powers pertaining to a trust. If the powerholder releases or dies without exercising a power of revocation or amendment, the power to revoke expires and, unless someone else continues to have a power of revocation or amendment, the trust becomes irrevocable and unamendable. If the powerholder releases or dies without exercising a power to withdraw principal of a trust, the principal that the powerholder could have withdrawn, but did not, remains part of the trust.

The rationale for the rules of this section runs as follows. The gift-in-default clause controls the disposition of unappointed property to the extent the clause is effective. To the extent the gift-in-default clause is nonexistent or ineffective, the disposition of the unappointed property depends on whether the powerholder merely failed to exercise the power or whether the powerholder released the power. If the powerholder merely *failed to exercise* the power, the unappointed property passes to the powerholder or to the powerholder's estate (if these are permissible appointees). The rationale is the same as when the powerholder makes an ineffective appointment. If, however, the powerholder *released* the power, the powerholder has affirmatively chosen to reject the opportunity to gain ownership of the property, hence the unappointed property passes under a reversionary interest to the donor or to the donor's transferee or successor in interest.

These rules are illustrated by the following examples.

Example 1. D transfers property to T in trust, directing T to pay the income to S (D's son) for life, with a general testamentary power in S to appoint the principal of the trust, and in default of appointment the principal is to be distributed "to S's descendants who survive S, by representation, and if none, to X-Charity." S dies leaving a will that does not exercise the power. The principal passes under the gift-in-default clause to S's descendants who survive S, by representation.

Example 2. Same facts as Example 1, except that D's gift-in-default clause covered only half of the principal, and S died intestate. Half of the principal passes under the gift-in-default clause. The other half of the principal passes to S's estate for distribution to S's intestate heirs.

Example 3. Same facts as Example 2, except that S released the power before dying intestate. Half of the principal passes under the gift-in-default clause. The other half of the principal passes to D or to D's transferee or successor in interest.

In addition to governing a released general power, subparagraph (2)(B) also applies to the special case of an unexercised general power that is general only because it is exercisable in favor of creditors, but not exercisable in favor of the powerholder or the powerholder's estate. This type of general power is sometimes used in generation-skipping transfer tax planning. In such a case, unappointed property passes under the gift-in-default clause (paragraph (1)) or, if there is no gift-in-default clause or to the extent it is ineffective, under a reversionary interest to the donor or the donor's transferee or successor in interest (subparagraph (2)(B)).

The rules of this section are essentially consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.22 and the

accompanying Commentary.

SECTION 311. DISPOSITION OF UNAPPOINTED PROPERTY UNDER RELEASED OR UNEXERCISED NONGENERAL POWER. To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(A) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(B) if there is no taker under subparagraph (A), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Comment

To the extent the powerholder of a nongeneral power releases, ineffectively exercises, or fails to exercise the power, thus causing the power to lapse, the gift-in-default clause controls the disposition of the unappointed property to the extent the gift-in-default clause is effective.

To the extent the gift-in-default clause is nonexistent or ineffective, the unappointed property passes to the permissible appointees of the power—including those who are substituted for permissible appointees under an antilapse statute (see Section 306)—if the permissible appointees are "defined and limited" (on the meaning of this term of art, see the Comment to Section 205) and the donor has not manifested an intent that the permissible appointees shall receive the appointive property only so far as the powerholder elects to appoint it to them. This rule of construction is based on the assumption that the donor intends the permissible appointees of the power to have the benefit of the property. The donor focused on transmitting the appointive property to the permissible appointees through an appointment, but if the powerholder fails to carry out this particular method of transfer, the donor's underlying intent to pass the appointive property to the defined and limited class of permissible appointees should be carried out. Subparagraph (2)(A) effectuates the donor's underlying intent by implying a gift in default of appointment to the defined and limited class of permissible appointees.

If the defined and limited class of permissible appointees is a multigenerational class, such as "descendants," "issue," "heirs," or "relatives," the default rule of construction is that they take by representation. See Restatement Third of Property: Wills and Other Donative Transfers § 14.3, Comment b. If the defined and limited class is a single-generation class, the default rule of construction is that the eligible class members take equally. See Restatement Third of Property: Wills and Other Donative Transfers § 14.2.

No implied gift in default of appointment to the permissible appointees arises if the permissible appointees are identified in such broad and inclusive terms that they are not defined and limited. In such an event, the donor has no underlying intent to pass the appointive property to such permissible appointees. Similarly, if the donor manifests an intent that the defined and limited class of permissible appointees is to receive the appointive property only by appointment, the donor's manifestation of intent eliminates any implied gift in default to the permissible appointees. Subparagraph (2)(B) responds to these possibilities by providing for a reversionary interest to the donor or the donor's transferee or successor in interest.

The rules are illustrated by the following examples.

Example 1. D died, leaving a will devising property to T in trust. T is directed to pay the income to S (D's son) for life, and then to pay the principal "to such of S's descendants who survive S as S may appoint by will." D's will contains no gift-in-default clause. S dies without exercising the nongeneral power. The permissible appointees of the power constitute a defined and limited class. Accordingly, the principal of the trust passes at S's death to S's descendants who survive S, by representation.

Example 2. Same facts as Example 1, except that the permissible appointees of S's power of appointment are "such one or more persons, other than S, S's estate, S's creditors, or creditors of S's estate." The permissible appointees do not constitute a defined and limited class. Accordingly, the principal of the trust passes, at S's death, under a reversionary interest to D or D's transferee or successor in interest.

The rules of this section are consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.23 and the accompanying Commentary.

SECTION 312. DISPOSITION OF UNAPPOINTED PROPERTY IF PARTIAL APPOINTMENT TO TAKER IN DEFAULT. Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

Comment

If a powerholder makes a valid partial appointment to a taker in default, leaving some property unappointed, there is a question about whether that taker in default may also fully share in the unappointed property. In the first instance, the intent of the *donor* controls. In the absence of any indication of the donor's intent, it is assumed that the donor intends that the taker can take in both capacities. This rule presupposes that the donor contemplated that the taker in default who is an appointee could receive more of the appointive assets than a taker in default who is not an appointee. The donor can defeat this rule by manifesting a contrary intent in the instrument creating the power of appointment, thereby restricting the powerholder's freedom to benefit an appointee who is also a taker in default in both capacities. If the donor has not so manifested a contrary intent, the *powerholder* is free to exercise the power in favor of a taker in default who is a permissible appointee. Unless the powerholder manifests a contrary intent in the terms of the instrument exercising the power, it is assumed that the powerholder does not intend to affect in any way the disposition of any unappointed property.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.24 and the accompanying Commentary.

SECTION 313. APPOINTMENT TO TAKER IN DEFAULT. If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

Comment

This section articulates the rule that, to the extent an appointee would have taken appointed property as a taker in default, the appointee takes under the gift-in-default clause rather than under the appointment.

Takers in default have future interests that may be defeated by an exercise of the power of appointment. To whatever extent the powerholder purports to appoint an interest already held in default of appointment, the powerholder does not exercise the power to alter the donor's disposition but merely declares an intent not to alter it. To the extent, however, that the appointed property *is different from* (e.g., is a lesser estate) or *exceeds the total of* the property the appointee would receive as a taker in default, the property passes under the appointment.

Usually it makes no difference whether the appointee takes as appointee or as taker in default. The principal difference arises in jurisdictions that follow the rule that the estate creditors of the powerholder of a general testamentary power that was conferred on the powerholder by another have no claim on the appointive property unless the powerholder has exercised the power. Although this act does not follow that rule regarding creditors' rights (see

Section 502), some jurisdictions do.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.25 and the accompanying Commentary.

SECTION 314. POWERHOLDER'S AUTHORITY TO REVOKE OR AMEND EXERCISE. A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) the powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

Comment

This section recognizes that a powerholder lacks the authority to revoke or amend an exercise of the power of appointment, except to the extent (1) the powerholder reserved a power of revocation or amendment in the instrument exercising the power of appointment and the terms of the instrument creating the power of appointment do not effectively prohibit the reservation, or (2) the donor provided that the exercise is revocable or amendable.

A powerholder who exercises a power of appointment is like any other transferor of property in regard to authority to revoke or amend the transfer. Hence, unless the powerholder (or the donor) in some appropriate manner manifests an intent that an appointment is revocable or amendable, the appointment is irrevocable.

The ability of an agent or guardian to revoke or amend the exercise of a power of appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

Other law of the state may permit the reformation of an otherwise irrevocable instrument. See, for example, Uniform Probate Code § 2-805; Uniform Trust Code § 415.

The rule of this section is essentially consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 19.7 and the accompanying Commentary.

[ARTICLE] 4

DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT.

SECTION 401. DISCLAIMER. As provided by [cite state law on disclaimer or the Uniform Disclaimer of Property Interests Act]:

(1) A powerholder may disclaim all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property.

Comment

A prospective powerholder cannot be compelled to accept the power of appointment, just as the prospective donee of a gift cannot be compelled to accept the gift.

A disclaimer is to be contrasted with a release. A release occurs after the powerholder accepts the power. A disclaimer prevents acquisition of the power, and consequently a powerholder who has accepted a power can no longer disclaim.

Disclaimer statutes frequently specify the time within which a disclaimer must be made. The Uniform Disclaimer of Property Interests Act (1999) (UDPIA) does not specify a time limit, but allows a disclaimer until a disclaimer is barred (see UDPIA § 13).

Disclaimer statutes customarily specify the methods for filing a disclaimer. UDPIA § 12 provides that the statutory methods must be followed. In the absence of such a requirement, statutory formalities for making a disclaimer of a power are not construed as exclusive, and any manifestation of the powerholder's intent not to accept the power may also suffice.

A partial disclaimer of a power of appointment leaves the powerholder possessed of the part of the power not disclaimed.

Just as an individual who would otherwise be a powerholder can avoid acquiring the power by disclaiming it, a person who otherwise would be a permissible appointee, appointee, or taker in default of appointment can avoid acquiring that status by disclaiming it.

The ability of an agent or guardian to disclaim on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 20.4 and the accompanying Commentary.

SECTION 402. AUTHORITY TO RELEASE. A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Comment

Whether a power of appointment is general or nongeneral, presently exercisable or testamentary, the powerholder has the authority to release the power in whole or in part, in the absence of an effective restriction on release imposed by the donor. A partial release is a release that narrows the freedom of choice otherwise available to the powerholder but does not eliminate the power. A partial release may relate either to the manner of exercising the power or to the persons in whose favor the power may be exercised.

If the powerholder did not create the power, so that the powerholder and donor are different individuals, the donor can effectively impose a restraint on release, but the donor must manifest an intent in the terms of the creating instrument to impose such a restraint.

If the powerholder created the power, so that the powerholder is also the donor, the donor/powerholder cannot effectively impose a restraint on release. A self-imposed restraint on release resembles a self-imposed restraint on alienation, which is ineffective. See, for example, Restatement Third of Trusts § 58.

If the exercise of a power of appointment requires the action of two or more individuals, each powerholder has a power of appointment. If one but not the other joint powerholder releases the power, the power survives in the hands of the nonreleasing powerholder, unless the continuation of the power is inconsistent with the donor's purpose in creating the joint power. See Restatement Third of Property: Wills and Other Donative Transfers § 20.1, Comment f.

The ability of an agent or guardian to release a power of appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 20.1 and 20.2 and the accompanying Commentary.

SECTION 403. METHOD OF RELEASE.

[(a) In this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b)] A powerholder of a releasable power of appointment may release the power in whole

or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Legislative Note: *A state that defines "record" in Section 102 should delete the bracketed material in this section.*

Comment

A powerholder may release the power of appointment by substantial compliance with the method specified in the terms of the instrument creating the power or any other method manifesting clear and convincing evidence of the powerholder's intent. Only if the method specified in the terms of the creating instrument is made exclusive is use of the other methods prohibited. Even then, a failure to comply with a technical requirement, such as required notarization, may be excused as long as compliance with the method specified in the terms of the creating instrument is otherwise substantial.

Examples of methods manifesting clear and convincing evidence of the powerholder's intent to release include: (1) delivering (by the same method of delivery that would make an instrument of transfer effective, see Restatement Third of Property: Wills and Other Donative Transfers § 20.3, Comment b) an instrument declaring the extent to which the power is released to an individual who could be adversely affected by an exercise of the power; (2) joining with some or all of the takers in default in making an otherwise effective transfer of an interest in the appointive property, in which case the power is released to the extent a subsequent exercise of the power would defeat the interest transferred; (3) contracting with an individual who could be adversely affected by an exercise of the power not to exercise the power, in which case the power is released to the extent a subsequent exercise of the power would violate the terms of the contract; and (4) communicating in a record an intent to release the power, in which case the power is released to the extent a subsequent exercise of the power would be contrary to manifested intent.

The black-letter of this section is based on Uniform Trust Code § 602(c). The rule of this section is fundamentally consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 20.3 and the accompanying Commentary.

SECTION 404. REVOCATION OR AMENDMENT OF RELEASE. A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Comment

A release is typically irrevocable. If a powerholder wishes to retain the power to revoke or amend the release, the powerholder should so indicate in the instrument executing the release.

The ability of an agent or guardian to revoke or amend the release of a power of appointment on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

Other law of the state may permit the reformation of an otherwise irrevocable instrument. See, for example, Uniform Probate Code § 2-805; Uniform Trust Code § 415.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers §§ 20.1 and 20.2 and the accompanying Commentary.

SECTION 405. POWER TO CONTRACT: PRESENTLY EXERCISABLE POWER OF APPOINTMENT. A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Comment

A powerholder of a presently exercisable power may contract to make, or not to make, an appointment if the contract does not confer a benefit on an impermissible appointee. The rationale is that the power is presently exercisable, so the powerholder can presently enter into a contract concerning the appointment.

The contract may not confer a benefit on an impermissible appointee. Recall that a general power presently exercisable in favor of the powerholder or the powerholder's estate has no impermissible appointees. See Section 305(a). In contrast, a presently exercisable nongeneral power, or a general power presently exercisable only in favor of one or more of the creditors of the powerholder or the powerholder's estate, does have impermissible appointees. See Section

305(b)-(c).

A contract *not* to appoint assures that the appointive property will pass to the taker in default. A contract to appoint to a taker in default, if enforceable, has the same effect as a contract not to appoint.

The ability of an agent or guardian to contract on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 21.1 and the accompanying Commentary.

SECTION 406. POWER TO CONTRACT: POWER OF APPOINTMENT NOT PRESENTLY EXERCISABLE. A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

Comment

Except in the case of a power reserved by the donor in a revocable inter vivos trust, a contract to exercise, or not to exercise, a power of appointment that is not presently exercisable is unenforceable, because the powerholder does not have the authority to make a current appointment. If the powerholder was also the donor of the power and created the power in a revocable inter vivos trust, however, a contract to appoint is enforceable, because the donor-powerholder could have revoked the trust and recaptured ownership of the trust assets or could have amended the trust to change the power onto one that is presently exercisable.

In all other cases, the donor of a power not presently exercisable has manifested an intent that the selection of the appointees and the determination of the interests they are to receive are to be made in the light of the circumstances that exist on the date that the power becomes exercisable. Were a contract to be enforceable, the donor’s intent would be defeated.

The ability of an agent or guardian to contract on behalf of a principal or ward is determined by other law, such as the Uniform Power of Attorney Act or the Uniform Guardianship and Protective Proceedings Act.

The rule of this section is consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 21.2 and the accompanying

Commentary.

SECTION 407. REMEDY FOR BREACH OF CONTRACT TO APPOINT OR NOT TO APPOINT. The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Comment

This section sets forth a rule on remedy. The remedy for a powerholder's breach of an enforceable contract to appoint, or not to appoint, is limited to damages payable out of the appointive property or, if appropriate, specific performance. The powerholder's owned assets are not available to satisfy a judgment for damages. For elaboration and discussion, see Restatement Third of Property: Wills and Other Donative Transfers §§ 21.1 and 21.2, and especially id., § 21.1, Comments c and d. This section does not address the *amount* of damages, which is determined by other law of the state, such as contract law.

[ARTICLE] 5

RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

SECTION 501. CREDITOR CLAIM: GENERAL POWER CREATED BY POWERHOLDER.

(a) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in [cite state law on fraudulent transfers or the Uniform Fraudulent Transfers Act].

(c) Subject to subsection (b), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder

or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(d) Subject to subsections (b) and (c), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

Comment

Subsection (b) states a well-settled rule: a donor of a power of appointment cannot use a fraudulent transfer to avoid creditors. If a donor fraudulently transfers appointive property, retaining a power of appointment, the donor/powerholder's creditors and the creditors of the donor/powerholder's estate may reach the appointive property as provided in the law of fraudulent transfers.

Subsection (c) also states a well-settled rule: if there is no fraudulent transfer, and the donor/powerholder has made an irrevocable appointment to a third party of the appointive property, the appointed property is beyond the reach of the donor/powerholder's creditors or the creditors of the donor/powerholder's estate. In other words, an irrevocable and nonfraudulent exercise of the general power by the donor/powerholder in favor of someone other than the powerholder or the powerholder's estate eliminates the ability of the powerholder's creditors or the creditors of the powerholder's estate to reach those assets.

Subsection (d) establishes rules governing the remaining fact-pattern: the donor has retained a general power of appointment but has made neither a fraudulent transfer nor an irrevocable appointment. In such a case, the following rules apply. If the donor retains a presently exercisable general power of appointment, the appointive property is subject to a claim of—and is reachable by—a creditor of the powerholder to the same extent as if the powerholder owned the appointive property. If the donor retains a general power of appointment exercisable at death, the appointive property is subject to a claim of—and is reachable by—a creditor of the donor/powerholder's estate (defined with reference to other law, but including costs of

administration, expenses of the funeral and disposal of remains, and statutory allowances to the surviving spouse and children) to the extent the estate is insufficient, subject to the decedent's right to direct the source from which liabilities are paid. For the same rules in the context of a retained power to revoke a revocable trust, see Uniform Trust Code § 505(a). The application of these rules is not affected by the presence of a spendthrift provision or by whether the claim arose before or after the creation of the power of appointment. See Restatement Third of Property: Wills and Other Donative Transfers § 22.2, Comment a.

Subsection (a) enables all of these rules to apply even if the general power was not created in a transfer made by the powerholder. The rules will apply to the extent the powerholder contributed value to the transfer. See Restatement Third of Property: Wills and Other Donative Transfers § 22.2, Comment d. Consider the following examples, drawn from the Restatement.

Example 1. D purchases Blackacre from A. Pursuant to D's request, A transfers Blackacre "to D for life, then to such person as D may by will appoint." The rule of subsection (d) applies to D's general testamentary power, though in form A created the power.

Example 2. A by will transfers Blackacre "to D for life, then to such persons as D may by will appoint." Blackacre is subject to mortgage indebtedness in favor of X in the amount of $10,000. The value of Blackacre is $20,000. D pays the mortgage indebtedness. The rule of subsection (d) applies to half of the value of Blackacre, though in form A's will creates the general power in D.

Example 3. D, an heir of A, contests A's will on the ground of undue influence on A by the principal beneficiary under A's will. The contest is settled by transferring part of A's estate to Trustee in trust. Under the trust, Trustee is directed "to pay the net income to D for life and, on D's death, the principal to such persons as D shall by will appoint." The rule of subsection (d) applies to the transfer in trust, though in form D did not create the general power.

The provisions of this section are designed to be consistent with Uniform Trust Code § 505(a). The provisions and this Comment also rely in part on Restatement Third of Property: Wills and Other Donative Transfers § 22.2 and the accompanying Commentary.

SECTION 502. CREDITOR CLAIM: GENERAL POWER NOT CREATED BY POWERHOLDER.

(a) Except as otherwise provided in subsection (b), appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to Section 504(c), a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section 2514(c)(1), [on the effective date of this [act]][as amended], is treated for purposes of this [article] as a nongeneral power.

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b).*

Comment

Subsection (a) reaffirms the fundamental principle that a presently exercisable general power of appointment is an ownership-equivalent power. Consequently, subsection (b) provides that property subject to a presently exercisable general power of appointment is subject to the claims of the powerholder's creditors, to the extent the powerholder's property is insufficient. Furthermore, upon the powerholder's death, property subject to a general power of appointment is subject to creditors' claims against the powerholder's estate (defined with reference to other law, but including costs of administration, expenses of the funeral and disposal of remains, and statutory allowances to the surviving spouse and children) to the extent the estate is insufficient, subject to the decedent's right to direct the source from which liabilities are paid. In each case, whether the powerholder has or has not purported to exercise the power is immaterial.

Subsection (b) states an important exception. If the power is subject to an ascertainable standard within the meaning of 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1), the power is treated for purposes of this article as a nongeneral power, and the rights of the powerholder's creditors in the appointive property are governed by Sections 504(a) and (b).

SECTION 503. POWER TO WITHDRAW.

(a) For purposes of this [article], and except as otherwise provided in subsection (b), a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Section 2041(b)(2) and 26 U.S.C. Section 2514(e) or the amount specified in 26 U.S.C. Section 2503(b), [on the effective date of this [act]][as amended].

Legislative Note: *In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b).*

Comment

Subsection (a) treats a power of withdrawal as the equivalent of a presently exercisable general power of appointment, because the two are ownership-equivalent powers. Upon the lapse, release, or waiver of the power of withdrawal, subsection (b) follows the lead of Uniform Trust Code § 505(b)(2) in creating an exception for property subject to a Crummey or five and five power: the holder of the power of withdrawal is treated as a powerholder of a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Internal Revenue Code §§ 2041(b)(2) and 2514(e) [greater of 5% or $5,000] or § 2503(b) [$13,000 in 2012].

SECTION 504. CREDITOR CLAIM: NONGENERAL POWER.

(a) Except as otherwise provided in subsections (b) and (c), appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of [cite state statute on fraudulent transfers or the Uniform Fraudulent Transfers Act].

(c) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this [article] as a general power.

Comment

Subsection (a) states the general rule of this section. Appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate. The rationale for this general rule is that a nongeneral power of appointment is not an ownership-equivalent power, so the powerholder's creditors have no claim to the appointive assets.

Subsection (b) addresses an important exception: the fraudulent transfer. A fraudulent transfer arises if the powerholder formerly owned the appointive property covered by the nongeneral power and transferred the property in fraud of creditors, reserving the nongeneral power. In such a case, the creditors can reach the appointive property under the rules relating to fraudulent transfers.

Subsection (c) also addresses an important exception, arising when the initial gift in default of appointment is to the powerholder or the powerholder's estate. In such a case, the power of appointment, though in form a nongeneral power, is in substance a general power, and the rights of the powerholder's creditors in the appointive property are governed by Sections 501 and 502.

The rules of this section are consistent with, and this Comment draws on, Restatement Third of Property: Wills and Other Donative Transfers § 22.1 and the accompanying Commentary.

[ARTICLE] 6

MISCELLANEOUS PROVISIONS

SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 603. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this [act], on and after [the effective date of this [act]]:

(1) this [act] applies to a power of appointment created before, on, or after [the effective date of this [act]];

(2) this [act] applies to a judicial proceeding concerning a power of appointment commenced on or after [the effective date of this [act]];

(3) this [act] applies to a judicial proceeding concerning a power of appointment commenced before [the effective date of this [act]] unless the court finds that application of a particular provision of this [act] would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this [act] does not apply and the superseded law applies;

(4) a rule of construction or presumption provided in this [act] applies to an instrument executed before [the effective date of this [act]] unless there is a clear indication of a contrary intent in the terms of the instrument; and

(5) except as otherwise provided in paragraphs (1) through (4), an action done before [the effective date of this [act]] is not affected by this [act].

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this [act] before [the effective date of this [act]], the law continues to apply to the right.

Comment

This act is intended to have the widest possible effect within constitutional limitations. Specifically, the act applies to all powers of appointment whenever created, to judicial proceedings concerning powers of appointment commenced on or after its effective date, and unless the court otherwise orders, to judicial proceedings in progress on the effective date. In

addition, any rules of construction or presumption provided in the act apply to preexisting instruments unless there is a clear indication of a contrary intent in the instruments's terms. By applying the act to preexisting instruments, the need to know two bodies of law will quickly lessen.

This legislation cannot be fully retroactive, however. Constitutional limitations preclude retroactive application of rules of construction to alter property rights that became irrevocable prior to the effective date. Also, rights already barred under former law are not revived by a possibly more liberal rule under this act. Nor, except as otherwise provided in paragraphs (1) through (4) of subsection (a), is an action done before the effective date of the act affected by the act's enactment.

For comparable Uniform Law provisions, see Uniform Trust Code § 1106 and Uniform Probate Code § 8-101.

SECTION 604. REPEALS; CONFORMING AMENDMENTS.

(a) ….

(b) ….

(c) ….

SECTION 605. EFFECTIVE DATE. This [act] takes effect ....

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A Few Facts about

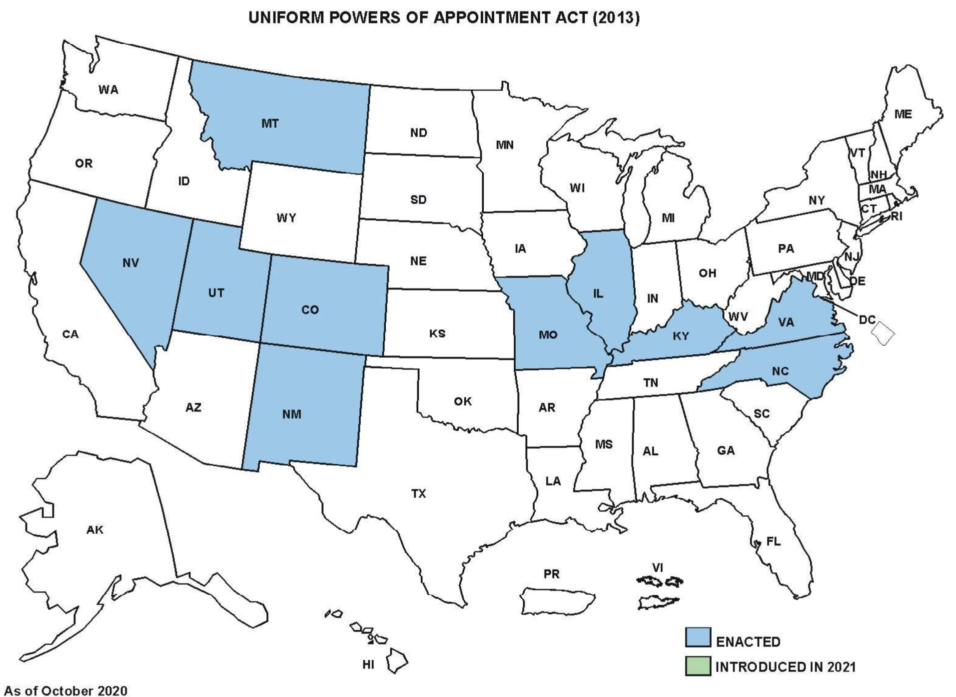
THE UNIFORM POWERS OF APPOINTMENT ACT

PURPOSE: A power of appointment is an estate planning tool that permits the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of permissible beneficiaries. It is an effective and flexible technique used in a wide variety of situations, but there is very little statutory law governing the creation and use of powers of appointment. Instead, estate planning attorneys must rely on a patchwork of state court decisions. The drafters of the Uniform Powers of Appointment Act did not set out to change the law, but rather to codify the existing common law, relying heavily on the Restatement (Third) of Property: Wills and other Donative Transfers. Therefore, estate planning attorneys will already be familiar with the act's provisions, and are likely to welcome the legal certainty that would result from its enactment.

ORIGIN: Completed by the Uniform Law Commission in 2013.

APPROVED BY: American Bar Association

ENACTED BY:



For further information about the Uniform Powers of Appointment Act, please contact ULC Chief Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

CHAPTER 702

POWERS OF APPOINTMENT

702.02 Definitions.
702.03 Manifestation of intent to exercise a power of appointment.
702.05 Exercise of a power of appointment.
702.07 Power of appointment to be construed as exclusive.
702.08 Disclaimer of a power of appointment.
702.09 Release of a power of appointment.
702.11 Irrevocability of creation, exercise and release of a power of appointment.
702.13 Recording instruments relating to a power of appointment.
702.15 Disposition when a special power of appointment is unexercised.
702.17 Rights of creditors of the donee.
702.19 Matters governed by common law.
702.21 Applicability of chapter.
702.22 Applicability of general transfers at death provisions.

702.02 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "Appointee" means the person to whom an interest is appointed.

(2) "Creating instrument" means the will, trust agreement, or other document which creates or reserves the power of appointment.

(3) "Donee" means the person in whom the power of appointment is created or reserved.

(4) "Donor" means the person who creates or reserves the power of appointment.

(5) "General power of appointment" means a power exercisable in favor of the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate, whether or not it is also exercisable in favor of others. A power to appoint to any person or a power of appointment that is not expressly restricted as to appointees may be exercised in favor of the donee or the donee's creditors if exercisable during lifetime, and in favor of the donee's estate or the creditors of the donee's estate if exercisable by will.

(6) "Power of appointment" means a power to appoint legal or equitable interests in real or personal property. A power of appointment is created or reserved by a person having property subject to his or her disposition which enables the donee of the power of appointment to designate, within such limits as may be prescribed, the transferees of the property or the shares or the interests in which it shall be received. A power of appointment does not include a power of sale, a power of attorney, a power of revocation, or a power exercisable by a trustee, a directing party, as defined in s. 701.0103 (7), another fiduciary in his or her fiduciary capacity, or a trust protector, as defined in s. 701.0103 (31).

(7) "Special power of appointment" means a power of appointment that is not a general power of appointment.

History: 1971 c. 66; 1983 a. 189; 1993 a. 486; 2013 a. 92 ss. 302 to 310; Stats. 2013 s. 702.02.

702.03 Manifestation of intent to exercise a power of appointment. **(1)** Unless the person who executed it had a contrary intention, if a creating instrument creates a power of appointment that expressly requires that the power of appointment be exercised by any type of reference to the power of appointment or its source, the donor's intention in requiring the reference is presumed to be to prevent an inadvertent exercise of the power of appointment. Extrinsic evidence, as defined in s. 854.01 (1), may be used to construe the intent.

(2) In the case of other powers of appointment, a creating instrument manifests an intent to exercise the power of appointment if the creating instrument purports to transfer an interest in the appointive property which the donee would have no power to transfer except by virtue of the power of appointment, even though the power of appointment is not recited or referred to in the creating instrument, or if the creating instrument either expressly or by necessary implication from its wording interpreted in light of the circumstances surrounding its drafting and execution manifests an intent to exercise the power of appointment. If there is a general power of appointment exercisable by will with no gift in default in the creating instrument, a residuary clause or other general language in the donee's will purporting to dispose of all of the donee's estate or property operates to exercise the power of appointment in favor of the donee's estate, but in all other cases such a clause or language does not in itself manifest an intent to exercise a power of appointment exercisable by will.

History: 1997 a. 188; 2005 a. 216; 2013 a. 92.

Sub. (1) recognizes that a specific power of appointment requirement creates a presumption that the specific reference was intended to prevent inadvertent exercise. This presumption can be overcome if it can be demonstrated that the donee had knowledge of and intended to exercise the power. Czaplewski v. Shepherd, 2012 WI App 116, 344 Wis. 2d 440, 823 N.W.2d 523, 11−2521.

702.05 Exercise of a power of appointment. **(1)** CAPACITY TO EXERCISE A POWER OF APPOINTMENT. A power of appointment can be exercised only by a person who would have the capacity to transfer the property covered by the power of appointment.

(2) KIND OF INSTRUMENT AND FORMALITIES OF EXECUTION. A donee can exercise a power of appointment only by an instrument which meets the intent of the donor as to kind of instrument and formalities of execution. If the power of appointment is exercisable by will, this means a will executed with the formalities necessary for a valid will. A written instrument signed by the donee is sufficient if the donor fails to require any additional formalities or fails to indicate a will, but if the power of appointment is to appoint interests in land, it can be exercised only by an instrument executed with sufficient formalities for that purpose.

(3) CONSENT OF 3RD PERSONS. When the consent of the donor or of any other person is required by the donor for the exercise of a power of appointment, such consent must be expressed in the creating instrument exercising the power of appointment or in a separate written instrument, signed in either case by the persons whose consent is required. If any person whose consent is required dies or becomes legally incapable of consenting, the power of appointment may be exercised by the donee without the consent of that person unless the donor has manifested a contrary intent in the creating instrument.

(4) POWER OF APPOINTMENT VESTED IN 2 OR MORE DONEES. Unless the donor manifests a contrary intent, when a power of appointment is vested in 2 or more persons, all must unite in its exercise, but if one or more of the donees dies, becomes incapable of exercising the power of appointment, or renounces, releases, or disclaims the power of appointment, the power of appointment may be exercised by the others.

(5) PRESUMPTION OF NONEXERCISE OF A POWER OF APPOINTMENT. A personal representative, trustee, or other fiduciary who holds property subject to a power of appointment may administer that property as if the power of appointment was not exercised if the personal representative, trustee, or other fiduciary has no notice of the existence of any of the following within 6 months after the death of the donee of the power of appointment:

(a) A document purporting to be a will of the donee of the power of appointment if the power of appointment is exercisable by a will.

(b) Some other documentation of the donee purporting to exercise the power of appointment if the power of appointment is exercisable other than by a will.

History: 1971 c. 66; 1977 c. 309; 2005 a. 253; 2013 a. 92.

A warranty deed grants a present fee simple interest. A purported reservation of a power of appointment in a warranty deed is ineffective. Powers may be reserved and a lesser interests granted, but not by warranty deed. Lucareli v. Lucareli, 2000 WI App 133, 237 Wis. 2d 487, 614 N.W.2d 60, 99−1679.

702.07 Power of appointment to be construed as exclusive. The donee of any power of appointment may appoint the whole or any part of the appointive assets to any one or more of the permissible appointees and exclude others, except to the extent that the donor specifies either a minimum share or amount to be appointed to each permissible appointee or to designated appointees, or a maximum share or amount appointable to any one or more appointees.

History: 2013 a. 92.

702.08 Disclaimer of a power of appointment. The donee of any power of appointment may disclaim all or part of the power of appointment as provided under s. 700.27 or 854.13.

History: 1977 c. 309; 1997 a. 188; 2005 a. 216; 2013 a. 92.

702.09 Release of a power of appointment. **(1)** Unless the creating instrument expressly provides that the power of appointment cannot be released or expressly restricts the time, manner, or scope of release, the donee of any power of appointment may do any of the following:

(a) At any time completely release the donee's power of appointment.

(b) At any time or times release the donee's power of appointment in any one or more of the following respects:

1. As to the whole or any part of the property which is subject thereto.

2. As to any one or more persons or objects, or classes of persons or objects, in whose favor such power of appointment is exercisable.

3. So as to limit in any other respect the extent to or manner in which the power of appointment may be exercised.

(2) A release may be effected, either with or without consideration, by written instrument signed by the donee and delivered.

(3) Delivery of a release may be accomplished in any of the following manners, but this subsection is permissive and does not preclude a determination that a release has been delivered in some other manner:

(a) Delivery to any person specified in the creating instrument.

(b) Delivery to a trustee or to one of several trustees of the property to which the power of appointment relates, or filing with the court having jurisdiction over the trust.

(c) Delivery to any person, other than the donee, who could be adversely affected by an exercise of the power of appointment.

(d) Recording in the office of register of deeds in the county where the property is located.

History: 1993 a. 301, 486; 2013 a. 92.

702.11 Irrevocability of creation, exercise and release of a power of appointment. The creation, exercise or release of a power of appointment is irrevocable unless the power to revoke is reserved in the creation, exercise or release of the power of appointment.

History: 2013 a. 92.

702.13 Recording instruments relating to a power of appointment. **(1)** Any of the following instruments relating to a power of appointment is entitled to be recorded as a conveyance upon compliance with s. 706.05 (1):

(a) An instrument, other than a will, exercising a power of appointment.

(b) An instrument expressing consent to exercise.

(c) A disclaimer.

(d) A release.

(2) If a power of appointment is exercised by a will, a certified copy of the will and of the certificate of probate thereof may be recorded.

History: 1971 c. 41 s. 11; 1977 c. 309; 2013 a. 92.

702.15 Disposition when a special power of appointment is unexercised. If the donee of a special power of appointment fails to exercise effectively the special power of appointment, the interests which might have been appointed under the special power of appointment pass in one of the following ways:

(1) If the creating instrument contains an express gift in default, then in accordance with the terms of such gift.

(2) If the creating instrument contains no express gift in default and does not clearly indicate that the permissible appointees are to take only if the donee exercises the special power of appointment, then to the permissible appointees equally, but if the special power of appointment is to appoint among a class such as "relatives," "issue," or "heirs," then to those persons who would have taken had there been an express gift to the described class.

(3) (a) Except as provided in par. (b), if the creating instrument contains no express gift in default and clearly indicates that the permissible appointees are to take only if the donee exercises the special power of appointment, then by reversion to the donor or the donor's estate.

(b) If the creating instrument expressly states that there is no reversion in the donor, then any language in the creating instrument indicating or stating that the permissible appointees are to take only if the donee exercises the special power of appointment is to be disregarded and the interests shall pass in accordance with sub. (2).

History: 1993 a. 486; 2013 a. 92.

702.17 Rights of creditors of the donee. **(1)** GENERAL POLICY: GENERAL POWER OF APPOINTMENT. If the donee has a general power of appointment, any interest which the donee has power to appoint or has appointed is to be treated as property of the donee for purposes of satisfying claims of the donee's creditors, as provided in this section.

(2) DURING LIFETIME OF THE DONEE. If the donee has an unexercised general power of appointment, and can presently exercise the general power of appointment in favor of the donee or the donee's creditors, any creditor of the donee may by appropriate proceedings reach any interest which the donee could appoint, to the extent that the donee's individual assets are insufficient to satisfy the creditor's claim. Such an interest is to be treated as property of the donee within ch. 816. If the donee has exercised such a general power of appointment, the creditor can reach the appointed interests to the same extent that under the law relating to fraudulent conveyances the creditor could reach property which the donee has owned and transferred.

(3) AT DEATH OF THE DONEE. (a) Except as provided in par. (b), if the donee has at the time of the donee's death a general power of appointment, whether or not the donee exercises the general power of appointment, any creditor of the donee may reach any interest which the donee could have appointed or has appointed, to the extent that the claim of the creditor has been filed and allowed in the donee's estate or filed with and approved by the trustee of a trust that is revocable, as defined in s. 701.0103 (22), by the donee or jointly by the donee and the donee's spouse but not paid because the assets of the estate or revocable trust are insufficient.

(b) If the donee fails to exercise a general power of appointment, in whole or in part, that the donee has at the time of the donee's death and neither the donee nor the donee's spouse is the donor of the power, a creditor of the donee may not reach an interest subject to the power, to the extent the power was not exercised.

(4) ASSIGNMENT FOR BENEFIT OF CREDITORS. Under a general assignment by the donee for the benefit of the donee's creditors,

the assignee may exercise any right which a creditor of the donee would have under sub. (2).

(5) THIRD PARTIES IN GOOD FAITH PROTECTED. Any person acting without actual notice of claims of creditors under this section incurs no liability to such creditors in transferring property which is subject to a power of appointment or which has been appointed; and a purchaser without actual notice and for a valuable consideration of any interest in property, legal or equitable, takes such interest free of any rights which a creditor of the donee might have under this section.

(6) GENERAL POLICY: SPECIAL POWER OF APPOINTMENT. If the donee has a special power of appointment, property subject to the donee's special power of appointment is exempt from a claim of a creditor of the donee or the donee's estate.

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1975 c. 218; 1993 a. 486; 2013 a. 92.

702.19 Matters governed by common law. As to all matters within the scope of those sections of ch. 232, 1963 stats., which have been repealed, and not within this chapter or any other applicable statute, the common law is to govern. This section is not intended to restrict in any manner the meaning of any provision of this chapter or any other applicable statute.

History: 1983 a. 192 s. 304.

702.21 Applicability of chapter. The provisions of this chapter are applicable to any power of appointment existing on May 16, 1965, as well as a power of appointment created after such date.

History: 2013 a. 92.

702.22 Applicability of general transfers at death provisions. Chapter 854 applies to transfers at death under an instrument that creates or exercises a power of appointment.

History: 1997 a. 188.

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Tax Intensive

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October 18, 2023

Navigating IRS Appeals: Resolving IRS Disputes without Litigation

Settling IRS Disputes Without Litigation

Exam Procedures Overview

1. A filed return is processed at a regional IRS Campus. Returns are checked for correct computations and information. Most self-assessed tax liabilities are accepted by the IRS. If a return is not acceptable to the IRS, it may be referred for examination. There are several different types of examinations.
2. Types of Examinations
    a. Automated Under Reporter (AUR)
        i. The purpose of AUR is to match third party documents to taxpayer provided information. If there is a discrepancy or mismatched information, then the IRS will send computer-generated letters to the taxpayers asking for additional information. IRM 4.19.3 (individuals); IRM 4.119.4 (businesses).

    b. Automated Substitute for Return (SFR)
        i. Similar to AUR procedures, but these procedures may be followed when there is third party information received, but no return from taxpayer. In this case, the IRS will file a return and assess tax based on the third-party information. IRM 5.18.1.2.

    c. Automated Correspondence Exam
        i. Similar to AUR but may include multiple issues. IRM 4.19.20.1.

    d. Campus Examination
        i. Correspondence examination. A Tax Examiner is assigned after the taxpayer responds to the initial correspondence received from the IRS.

e. Field Examination

    i. In person examination with an assigned Revenue Agent. Depending on the complexity of the return, the Revenue Agent may seek to inspect the taxpayer's books and records, visit the taxpayer's place of business, or interview the taxpayer. IRM 4.10.3.5.

3. Examination Outcomes – Agreed or Disagreed

    a. No Change – the Revenue Agent does not make any changes to the taxpayer's return.

    b. Agreed – The Taxpayer and Revenue Agent agree to proposed changes.

    c. Partially Agreed – The Revenue Agent proposes changes to the taxpayer's return. The Taxpayer and RA agree to some of the proposed changes.

    d. Unagreed – the taxpayer and Revenue Agent do not agree to proposed changes.

Taxpayer First Act of 2019

- What is the Independent Office of Appeals?
    - Established under IRC § 7803(e).
    - Purpose of Appeals is to settle taxpayer disputes by hearing taxpayer protests, holding conferences, and negotiating settlements. IRM 8.1.1.1.
- Appeals Mission Statement:
    - "Our mission is to resolve tax controversies without litigation, on a basis which is fair and impartial to both the Government and you, and in a manner that will enhance voluntary compliance and your confidence in the integrity and efficiency of the Service." (https://www.irs.gov/appeals/appeals-an-independent-

organization#:~:text=Our%20mission%20is%20to%20resolve,and%20efficiency%20of%20the%20Service)

Getting to Appeals:

1. **Traditional Path:**
   a. Revenue Agent's Report (RAR or 30-day Letter).
   b. Statute of limitations issues (at least 12 months left for individuals).
   c. Publication 5.
   d. Protest required.
      i. Special rule for under $25k a year.
      ii. How detailed should the Protest be?
2. **Early Involvement:**
   a. Generally, in order for Appeals to have jurisdiction over a matter the taxpayer's examination must be complete, i.e. the examiner must have issued a summary report. There are exceptions for fast track and early referral.
      i. Early Referral Program. Rev. Proc. 99-28.
         1. Program that allows Exam and Appeals to work together on specific unagreed issues during the examination.
            a. Issue must still be in exam, i.e., 30-day letter has not been issued.
            b. The issue must be fully developed by exam.
            c. Appeals must be able to resolve the issue before the remaining issues are resolved by exam.
            d. Cannot be a designated issue for litigation.

ii. Fast Track Settlement.

1. During Fast Track, Appeals acts as mediator to taxpayer and examining officer.
2. All issues must be fully developed.
3. Taxpayer must have acted in good faith during exam.
4. Must be a non-docketed case.

3. Docketed Cases:

a. No Protest was filed (or accepted).

b. Notice of Deficiency (90-day letter) issued.

c. Petition filed in the Tax Court.

4. Appeals consideration is unavailable when:

a. Criminal prosecution.

b. Tax protestor arguments.

c. Designated as a litigation vehicle.

5. Rev. Proc. 2016-22 provided an update to Appeals procedures for consideration by Appeals of cases docketed in Tax Court

a. Generally, automatic referral to Appeals if not previously considered and taxpayer agrees.

b. Appeals may be denied for cases Designated for litigation.

c. Appeals may also be denied if referral to Appeals "is not in the interest of sound tax administration"

i. Decision made by Counsel, not Appeals.

Appeals Jurisdiction:

- Appeals has jurisdiction to hear many types of cases, including:
    - Determination of taxpayer liability for income, estate, gift, employment and excise taxes, plus additions to tax, additional amounts and assessable penalties.
    - Post assessment penalty appeals.
    - Determination or continuation of tax entity classification for charitable entities.
    - Offers in compromise.
    - Consideration of request for the abatement of interest.
    - Evaluation of taxpayer requests for administrative costs under §7430.
    - Consideration of jeopardy levies.
    - Recommendations concerning settlement offers in refund suits.
    - Lien, levy or seizure action that will or was taken and denials to issue lien certificates.
    - § 6672 Trust Fund Recovery Penalty (100% penalty) cases.
    - Collection Due Process (CDP) hearing with Appeals when the taxpayer receives a §6320 notice.

Statute of Limitations:

- Generally, under IRC § 6501(a) a tax assessment must be made within three years after a return has been filed.
- The running of the IRC §6501(a) three-year period for making an assessment is generally triggered when a return is filed by the taxpayer against whom a deficiency has been proposed or assessed.

- The period of time for assessment may be extended by agreement of the taxpayer and the IRS. IRC § 6501(c)(4)(A).
- There must sufficient time left on the statute of limitations for Appeals to consider a protest.
- How much time is needed on the statute before you can submit your protest?
    - 12 months for individuals and other non-TEFRA cases
    - Nine months left when case gets to Appeals for estate and excise tax cases.
        - Note: The statute of limitations for an estate cannot be extended, so administrative appeals are rare.
    - 20 months for TEFRA cases.
        - IRM §25.6.23.7.1
    - 18 months for BBA cases. IRM § 4.31.9.10.2
- If there is less time that required and the taxpayer does not agree to extend the statute of limitations, then the IRS will prepare the case for SNOD/ FPAA, etc.
- Pros and cons to extending the statute of limitations on assessment:
    - Pro: Avoid (or delay) litigation which is public information.
    - Pro: Keep costs low to the taxpayer by avoiding litigation.
    - Con: Delay resolution for the taxpayer.
    - Con: If a settlement cannot be reached with Appeals, then the Taxpayer may have to file a petition with the Tax Court and begin the litigation process.

The 30-day letter:

- After the close of an examination, the IRS will issue the 30-day letter. the 30-day letter includes the examiner's report, which contains explanations and the basis for all adjustments. Reg. §601.105(d)(1).
- For amounts in controversy for more than $25,000 (per tax period) a taxpayer must submit a formal written protest.
- If less than $25,000 then only a written request is required. Reg. §601.105(d)(2)(iii), Prop. Reg. §601.106(b)(4)(iii).
- Extensions of time to submit a protest are not formally provided for in the regulations, but an extension of time to respond may be granted on a case-by-case basis by the examining officer.
- Common reasons for extension:
    - A taxpayer retains a new representative who needs more time to prepare a protest.
    - The taxpayer or his representative is ill.
    - The case involves complex issues, requiring considerable legal research or factual development.
    - Practice Tip: Document extension approval in writing by fax/ email and also mailing the letter to Revenue Agent.

The Formal Protest:

- Follow the instructions included with the 30-day letter. Treas. Reg. §601.105(d)(2)(v).
- Information required to be included in the protest:

    - Statement that the taxpayer wants to appeal the findings from the examination.
    - Taxpayer name, address, and phone number.
    - Provide a copy of the examination report as an attachment.
    - List each tax years or periods being protested.
    - List of all issues being disputed.
    - List of all unagreed adjustments.
    - A statement of facts used by the taxpayer to support their position.
    - All law or authority relied on by the taxpayer to support their position.
    - A declaration under penalties of perjury attesting that the statement of facts is true and accurate.
        - "Under penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."
        - Found in Publication 5.
- If the protest is missing any of the above information, the IRS may reject the protest and require the taxpayer to correct the missing information.
- In addition to the required information, it is best practices to include exhibits and documentary evidence to support the taxpayer's position.
- Practical tip: In addition to the code, regulations, and case law when preparing a protest other "authorities" like private letter rulings, chief counsel advice, field service advice, audit technique guides, and even, publications and instructions can be useful in presenting your client's position.

Preparing for Appeals Conference

How to get information from the Government:

- Specified taxpayers under the Taxpayer First Act have the right to non-privileged portion of case file regarding disputed issues at least 10 days before the Appeals conference. I.R.C. § 7803(e)(7).
  - Natural persons with AGI of $400,000 or less
  - Other taxpayers with gross receipts of $5 million or less
- Other taxpayers – FOIA request (https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines) and FOIA suits.
- Direct requests to Appeals.

Conference and Settlements with Appeals:

- Appeals conferences are typically informal with the participants seated around a conference table.
- Practice Tip: The conference is a presentation, and a representative should provide the Appeals Officer with slides, talking points, or an outline.
- If the taxpayer introduces new information or legal arguments, Appeals may refer the case back to examination for additional analysis.
- Appeals generally will not reopen issue settled in exam.
- Depending on the complexity of the issue, there may need to be more than one Appeals conference.
- Chief Counsel Memorandum CC-2004-036 – Appeals should not waive penalties on the basis of hazards of litigation or as a "bargaining chip."

- Hazards of Litigation Standard – appeals should fairly settle cases and consider all hazards to the government to litigate the case when compared to the merits of the taxpayer's case. IRM 1.2.1.9.6.
- **Practice Tip:** After reaching an agreement with the Appeals Officer confirm the basis for settlement**.** Best practice is to produce a writing – a letter or email – and send it to the Appeals Officer for confirmation. Be sure to cover the resolution of every adjustment in the 30-day letter, including penalties and even automatic or consequential adjustments. Assume that nothing is "understood."
- After agreeing to the settled issues, the Appeals Officer will obtain a computation and prepare the formal settlement documents.
- Settlement documents **–**
    - The most common form used to settle a matter in Appeals is Form 870-AD. It reduces the settlement to a tax due (or refund) and includes additions to tax, i.e., penalties.
        - The Form 870-AD provides the finality as to tax liability.
    - Another settlement document is the Form 906, Closing Agreement on Final Determination Covering Specific Matters.
        - Form 906 provides finality about specific matters (like the amount of an asset's basis).

Settling Tax Disputes without Litigation IRS Appeals

Presented by:
Andrew R. Vazquez, Esq.
Asbury Law Firm
Atlanta, Georgia

2023 National Conference on Special Needs Planning and Special Needs Trusts
October 18, 2023

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Biography

Andrew R. Vazquez represents clients in complex federal tax litigation, federal and state tax controversies, and federal and state tax collection resolution.

Andrew received his B.A. from Georgia State University and his J.D. from the Georgia State University College of Law.

He is the Immediate Past Chair of the Georgia Bar Association Taxation Law Section

Andrew has been named to "Best Lawyers: Ones to Watch" by Best Lawyers in America for successive years.

In law school, Andrew represented individuals facing federal income tax controversy and collection issues as a student attorney and graduate research assistant in the Philip C. Cook Low-Income Taxpayer Clinic. While in the clinic, he earned the Atlanta Bar Foundation J.B. Moore Tax Clinic Client Service Award.

Andrew also was an extern with the IRS Office of Chief Counsel during law school.

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IRS Examinations

- Automated Under Reporter (AUR)
- Automated Substitute for Return (SFR)
- Automated Correspondence Exam
- Campus Examination
- Field Examination

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Discussion

Your client is about to close her examination unagreed. You expect to receive the 30-day letter in the next week or so. She asks you what her options are for resolving this. She tells you that she is not afraid to spend money, so she is not afraid to go to court with the IRS. However, she is in a very public child custody dispute with her ex-husband. She doesn't want him to know that the IRS thinks she has unreported income. What do you advise her?

IRS Independent Office of Appeals

Taxpayer First Act (I.R.C. § 7803(e))

- Name Change: IRS Independent Office of Appeals
- Purpose of Appeals is to settle taxpayer disputes by hearing taxpayer protests, holding conferences, and negotiating settlements.

Appeals Mission Statement

- "Our mission is to resolve tax controversies without litigation, on a basis which is fair and impartial to both the Government and you, and in a manner that will enhance voluntary compliance and your confidence in the integrity and efficiency of the Service."

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Statute of Limitations

- Nine months (270 days) left when case gets to Appeals for estate and excise tax cases.
- 12 months (365 days) left for individuals and other non-TEFRA cases.
  - Reduced to six months (180 days) when the originating function returns a case that was previously returned to them for consideration of new information or a new issue.
- 20 months (600 days) for TEFRA cases.
- 18 months for BBA cases.

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Paths to the Office of Appeals

1. Traditional path
   - Revenue Agent's Report (RAR or 30-day Letter)
   - Statute of limitations issues (at least 12 months left)
   - Publication 5
   - Protest required
     - Special rule for under $25k a year
     - How detailed should the Protest be?
2. Early involvement
   - Early Referral Program
   - Fast Track Settlement

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Paths to the Office of Appeals

3. Docketed cases
   - No Protest was filed (or accepted)
   - Notice of Deficiency (90-day letter) issued
   - Petition filed in the Tax Court
4. Unavailability of Appeals consideration
   - Criminal prosecution
   - Tax protestor arguments
   - Designated as a litigation vehicle

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Appeals Jurisdiction

- Determination of taxpayer liability for income, estate, gift, employment and excise taxes, plus additions to tax, additional amounts and assessable penalties.
- Post assessment penalty appeals.
- Determination or continuation of tax entity classification for charitable entities.
- Offers in compromise.
- Consideration of request for the abatement of interest.
- Evaluation of taxpayer requests for administrative costs under §7430.
- Consideration of jeopardy levies.
- Recommendations concerning settlement offers in refund suits.
- Lien, levy or seizure action that will or was taken and denials to issue lien certificates.
- § 6672 Trust Fund Recovery Penalty (100% penalty) cases.
- Collection Due Process (CDP) hearing with Appeals when the taxpayer receives a §6320 notice.

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The 30-Day Letter

- After the close of an examination, the IRS will issue the 30-day letter. the 30-day letter includes the examiner's report, which contains explanations and the basis for all adjustments.
- For amounts in controversy for more than $25,000 (per tax period) a taxpayer must submit a formal written protest.
- If less than $25,000 then only a written request is required.
- Extensions of time to submit a protest are not formally provided for in the regulations, but an extension of time to respond may be granted on a case-by-case basis by the examining officer.

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Formal Protest

- Publication 5
- Opportunity for taxpayer to present his position.
  - State all relevant facts
  - List all disputed issues and unagreed adjustments
  - State law and authority relied on by the taxpayer.
  - A good protest should provide a concise, affirmatively stated summary of the points relied on by the taxpayer.

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Getting Information from the Government

- Specified taxpayers under the Taxpayer First Act have the right to non-privileged portion of case file regarding disputed issues at least 10 days before the Appeals conference. I.R.C. § 7803(e)(7).
  - o Natural persons with AGI of $400,000 or less
  - o Other taxpayers with gross receipts of $5 million or less
- Other taxpayers – FOIA request (https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines) and FOIA suits.
- Direct requests to Appeals.

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Appeals Procedures

- Conferences are informal
- Appeals Judicial Approach and Culture (AJAC)
  - Less involvement in developing information
  - Discouraged from raising new issues
- Settlement
  - Concession
  - No nuisance settlements (80/20)
  - “Hazards of litigation”
  - Qualified Settlement Offer (QSO)

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Whether to Seek Appeals Consideration

- Possible benefits
  - Prospect of efficiently settling on a satisfactory basis
  - Resolution can be comprehensive
  - Less publicity than litigation
  - Sometime necessary to “exhaust administrative remedies”
- Possible drawbacks
  - Examining agents miss adjustments or arguments
  - May have to extend the statute of limitations
  - Appeals Officers have little flexibility with coordinated issues

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Conclusion of Examination or Appeal

- No-change cases
- Agreed or partly agreed cases
  - Common agreements
    - Form 870
    - Form 870-AD
  - Less common – Closing Agreements under IRC § 7121
    - Form 906 “Closing Agreement as to Final Determination Covering Specific Matters”
    - Form 866 “Agreement as to Final Determination of Tax Liability”
- Unagreed cases
  - Thirty-Day Letter (RAR)
  - Ninety-Day Letter (Notice of Deficiency)

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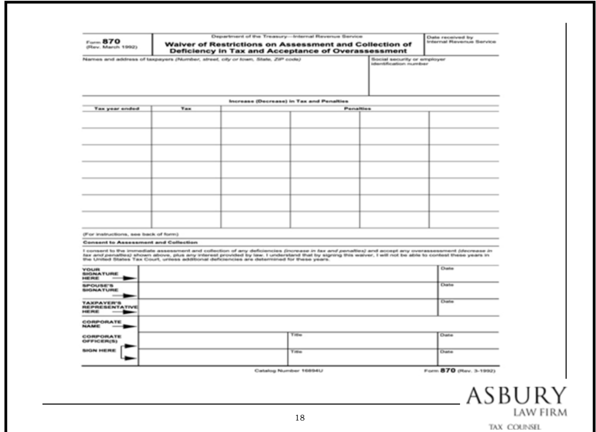

Form 870 (Rev. March 1992)

Department of the Treasury—Internal Revenue Service

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment

Date received by Internal Revenue Service

Names and address of taxpayers (*Number, street, city or town, State, ZIP code*)

Social security or employer identification number

Increase (Decrease) in Tax and Penalties

Tax year ended	Tax	Penalties			

(*For instructions, see back of form*)

Consent to Assessment and Collection

I consent to the immediate assessment and collection of any deficiencies (*increase in tax and penalties*) and accept any overassessment (*decrease in tax and penalties*) shown above, plus any interest provided by law. I understand that by signing this waiver, I will not be able to contest these years in the United States Tax Court, unless additional deficiencies are determined for these years.

YOUR SIGNATURE HERE			Date
SPOUSE'S SIGNATURE			Date
TAXPAYER'S REPRESENTATIVE HERE			Date
CORPORATE NAME			
CORPORATE OFFICER(S) SIGN HERE		Title	Date
		Title	Date

Catalog Number 16894U

Form **870** (Rev. 3-1992)

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Taxpayer Advocate Service

- Purposes of TAS
  - Individual help
    - Hardship or emergency
    - "Traffic cop" needed
    - Normal channels have broken down
    - Unique situation where "one size doesn't fit all"
  - Systemic help
    - A pattern in issues that are causing a problem
    - Annual Report to Congress
- Request for Taxpayer Advocate Service Assistance
  - Form 911

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STETSON
LAW
Center for
Elder Justice
Access and Justice For All®

Tax Intensive

Wednesday
October 18, 2023

The Tax "Ins and Outs" of Gifting

The Tax "Ins and Outs" of Gifting

Fact Pattern:

A recently retired married couple (ages 68 and 67) comes to see you to update their estate planning. They have both done very well for themselves. They are both in excellent health for their ages. They have four adult children, two of whom are disabled as determined by the Social Security Administration ("SSA"). Each of the non-disabled children are married, have children of their own, and live comfortable middle-class lives. Their disabled children live with them and they receive benefits from the SSA.

They have a nice home and a nice lake home. They also own a unit in a beachfront condominium high-rise in Florida. They have cash accounts (i.e., checking, savings, and certificates of deposit) at two banks and at a credit union. They have a joint investment (or brokerage) account with a significant amount of appreciated assets. They have a joint non-qualified tax-deferred annuity. Each has significant assets in retirement accounts (including 401(k)s and IRAs). In addition, they both have life insurance policies.

Their monthly income consists of social security retirement benefits and a pension.

In the last five years, the couple has made gifts of appreciated stock to all of their children, but the gifts to the disabled children have been made to third-party supplemental/special needs trusts. They are contemplating additional gifts, but would like your advice before making them.

In addition, they are expecting all of their children to receive cash and shares of publicly-traded stock from the probate estate of their maternal grandmother in the near future.

Questions:

1. What other information do you want to know about these clients?

2. What are the "tax consequences" from the facts presented?

3. What are the "tax issues" to be aware of with respect to their estate planning?

4. What "tax opportunities" may be available with respect to their estate planning?

The Tax Ins and Outs of Gifting

DEIRDRE R. WHEATLEY-LISS, ESQ. LL.M (TAXATION), CELA

MARK MUNSON, CELA, CAP

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Fact Pattern

A recently retired married couple (ages 68 and 67) comes to see you to update their estate planning. They have both done very well for themselves. They are both in excellent health for their ages. They have four adult children, two of whom are disabled as determined by the Social Security Administration ("SSA"). Each of the non-disabled children are married, have children of their own, and live comfortable middle-class lives. Their disabled children live with them and they receive benefits from the SSA.

They have a nice home and a nice lake home. They also own a unit in a beachfront condominium high-rise in Florida. They have cash accounts (i.e., checking, savings, and certificates of deposit) at two banks and at a credit union. They have a joint investment (or brokerage) account with a significant amount of appreciated assets. They have a joint non-qualified tax-deferred annuity. Each has significant assets in retirement accounts (including 401(k)s and IRAs). In addition, they both have life insurance policies.

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Fact Pattern

Their monthly income consists of social security retirement benefits and a pension.

In the last five years, the couple has made gifts of appreciated stock to all of their children, but the gifts to the disabled children have been made to third-party supplemental/special needs trusts. They are contemplating additional gifts, but would like your advice before making them.

In addition, they are expecting all of their children to receive cash and shares of publicly-traded stock from the probate estate of their maternal grandmother in the near future.

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Fact Pattern

Questions:

1. What other information do you want to know about these clients?
2. What are the "tax consequences" from the facts presented?
3. What are the "tax issues" to be aware of with respect to their estate planning?
4. What "tax opportunities" may be available with respect to their estate planning?

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Fact Pattern – Worksheet

Family		
Husband	68	
Wife	67	
Child 1	Adult - grandchildren	
Child 2	Adult - grandchildren	
Child 3	Adult - Disabled	
Child 4	Adult - Disabled	

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Fact Pattern – Worksheet - Income

Income

Description	Husband	Wife
Social Security	$ 3,500	$ 3,000
Pension	$ 9,500	$ 4,000
Totals	**$ 13,000**	**$ 7,000**
Total Joint Income	**$ 20,000**	

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Fact Pattern – Worksheet - Assets

Assets

Description	Type	Joint	Husband	Wife
Home	Real Estate	$ 1,500,000		
Lake Home	Real Estate	$ 1,150,000		
Florida Home	Real Estate	$ 2,200,000		
Bank	Cash	$ 250,000		
Bank	Checking	$ 125,000		
Bank	CD			$ 250,000
Credit Union	Cash	$ 75,000		
Credit Union	CD		$ 250,000	$ 250,000
Taxable Investments	Brokerage	$ 7,700,000		
Non-Qualified Annuity	Annuity	$ 1,500,000		
401k	Retirement		$ 3,500,000	$ 550,000
IRA	Retirement		$ 2,800,000	$ 1,400,000
Life Insurance	Life Insurance		$ 4,000,000	$ 2,000,000
Totals		**$ 14,500,000**	**$ 10,550,000**	**$ 4,450,000**
Net Worth	**$ 29,500,000**			

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Fact Pattern – Worksheet – Estate Tax – No Planning

1. Taxable Estate - No Planning - 2023

Taxable Estate	$ 29,500,000
Exemption - Husband	$ 12,920,000
Exemption - Wife	$ 12,920,000
Taxable Estate	$ 3,660,000
Estate Tax - 40%	$ 1,464,000
Net to Heirs	**$ 28,036,000**

2. Taxable Estate - No Planning - 2026

Taxable Estate	$ 29,500,000	
Exemption - Husband	$ 7,000,000	*<-- Reduced Exemption*
Exemption - Wife	$ 7,000,000	*<-- Reduced Exemption*
Taxable Estate	$ 15,500,000	
Estate Tax - 40%	$ 6,200,000	
Net to Heirs	**$ 23,300,000**	
Compare to 1	**$ 4,736,000**	

Note – Over simplified example for illustration.

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Fact Pattern – Worksheet – Estate Tax – ILIT Planning

3. Taxable Estate - ILIT - 2023

Item		Amount	Note
Taxable Estate	$	23,500,000	
Lifetime Gifts	$	800,000	*<-- Split Lifetime Gifts CSV Ins.*
Adjusted Taxable Estate	$	24,300,000	
Exemption - Husband	$	12,920,000	
Exemption - Wife	$	12,920,000	
Taxable Estate	$	-	
Estate Tax - 40%	$	-	
ILITs	$	6,000,000	
Net to Heirs	**$**	**29,500,000**	
Compare to 1	**$**	**1,464,000**	

4. Taxable Estate - ILIT - 2026

Item		Amount	Note
Taxable Estate	$	23,500,000	
Lifetime Gifts	$	800,000	*<-- Split Lifetime Gifts CSV Ins.*
Adjusted Taxable Estate	$	24,300,000	
Exemption - Husband	$	7,000,000	*<-- Reduced Exemption*
Exemption - Wife	$	7,000,000	*<-- Reduced Exemption*
Taxable Estate	$	10,300,000	
Estate Tax - 40%	$	4,120,000	
ILITs	$	6,000,000	
Net to Heirs	**$**	**25,380,000**	
Compare to 2	**$**	**2,080,000**	

Note – Over simplified example for illustration.

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Fact Pattern – Worksheet – Estate Tax – $12 Million Planning (ILIT + Other Assets)

5. Taxable Estate - $12M Gift - 2023

Item		Amount	Note
Taxable Estate	$	12,300,000	
Lifetime Gifts	$	12,000,000	*<-- Gift Ins + H Gift to Trust*
Adjusted Taxable Estate	$	24,300,000	
Exemption - Husband	$	12,920,000	
Exemption - Wife	$	12,920,000	
Taxable Estate	$	-	
Estate Tax - 40%	$	-	
ILITs	$	6,000,000	
Gift	$	11,200,000	*<-- Gift over Ins. CSV*
Growth Assets After Gift	$	1,000,000	<-- KEY - Growth after Gift
Net to Heirs	**$**	**30,500,000**	
Compare to 1	**$**	**2,464,000**	
Compare to 3	**$**	**1,000,000**	

6. Taxable Estate - ILIT - 2026

Item		Amount	Note
Taxable Estate	$	12,300,000	
Lifetime Gifts	$	12,000,000	*<-- Gift Ins + H Gift to Trust*
Adjusted Taxable Estate	$	24,300,000	
Exemption - Husband	$	7,000,000	
Exemption - Wife	$	7,000,000	
Taxable Estate	$	10,300,000	
Estate Tax - 40%	$	4,120,000	
ILITs	$	6,000,000	
Gift	$	11,200,000	*<-- Gift over Ins. CSV*
Growth Assets After Gift	$	1,000,000	<-- KEY - Growth after Gift
Net to Heirs	**$**	**26,380,000**	
Compare to 2	**$**	**3,080,000**	
Compare to 4	**$**	**1,000,000**	

Note – Over simplified example for illustration.

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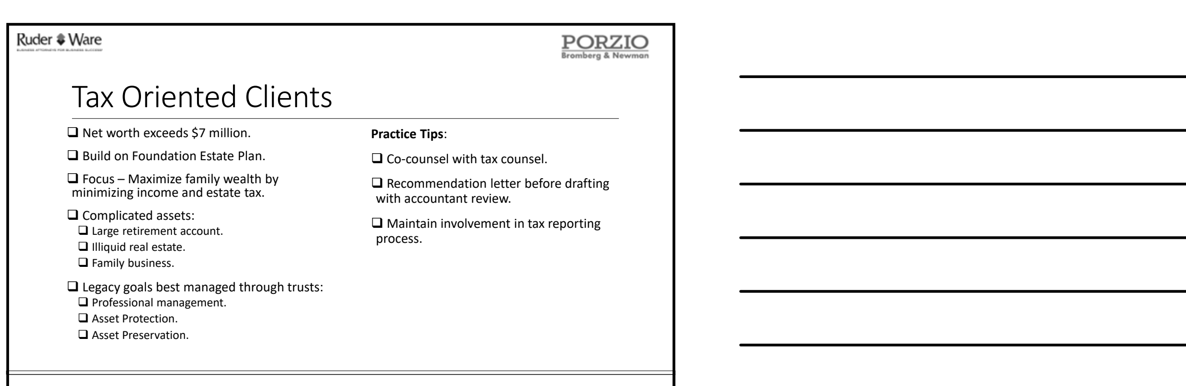

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Problems and Opportunities

Problems / Constraints
- ❑ Gift and Estate Tax.
- ❑ Basis Step-Up
- ❑ Generation Skipping Tax.
- ❑ Federal and State Income Tax.
- ❑ Capital Gain Tax
- ❑ Green Book

Opportunities
- ❑ Valuation
- ❑ Income management (shifting and matching)
- ❑ Gifting – exclude growth from taxable estate
- ❑ Trust situs

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Gift and Estate Tax

US Citizen Spouse	Unlimited
Non-US Citizen Spouse	$175,000
Gift and Estate Tax Exemption Amount	$12,920,000
Annual Exclusion Gifts	$17,000

Practice Tips:
- ❑ Sunset to $7 million 2026 – Use it or lose it?
- ❑ Anti-Clawback Regulation Treasury Reg 20.2010-1(c)
- ❑ Non-US Donors

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Gift and Estate Tax – Basis Issues

Included in Taxable Estate	Basis step up §1014
Gifts	Basis Carryover §1015
Community Property	Basis step-up in 100% of the property
Income in Respect of a Decedent (IRD) (e.g. IRA)	No-Basis Step-up

Practice Tips:
- ❑ Gift high basis property.
- ❑ Swap powers in Grantor Trusts.
- ❑ Alaska Community Property Trust.
- ❑ Accelerate IRA distributions if higher generation in a lower federal / state income tax bracket.

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Generation Skipping Tax

Tax Rate	40%	Separate tax from Gift / Estate Tax
Skip Person	(1) Lineal descendant 2 or more generations below; (2) non-lineal descendant 37 ½ years younger	
Direct Skip	To (1) Skip Person, or (2) trust where all beneficiaries Skip Persons	Subject Gift/Estate and GST Tax at time of gift
Taxable Termination	Death of a non-skip person (e.g. child dies and pass to grandchild)	Subject Gift/Estate at time of gift and GST Tax at time of Taxable Termination
Taxable Distribution	Distribution to a Skip Person not a Taxable Termination	Subject Gift/Estate at time of gift and GST Tax at time of Taxable Termination
GST Tax Annual Exclusion	$17,000 single Skip Person / trust included in Skip Person estate	

Practice Tips:

- ❑ Exemption - $12,092,000
- ❑ NOT portable – must be used in the estate of the first spouse to die (reverse QTIP Trust)
- ❑ Non-US Donors

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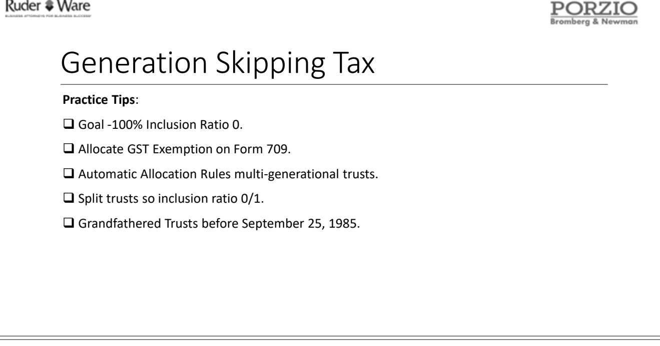
Generation Skipping Tax



Practice Tips:

- ❑ Goal -100% Inclusion Ratio 0.
- ❑ Allocate GST Exemption on Form 709.
- ❑ Automatic Allocation Rules multi-generational trusts.
- ❑ Split trusts so inclusion ratio 0/1.
- ❑ Grandfathered Trusts before September 25, 1985.

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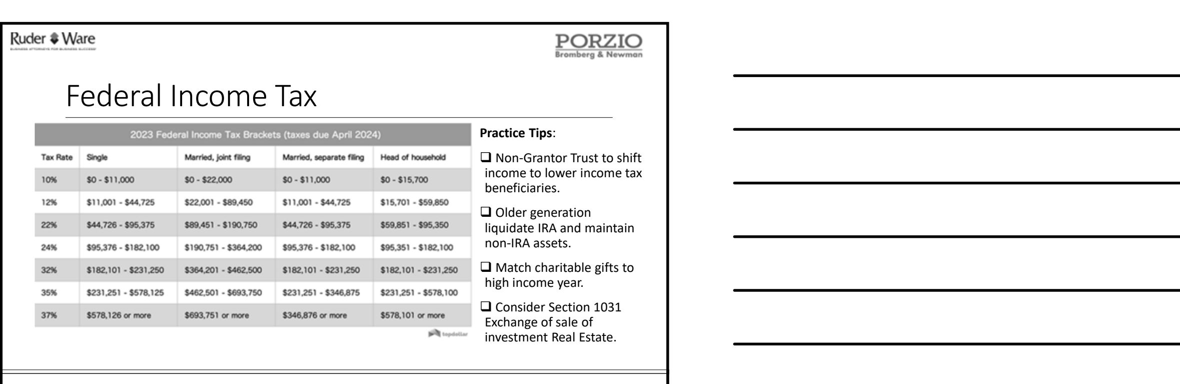
Federal Income Tax



2023 Federal Income Tax Brackets (taxes due April 2024)

Tax Rate	Single	Married, joint filing	Married, separate filing	Head of household
10%	$0 - $11,000	$0 - $22,000	$0 - $11,000	$0 - $15,700
12%	$11,001 - $44,725	$22,001 - $89,450	$11,001 - $44,725	$15,701 - $59,850
22%	$44,726 - $95,375	$89,451 - $190,750	$44,726 - $95,375	$59,851 - $95,350
24%	$95,376 - $182,100	$190,751 - $364,200	$95,376 - $182,100	$95,351 - $182,100
32%	$182,101 - $231,250	$364,201 - $462,500	$182,101 - $231,250	$182,101 - $231,250
35%	$231,251 - $578,125	$462,501 - $693,750	$231,251 - $346,875	$231,251 - $578,100
37%	$578,126 or more	$693,751 or more	$346,876 or more	$578,101 or more

topdollar

Practice Tips:

- ❑ Non-Grantor Trust to shift income to lower income tax beneficiaries.
- ❑ Older generation liquidate IRA and maintain non-IRA assets.
- ❑ Match charitable gifts to high income year.
- ❑ Consider Section 1031 Exchange of sale of investment Real Estate.

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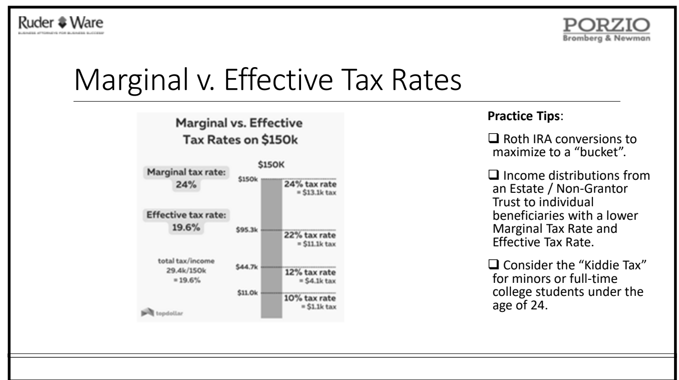

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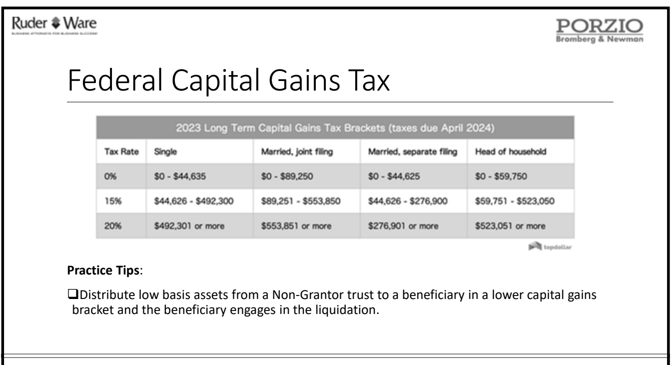

2023 Long Term Capital Gains Tax Brackets (taxes due April 2024)

Tax Rate	Single	Married, joint filing	Married, separate filing	Head of household
0%	$0 - $44,635	$0 - $89,250	$0 - $44,625	$0 - $59,750
15%	$44,626 - $492,300	$89,251 - $553,850	$44,626 - $276,900	$59,751 - $523,050
20%	$492,301 or more	$553,851 or more	$276,901 or more	$523,051 or more

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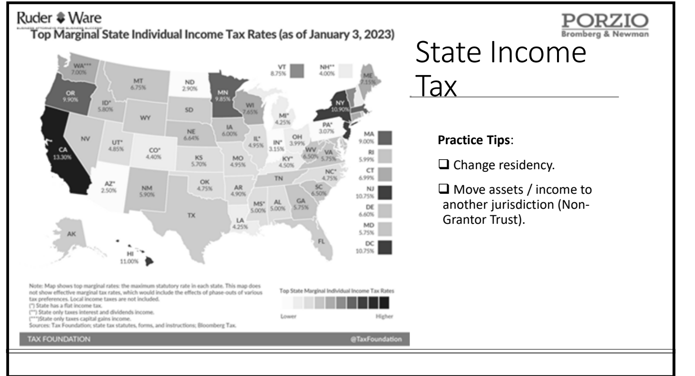

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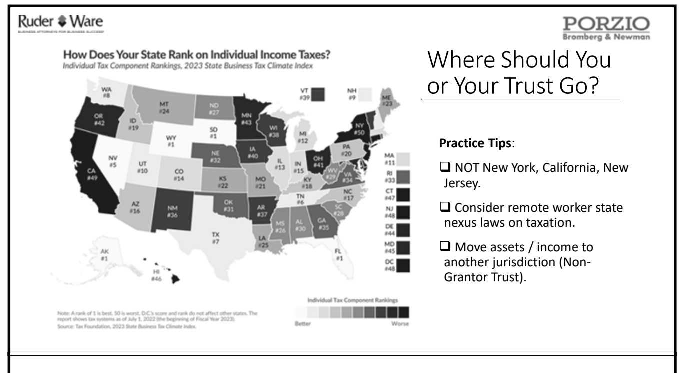

Where Should You or Your Trust Go?

Practice Tips:

- ❑ NOT New York, California, New Jersey.
- ❑ Consider remote worker state nexus laws on taxation.
- ❑ Move assets / income to another jurisdiction (Non-Grantor Trust).

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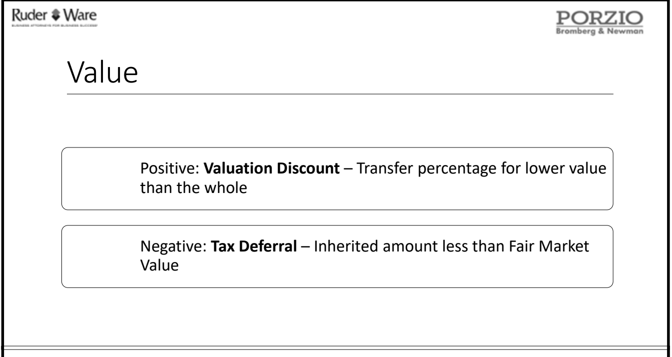
Value



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Valuation Discount – Positive

Enterprise Value	$ 1,000,000
Gifted Interest	10%
Undiscounted Value	$ 100,000
Lack of Control	15%
Discount for Lack of Control	$ (15,000)
Lack of Marketabilty	20%
Discount for Lack of Marketability	$ (17,000)
Discounted Value	**$ 68,000**
Tax Exemption Shielded	$ 32,000

Practice Tips:

- ❑ Qualified Appraiser Rev. Rul. 59-60.
- ❑ Consider Non-Tax purposes of any entity: common management, asset protection, preserve whole assets, investment philosophy;
- ❑ Use valuation formulas in gifts: "I hereby transfer X membership interests in ABC, LLC with a fair market value as finally determined for gift tax purposes equal to $ [specific dollar amount]". (*Wandry*)

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Tax Deferral - Negative

Example : IRA Owner Dies before Required Beginning Date (Age 72)		
Date of Death	3/31/2022	
Age	69	
Eligible Designated Beneficiary	Yes	
Payout Period	10 years	
RMD During Payout Period	No	
IRA DOD Balance	$ 1,000,000	Included Taxable Estate
Withdraw in 2022		
Federal Tax	37%	$ 370,000
State Tax	10.75%	$ 107,500
Net to Beneficiary	**$ 522,500**	
Withdraw in 2032		
Growth at 5%	$ 1,628,895	
Federal Tax	37%	$ 602,691
State Tax	10.75%	$ 175,106
Net to Beneficiary	**$ 851,097**	
If Estate Taxable	**$ (400,000)**	

Practice Tips:

- ❑ New SECURE Act Regulations – Natalie Choate.
- ❑ KEY – Annual RMD for death after RBD (EDB life expectancy AND 10-year rule).
- ❑ Consider accelerated lifetime distributions at a lower tax bracket (financial advisor projections).
- ❑Still consider Self Directed-IRA (Peter Theil plan)

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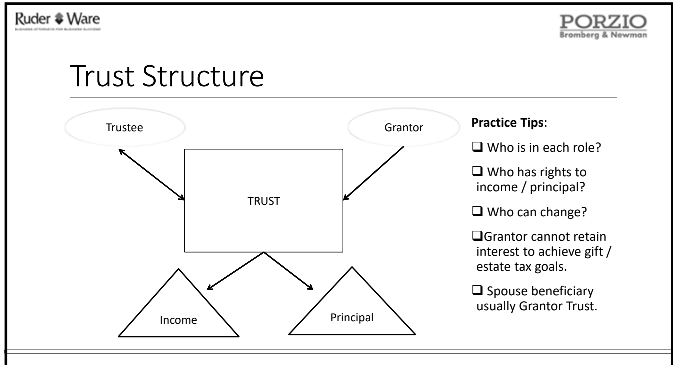

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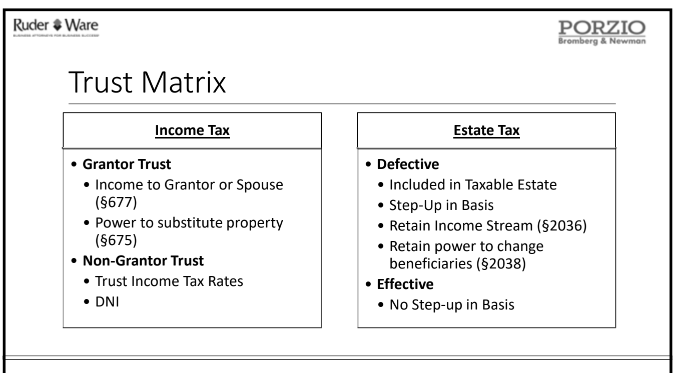

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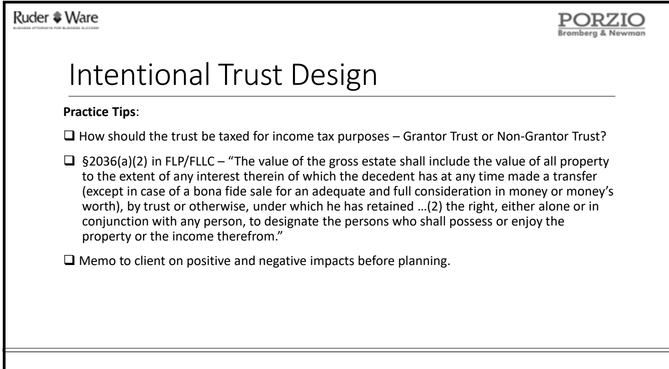

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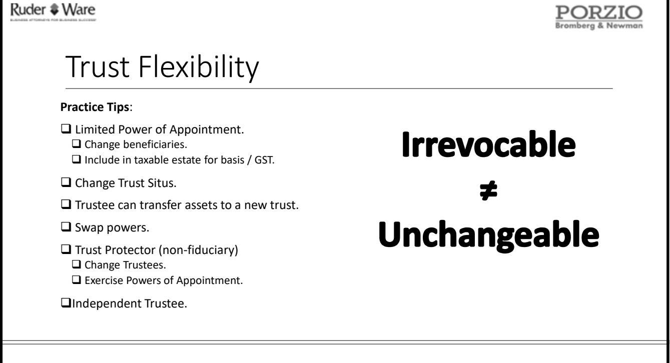

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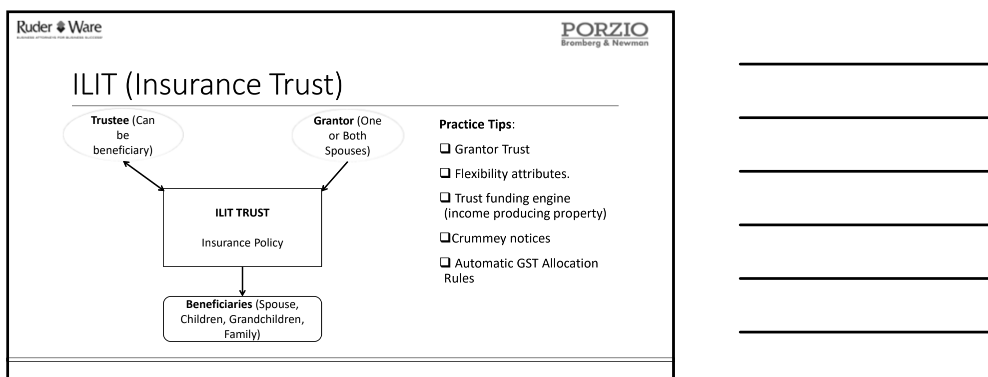

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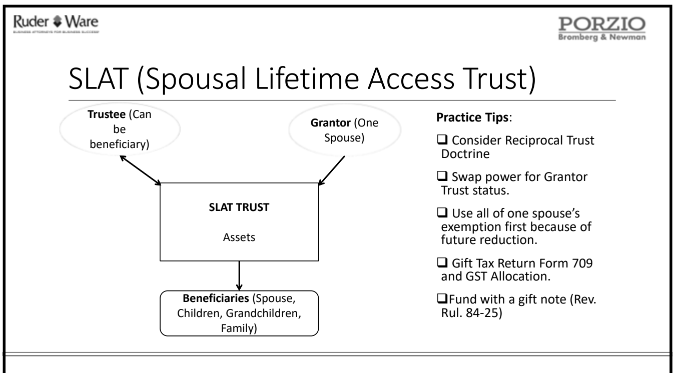

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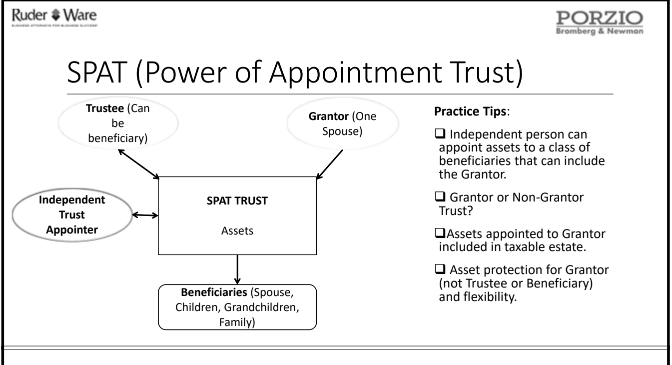

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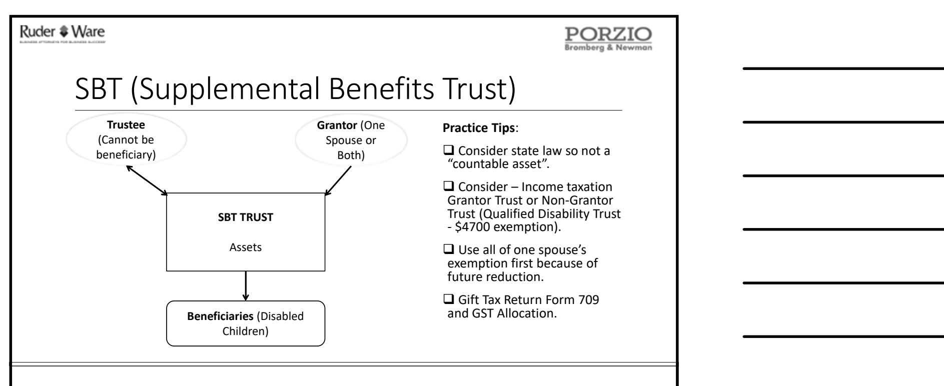

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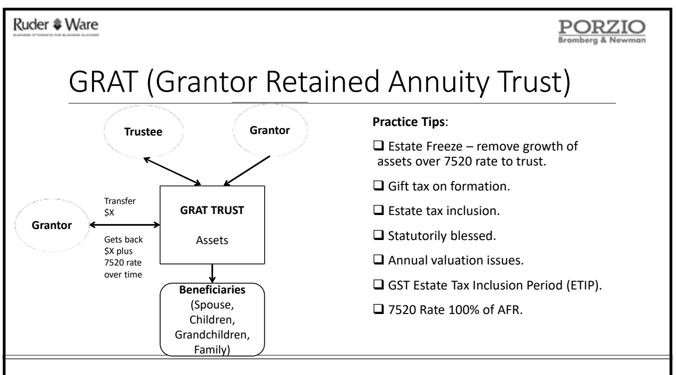
GRAT (Grantor Retained Annuity Trust)



Practice Tips:

- Estate Freeze – remove growth of assets over 7520 rate to trust.
- Gift tax on formation.
- Estate tax inclusion.
- Statutorily blessed.
- Annual valuation issues.
- GST Estate Tax Inclusion Period (ETIP).
- 7520 Rate 100% of AFR.

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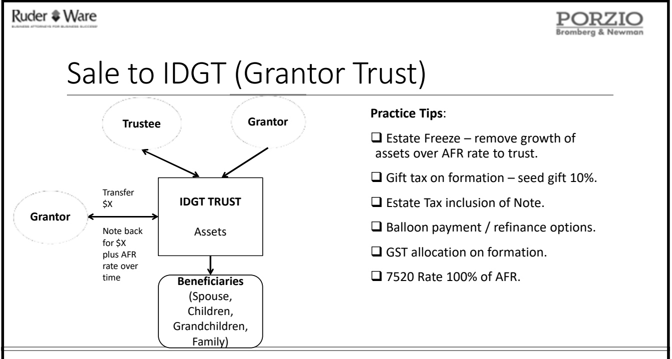
Sale to IDGT (Grantor Trust)



Practice Tips:

- Estate Freeze – remove growth of assets over AFR rate to trust.
- Gift tax on formation – seed gift 10%.
- Estate Tax inclusion of Note.
- Balloon payment / refinance options.
- GST allocation on formation.
- 7520 Rate 100% of AFR.

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Split Interest Charitable Gift

CRT	Charitable Remainder Trust	Pays amounts to noncharitable beneficiaries and a remainder to charitable beneficiaries.
CRAT	Charitable Remainder Annuity Trust	A CRT that pays a fixed amount each year to noncharitable beneficiaries.
CRUT	Charitable Remainder Unitrust	A CRT that pays a fixed percentage of the FMV of the trust's assets to noncharitable beneficiaries.
NIMCRUT	Net Income with Makeup CRUT	A CRUT whose payments to noncharitable beneficiaries can be made up in a future year if its income falls below its percentage payout in one year.
CLT	Charitable Lead Trust	Pays an annuity to charitable beneficiaries and the remainder to noncharitable beneficiaries.
CLAT	Charitable Lead Annuity Trust	A CLT that pays a fixed amount each year to charitable beneficiaries.
CLUT	Charitable Lead Unitrust	A CLT that pays a fixed percentage of the FMV of the trust's assets to charitable beneficiaries.
IPCLAT	Increasing Payment CLAT	Provides an annuity (initially a fixed amount or percentage) that increases during the annuity period.

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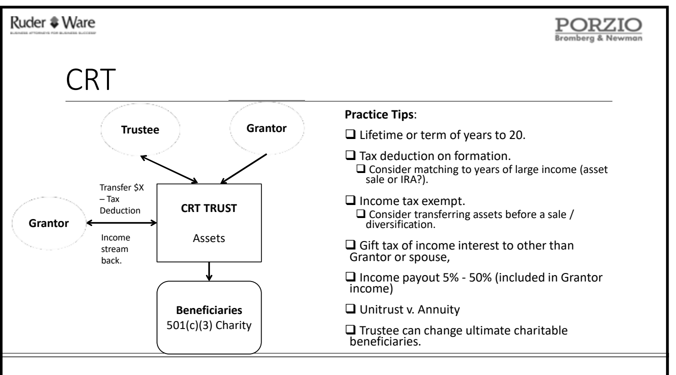

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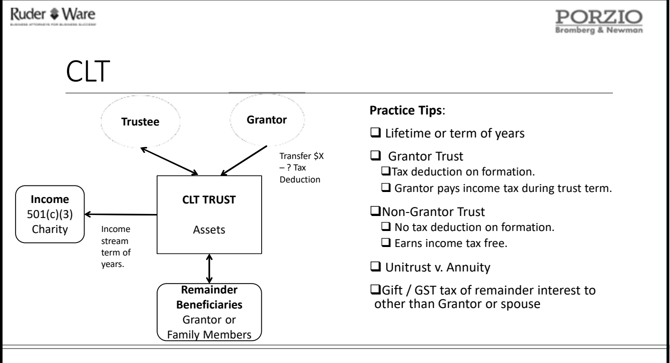

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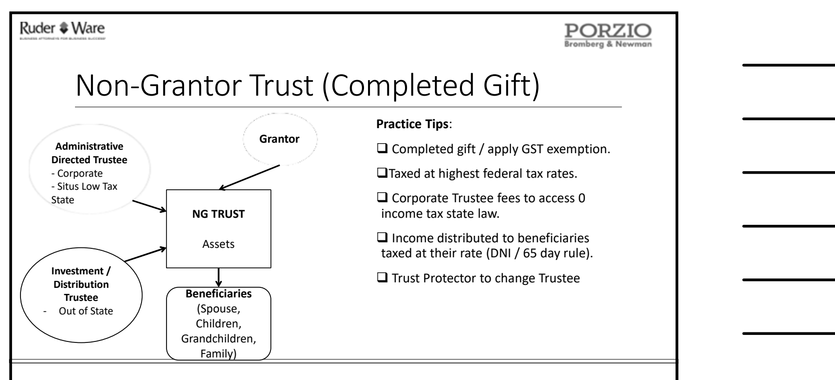

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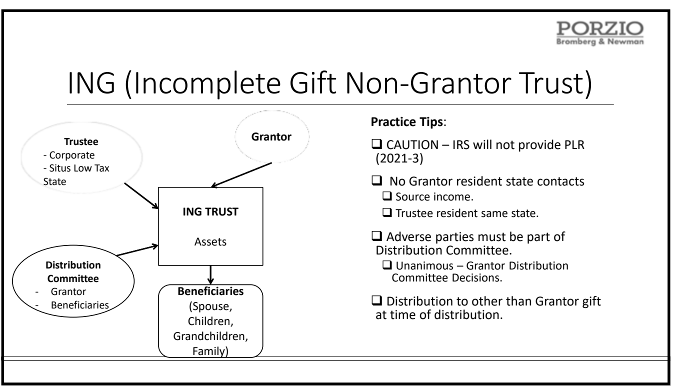

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Tax Intensive

Wednesday
October 18, 2023

Residency for State Personal Income Taxation

RESIDENCY DETERMINATION FOR STATE PERSONAL INCOME TAXATION

ANDREW D. APPLEBY*

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I. Residence vs. Domicile

A. In general, a person may have more than one residence but can have only one domicile.

1. There are two fundamental, but alternative, bases for a state's power to tax individual income: residence and source. States can deem an individual to be a tax "resident" of the state either under a statutory test or domicile test.
    a) The U.S. Supreme Court, in interpreting Due Process and Commerce Clause restraints on state jurisdiction to tax income, has taken a broad view of the states' taxing jurisdiction. In particular, by tying the states' taxing power to "benefits" and "protection" afforded, the Court has eschewed a narrow conception of source as a limitation on the states' power to tax nonresidents' income.[1]
2. Regarding residence, the U.S. Supreme Court has observed that, "the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords a basis for such taxation."[2]
3. Statutory residence is a somewhat objective test in most states, whereas domicile is subjective and requires an examination of all the factual circumstances regarding the taxpayer's life.

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[1] *See Wisconsin v. JC Penney Co.*, 311 US 435, 444 (1940) ("a State is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the State has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society"). *See also* Andrew Appleby, *No Migration Without Taxation: State Exit Taxes*, 60 HARV. J. ON LEGIS. 55 (2023).

[2] *New York ex rel. Cohn v. Graves,* 300 US 308, 312 (1937); *see also Lawrence v. State Tax Comm'n*, 286 US 276, (1932).

B. Residency Tests: to determine whether an individual is a resident of the state for tax purposes: (1) statutory residency and (2) domicile. If an individual satisfies either test, they are considered a resident of the respective state. Thus, it is possible for an individual to be considered a resident of multiple states in the same tax year.

1. **Statutory residency:** often a bright-line, objective test under which the taxpayer must meet both requirements of the test to be deemed a state resident. To be deemed a resident under the statutory test, most states have a statute that incorporates a test such as: "an individual must (1) maintain a permanent place of abode in [state] and (2) spend more than 183 days in [the state]."
   - *a)* ***A common misconception is that if an individual spends more than 183 days (i.e., half the year) in a state, they will necessarily not be considered a resident of any other state for the tax year. This conclusion is incorrect for several reasons.***
2. **Domicile**: a subjective test, determined by established common law principles and the <u>facts and circumstances</u> of each case. Largely a factual determination that takes into consideration many factors relating to a person's social, economic, and political life.[7] To determine a taxpayer's domicile, all the factual circumstances connected to the taxpayer's major life interests, including family, business connections, social activities, and healthcare, are examined.

C. Domicile is a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

1. Domicile is focused on objective indicia of the taxpayer's subjective intention to make a particular state his or her home.
2. Factors to show that intent include:
    a) the extent to which the taxpayer is physically present in the state;
    b) the nature and locations of the taxpayer's abodes, especially the one in which his or her family resides;
    c) whether the taxpayer owns property in the state (including their most valued and personal property—the "teddy bear" test);
    d) the state in which the taxpayer votes, registers his or her car, and maintains his or her bank accounts; and
    e) the state in which the taxpayer maintains club memberships, seeks professional services (*e.g.*, medical, legal, and accounting), and establishes professional and social relationships.

D. Residence varies in definition across the states; however, several common factors apply in the states' individual determinations. Though domiciled in one state, a taxpayer may be a "statutory resident" of another state. In fact, if states have inconsistent definitions of "statutory resident," an individual may be considered a "statutory resident" of multiple states in the same tax year.

1. Factors to show statutory residence include:
    a) Domicile in the state;

b) Presence in the state for other than a temporary or transitory purpose;

c) Presence in the state for a specified period (commonly 183 days); and

d) Maintenance of a permanent place of abode in the state.

2. **What is presence for other than a temporary or transitory purpose?**

a) Many states, like Massachusetts, look to the intent and actions of the taxpayer to determine if that individual truly intended to change residence and/or domicile.

(1) In *Williams*, the taxpayers successfully claimed a change of domicile from Massachusetts to Florida in 2002, when they bought a house in Florida, but the husband continued working for a company in Massachusetts, both taxpayers voted in Massachusetts elections that fall, and the taxpayers stayed in Massachusetts to spend Christmas with their daughters.[3] The evidence supported their connections in Florida, such as voter registration, new jobs, and new church membership showed Florida was their new, true home.

(2) In *Swartz*, the taxpayers tried to move to Florida before a large capital gain event, changed driver's licenses, and

[3] *Williams v. Commissioner of Revenue*, Nos. C288160, C294635, C288161, and C294634 (Mass. App. Tax Bd. 2009).

registered to vote in Florida.[4] Among other factors, because the taxpayers split time between Florida and Massachusetts in the same way as they always did, and the voter/driver registrations did not take effect *before* the capital gain event, the taxpayers failed to show a true change of domicile.

(a) Merely changing your formal documents and maintaining the status quo is patently insufficient to make this kind of move.[5]

3. **What is permanent place of abode?**

a) Under New York Law, for example, a "resident individual" includes an individual "who is not domiciled in this state but maintains a *permanent place of abode* in this state and spends in the aggregate more than [183] days of the taxable year in this state."[6]

b) New York regulations define "permanent place of abode" as "a dwelling place of a permanent nature maintained by the taxpayer, whether or not owned by such taxpayer," but provide that a "mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode."[7]

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[4] *Swartz v. Commissioner of Revenue*, No. C287671 (Mass. App. Tax. Bd. 2010).
[5] Timothy P. Noonan & Katherine P. McDonald, *An Open Letter to Massachusetts Residents: Here's How to Move!*, 107 TAX NOTES STATE 685 (Feb. 20, 2023).
[6] N.Y. Tax Law § 605(b)(1)(B).
[7] N.Y. Comp. Codes R. & Regs. tit. 20, § 105.20(e)(1).

c) **Vacation Homes:** In *Obus*, the New York Appellate Division struck down New York's attempt to hold an upstate New York vacation home used by a New Jersey resident for only two to three weeks a year as a "permanent place of abode" for tax residency purposes—reversing an income tax assessment that treated him as a full income tax "resident" of New York.[8] There was no dispute that Mr. Obus, the taxpayer, met the 183 days of presence prong of New York's statutory residence test, so the central question was whether the seldom-used vacation home constituted a "permanent place of abode." The court made it clear that the determination of whether a vacation home in New York can constitute a permanent place of abode (one of two requirements to hold a non-domiciliary as a resident for tax purposes) is not merely an objective question whether the home *could* be used for more than vacations, but whether the home was, in fact, used as a "residence."

d) New York has had a litany of "abode" cases, some decided in favor of the taxpayer, and some against.[9]

E. Nonresident Taxation

1. States possess the constitutional power to tax nonresidents on personal income derived from sources within the state.[10]

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[8] *Matter of Obus v. New York State Tax Appeals Tribunal*, 206 A.D.3d 1511 (3d Dept. 2022).

[9] *See, e.g.,* Timothy P. Noonan & Joshua K. Lawrence, Obus*: A Return to Reason in New York's Residency Saga*, 106 TAX NOTES STATE 1093 (Dec. 19, 2022).

[10] *See* JEROME R. HELLERSTEIN, WALTER HELLERSTEIN & ANDREW D. APPLEBY, STATE TAXATION ¶¶ 20.05 (3d ed. 2023 rev.).

2. **Convenience Rule**

a) New York's "convenience rule" permits state tax authorities to tax New York-based employees for days worked remotely in a location outside of the state.[11]

(1) Nonresidents of New York are taxed on their compensation based on the percentage of days worked in New York during the tax year. Most states use essentially the same approach, but New York is among those that diverge from it by treating days worked out of state by the employee for the employee's convenience—as opposed to employer necessity—as days worked in New York.[12]

b) *Zelinsky* 1.0[13]

(1) "The convenience test serves merely to equalize tax obligations among residents and nonresidents, preventing nonresidents from manipulating their New York tax liability by choice of auxiliary work location in a manner unavailable to similarly situated New York resident employees. Since a New York resident would not be entitled to any special tax benefits for similar work performed at home, neither should a nonresident."

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[11] *See generally* Timothy P. Noonan & Emma M. Savino, *The Convenience Rule: Another Bite at the Big Apple*, 108 TAX NOTES STATE 1083 (June 26, 2023).
[12] Delaware, Nebraska, and Pennsylvania also impose a convenience rule that resembles that of New York. *See* 30 Del. C. § 1124(b); Neb. Admin. R. & Regs. 003.01C; 61 Pa. Code 109.8. Connecticut imposes a reciprocal convenience rule, which it only applies when the resident's home state does. Conn. Gen. Stat. § 12-711(b)(2)(C).
[13] *Zelinsky v. Tax Appeals Tribunal*, 1 N.Y.3d 85 (2003), *cert. denied*, 541 U.S. 1009 (2004).

(2) Regarding the Commerce Clause argument, Zelinsky only challenged the second prong of the four-prong *Complete Auto* test—that the tax be fairly apportioned, which requires that it be externally and internally consistent.[14]

(3) In finding that the tax was fairly apportioned, the court relied on several factors: (1) The income was derived from the taxpayer's teaching activity, which occurred in New York; (2) work that the taxpayer brought home was "inextricably intertwined with the business of his New York law school"; (3) the taxpayer voluntarily brought work home to Connecticut that he could have done in New York—a choice that cannot transform him into an interstate actor; and (4) the potential for double tax did not necessarily create a commerce clause issue.

F. Source

1. The states' power to tax on the basis of source is as well recognized as their power to tax on the basis of residence.[15] This power is derived only

[14] *See Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977) (the Court will sustain a tax so long as it (1) applies to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services the State provides).

[15] *Curry v. McCanless*, 307 US 357, 368 (1939) ("income may be taxed both by the state where it is earned and by the state of the recipient's domicile. Protection, benefit, and power over the subject matter are not confined to either state"). The determination of both residence and source have become much more difficult with the proliferation of remote work post-covid. *See, e.g.*, Hayes R. Holderness, *Individual Home-Work Assignments for State Taxes*, 98 WASH. L. REV. 1 (2023); Young Ran (Christine) Kim, *Taxing Teleworkers*, 55 U.C. DAVIS L. REV. 1149 (2022); Michael T. Fatale, *Post-Pandemic State Taxation of Non-Resident Telecommuter Wages*, 64 B.C. L. REV. (forthcoming 2023).

from the protection that the states provide to "persons, property, and business transactions *within their borders*."[16]

2. The Court has sustained the states' power to impose taxes on residents' income derived from (1) services performed outside the state;[17] (2) the rent of land located outside the state;[18] (3) interest on bonds located outside the state and secured by lands located outside the state;[19] and (4) trusts created and administered outside the state.[20]

3. **Nonresidents**: When states seek to tax nonresident individuals and corporations for which source is the sole jurisdictional basis, their power extends only to the nonresidents' "property owned within the State and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources."[21]

G. Double Taxation

1. The power of a state to tax residents on all of their income regardless of source, in conjunction with the power of a state to tax nonresidents on income from sources within the state, exposes a taxpayer to the risk of multiple taxation.[22]

    a) Most states with broad-based personal income taxes impose their levies on all of a resident's income, wherever earned. To avoid

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[16] *Shaffer v. Carter*, 252 US 37, 57 (1920) (emphasis supplied).
[17] *Lawrence v. State Tax Comm'n*, 286 US 276 (1932) (income from construction of highways outside the state).
[18] *New York ex rel. Cohn v. Graves*, 300 US 308 (1937).
[19] *Id*.
[20] *Guaranty Trust Co. v. Virginia*, 305 US 19 (1938); *Maguire v. Trefry*, 253 US 12 (1920).
[21] *Id*.
[22] *See* JEROME R. HELLERSTEIN, WALTER HELLERSTEIN & ANDREW D. APPLEBY, STATE TAXATION ¶¶ 20.04 (3d ed. 2023 rev.).

double taxation of their residents' income attributable to and taxed in other states, states with broad-based income taxes typically provide a credit for taxes paid by their residents to other states.

b) In some instances, however, states have not exerted their full constitutional power over their residents' personal income and have excluded from the resident income tax base specific items of income attributable to out-of-state property or activities.[23]

2. Double taxation can arise when states have inconsistent definitions of "resident," or if one state is taxing a "resident" based on domicile and the other on statutory residency, because each state will not grant a credit for taxes paid to the other state on the basis of residency (as opposed to source).

[23] *See e.g.*, Okla. Stat. Ann. tit. 68, § 2358(A)(4) (Westlaw 2023).

RESIDENCY DETERMINATION FOR STATE PERSONAL INCOME TAXATION

Andrew D. Appleby
Associate Professor of Law
Stetson University College of Law

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Overview

- States may impose personal income tax on the basis of residence or source.
- States generally impose tax on 100% of a "resident's" taxable income.
  - But provide a credit for income taxes paid to other states on a "source" basis.
    - Source trumps residence.
- States have inconsistent and complex tests to determine both "residence" and income "source."
  - These tests are even more difficult to administer with increased interstate migration and proliferation of remote work post-covid.
- The stakes are high, as individuals may end up paying state personal income tax on greater than 100% of their taxable income.
- Also, estate planning implications:
  - *See, e.g.,* Jerome R. Hellerstein, Walter Hellerstein & Andrew D. Appleby, State Taxation ¶ 21.14 (3d ed. 2023 rev.).

1

1

Residency Tests

- States generally have two tests to determine if an individual is a "resident" for tax purposes.
  - If either test is satisfied, the individual may be considered a "resident" of the state, which can impose tax on 100% of the resident's taxable income.
- Domicile -OR- Statutory Residence
  - What if an individual is Domiciled in State A but a Statutory Resident in State B??

2

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Residency Tests – Domicile

- Domicile is a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.
  - Domicile is focused on objective indicia of the taxpayer's subjective intention to make a particular state his or her home.
  - Factors to show that intent include:
    - the extent to which the taxpayer is physically present in the state;
    - the nature and locations of the taxpayer's abodes, especially the one in which his or her family resides;
    - whether the taxpayer owns property in the state (including their most valued and personal property—the "teddy bear" test);
    - the state in which the taxpayer votes, registers his or her car, and maintains his or her bank accounts; and
    - the state in which the taxpayer maintains club memberships, seeks professional services (e.g., medical, legal, and accounting), and establishes professional and social relationships.
- Domicile is subjective and requires an examination of the factual circumstances regarding the taxpayer's life.

3

3

Residency Tests – Statutory Residence

- Statutory residency is often a bright-line, objective test under which the taxpayer must meet *both* requirements of the test to be deemed a resident:
  - For example: "an individual must:
    - (1) maintain a permanent place of abode in [the state]; and
    - (2) spend more than 183 days in [the state]."
- A common misconception is that if an individual spends more than 183 days (*i.e.*, half the year) in one state, they will necessarily not be considered a resident of any other state for the tax year.
  - This conclusion is incorrect for several reasons.
    - Notably, a person can be in more than one state each day.

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Residency Tests – Statutory Residence

- What is a "permanent place of abode?"
- New York Case Law
  - *Obus* (2022)
  - *Gaied* (2014)
  - *Barker* (2011)
  - *Tamagni* (1998)

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Non-Resident Taxation – Income Source

- States may tax non-residents on their income to the extent the income is "sourced" to that state.
- Determining source can be difficult.
  - Traditionally:
    - Wages -> Employee's primary office location
    - Intangibles -> Individual's state of residence
    - Property -> Location of the property being sold

6

6

Non-Resident Taxation – Income Source

- "Convenience of the Employer" Rule
- Several states adopt this rule to determine source of employment income when an individual works across multiple states.
- For example, New York:
  - Non-residents of New York are taxed on their compensation based on the percentage of days worked in New York during the tax year.
  - Days worked out of state by the employee for the employee's convenience—as opposed to employer necessity—count as days worked in New York.
  - *Zelinsky* cases.

7

7

Risks of Multiple Taxation

- Inconsistent definitions
  - Resident
    - Defining "day."
    - Defining "permanent place of abode."
  - Source
    - Convenience of Employer Rule or not.
- Commerce Clause Protection?

8

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Changing Residence

- Day Count:
  - Avoid spending more than 183 days in previous state.
  - Document every day.
- Avoid "Permanent Place of Abode":
  - Sell real property, or rent property to unrelated tenants.
- Pay Attention to Subjective Factors:
  - Move personal belongings.
  - Change driver's license and other licenses.
  - Voter registration.
  - Children's schools.

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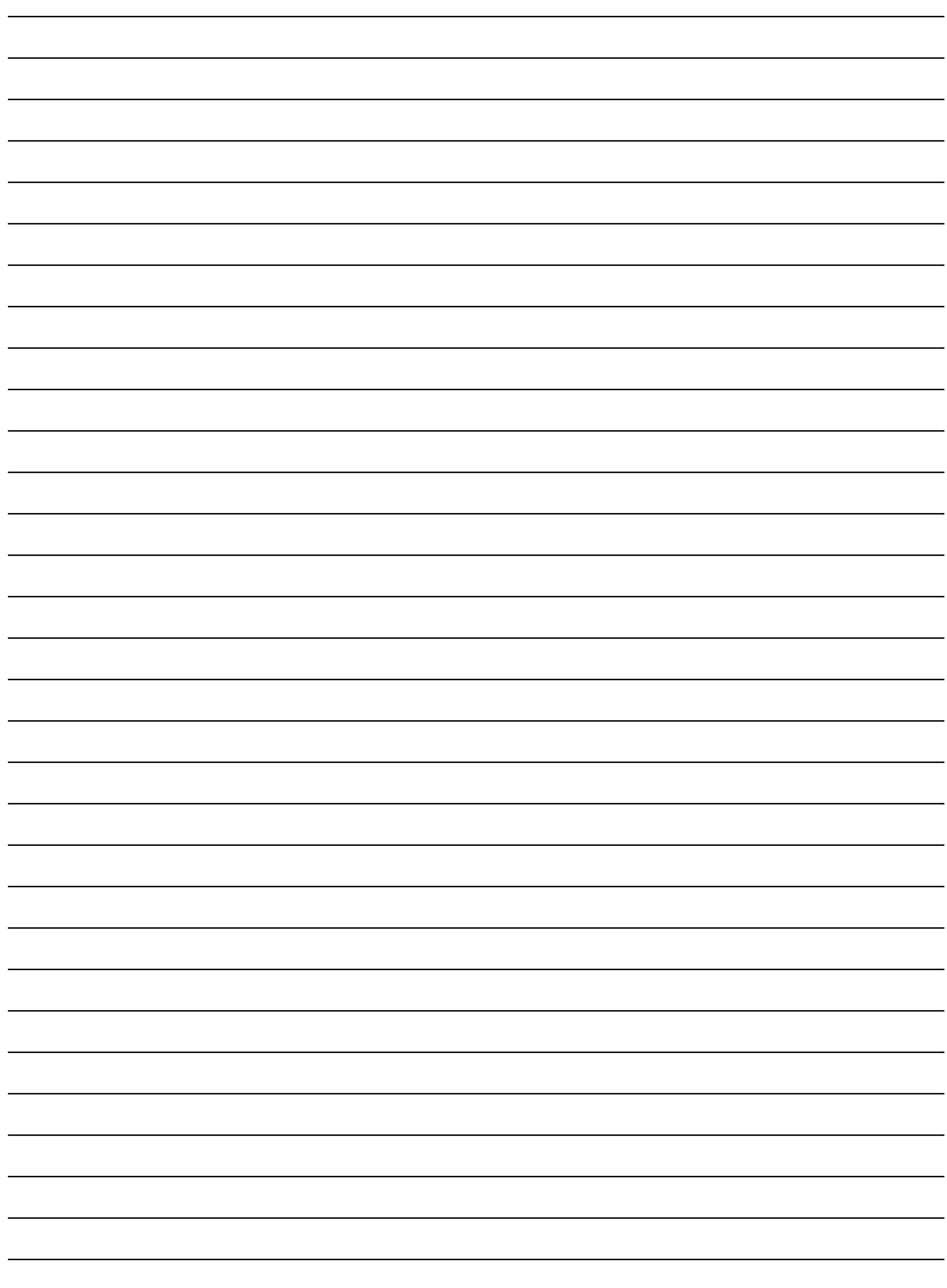

Tax Intensive

Wednesday
October 18, 2023

Tax Considerations in the Year of Death

PORZIO Bromberg & Newman

Tax Considerations in the Year of Death

DEIRDRE R. WHEATLEY-LISS, ESQ. LL.M (TAXATION), CELA

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Agenda

- ❑Tax opportunities in the year of death.
- ❑Decedent's Final Income Tax Return.
- ❑Estate Income Tax Filing.
- ❑Trust Income Tax Filing.
- ❑Estate Tax Return.
- ❑ Stepped-Up Basis.
- ❑ Qualified Disclaimers.
- ❑ State-Specific Considerations.
- ❑Action Plan– Putting it All Together

2

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Tax Opportunities

- ❑ Electing Estate Fiscal Year.
- ❑ Use Decedent's carryforward losses.
- ❑ Filing Federal Estate Tax Return for Portability and Step Up in Basis.
- ❑ Distributable Net Income Deduction.

3

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Decedent's Final Income Tax Return

- Due for the period from January 1 of the year of death until the Date of Death.
- Filed by April 15 of the year following the year of death, or October 15, with extension.
- Filed by the Executor in the case of a single individual, or by the surviving spouse in the case of a married individual filing jointly.
  - Note – An Executor must be appointed in order to file the federal income tax return. Even if the probate estate has no assets due to a Revocable Trust or transfer and death planning, an Executor should be authorized in order to file the final income tax return.
  - Note – The Executor has personal liability for the payment of income taxes for the decedent, including any previously unfiled tax years (See §3713), if distributions are made to beneficiaries before taxes are paid. The income tax filing must be made under penalties of perjury.
  - Note – There is a 3-year statute of limitations for claiming any refund that may be due.
  - Practice Tip – File Form 4506-T, Request for Transcript of Tax Return to obtain a tax to transcript for any unfiled tax years to verify if any taxes are owed or refunds due.

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Decedent's Carryforward Losses

- Use it or Lose it.
- **Long Term Capital Losses** – Capital loss carry forward is lost for future tax years. Capital loss carry forwards can be utilized by the estate or the surviving spouse on the final income tax return filed for the year of death. Capital losses are losses generated by capital assets (e.g.Real estate, stocks). Capital losses cannot offset ordinary income, only capital gain income.
  - Practice Tip – Surviving Spouse. Examine the immediate prior year tax return for any carryforward losses and the current year for any realized losses. While the decedent's assets will enjoy a stepup in basis, the spouse's assets, or the spouse's share of joint assets, will not enjoy a stepup in basis. Examine built-in capital gains in the spouse's assets and consider liquidating assets to match against carryforward and same year losses.
  - Practice Tip – Estate. This will only apply to gains following date of death since the stepup in basis will eliminate built-in gains during lifetime. Before the end of the tax year consider any gains since date of death and if assets can be liquidated and the gains offset against the losses.

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Decedent's Carryforward Losses (Cont'd)

- **Net Operating Losses** – Net Operating Loss carry forward is lost for future tax years unless the surviving spouse is operating the business that generates the Net Operating Loss. Net Operating Losses can be used by the surviving spouse in the year of death to offset ordinary income. Operating Losses are generated by business activity (e.g. sole proprietorship, limited liability company, limited partnership, S-Corporation).
  - Practice Tip – Surviving Spouse Operates Business. Surviving spouse can carry forward 50% of the Operating Losses into future years.
  - Practice Tip – Surviving Spouse Generates Ordinary Income. The surviving spouse does a Roth IRA conversion in an amount so that the ordinary income generated by the Roth IRA conversion in the year of death is equal to the Net Operating Loss and is reflected on the final joint income tax return.

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Decedent's Carryforward Losses (Cont'd)

- **Excess Charitable Contributions**– Charitable contributions can be deducted up to 30% - 60% of Adjusted Gross Income. Excess charitable contribution deductions are lost for future tax years. Further, the excess charitable contribution deductions continue to be limited to 30%-60% of adjusted gross income.
  - Practice Tip – Surviving Spouse Defers Additional Deductions. The surviving spouse defers additional deductions in the year of death, pushing them to a future income tax year, so that as much of the surviving spouse's income as possible can be absorbed by the Excess Charitable Contribution.

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Estate – Income Tax Year

- **General Rule** – A Estate may use a calendar year or fiscal year as its tax year.(See §441(e), §443, §7701(a)(1), §7701(14)). A fiscal year is a 12-month period ending on the last day of any month other than December. A Fiscal Year tax return is due by the 15th day of the 4th month after the end of the fiscal tax year.
- **Example –** Harry dies on August 25, 2023. His Executor chooses a fiscal year ending March 31. The first year of the estate begins August 26, 2023 and ends March 31, 2024. The next year will be from April 1, 2024, to March 31, 2025. If the estate terminates on September 15, 2025, the last fiscal year will begin April 1, 2025, and end September 15, 2025.
  - Note – The first and last tax years of the estate will be short years.
- **Making a Fiscal Year Election** - A fiscal year can only be adopted when Executor files the estate's first Form 1041. The following do NOT select a Fiscal Tax Year, so a Fiscal Tax Year can be elected on a late filed return:
  - Application for automatic extension of time to file a federal income tax return (Form 7004)
  - Application for an employer identification number (Form SS-4)
  - Payment of estimated taxes.

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Estate – Income Tax Year (Cont'd)

- **Why Select a Fiscal Year? Timing of Taxation of Distributions to Beneficiaries**– Income distributed to a beneficiary is deemed distributed on the last day of the estate's fiscal year, regardless of when the actual distribution occurred. As a result, a beneficiary who receives a distribution in one calendar year may not have to report any income resulting from the distribution until the following year.
- **Example –** Harry dies on August 25, 2023. His Executor chooses a fiscal year ending March 31. The first year of the estate begins August 26, 2023, and ends March 31, 2024. The estate makes a distribution of $1,000,000 to Beth, of which $100,000 is income to the Estate, on December 15, 2024. The distribution of $100,000 of income is "deemed" to be made to Beth on March 31, 2025. This means that Beth will receive the $100,000 in December 2024, but the income will not reported until Beth's 2025 income tax return, and the tax will not be due until April 15, 2026.

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Trust – Income Tax Year

- **General Rule** – A trust must use the calendar year (See §644).
- **Revocable Trust Can Elect to be Treated as part of the Estate for Income Tax Purposes** –This election allows a decedent's Revocable Trust to be treated as an estate for a limited timeframe and to take advantage of tax rules that apply to estates but not to trusts. (See §645). These may include:
  - Using the estate's fiscal year for income tax purposes.
  - Being entitled to the charitable set-aside deduction under §642(c).
  - Being an eligible S corporation shareholder.
  - Being permitted to recognize loss upon the satisfaction of a pecuniary bequest with assets that have a fair market value less than basis pursuant to §267(b)(13).
  - Having the active participation requirements under the passive loss rules waived for tax years ending less than two (2) years after the decedent's death pursuant to §469(i)(4).

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Trust – Income Tax Year (cont'd)

- **Making the Election –** The election is made on Form 8855 and is effective for all taxable years of the estate but:
  - If an estate tax return is required, not longer than six (6) months after the final determination of the federal estate tax liability (One (1) year after the date of the closing letter for the estate tax return).
  - If an estate tax return is not required, the election is effective for two (2) years after the date of death. Note: An estate tax return filed solely to elect portability is not a "required" return for this purpose.
  - The election must be made by the Executor and the Trustee by the due date of the first Form 1041, including extensions.
  - The election is irrevocable.

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Grantor Trusts → Non-Grantor Trusts

- **Issue** - Upon the Grantor's death all Grantor Trusts - Revocable and Irrevocable - become Non-Grantor Trusts.
- **EIN** – A new EIN should be obtained for (1) any Revocable Trust, and (2) any Irrevocable Trust that was taxed as a Grantor Trust during the Grantor's lifetime.
  - Practice Tip – These EIN's are likely to be short-lived and only utilized during the period of administration until the trust assets are distributed to the ultimate beneficiaries, either (1) individuals, or (2) resulting trusts, which should each have their own separate EIN.
- **First Income Tax Year** –
  - Revocable Trust – Unless an election is made so that the Revocable Trust is treated as part of the Estate, the first tax year will be from the day after the Date of Death until December 31. A Form 1041 must be filed by April 15 of the following year, or October 15 if a timely extension is filed.
  - Irrevocable Trust – The first tax year will be from the day after the Date of Death until December 31. A Form 1041 must be filed by April 15 of the following year, or October 15 if a timely extension is filed.

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Income Taxation of Estates and Non-Grantor Trusts

- ❑ Compressed income tax rates.
- ❑ Distinction between Trust Accounting Income and Trust Taxable Income.
- ❑ Distributable Net Income considerations before the 65th day of the next tax year.

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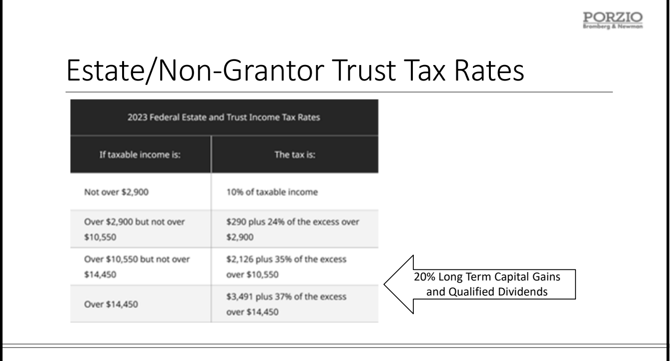
Estate/Non-Grantor Trust Tax Rates



2023 Federal Estate and Trust Income Tax Rates	
If taxable income is:	The tax is:
Not over $2,900	10% of taxable income
Over $2,900 but not over $10,550	$290 plus 24% of the excess over $2,900
Over $10,550 but not over $14,450	$2,126 plus 35% of the excess over $10,550
Over $14,450	$3,491 plus 37% of the excess over $14,450

20% Long Term Capital Gains and Qualified Dividends

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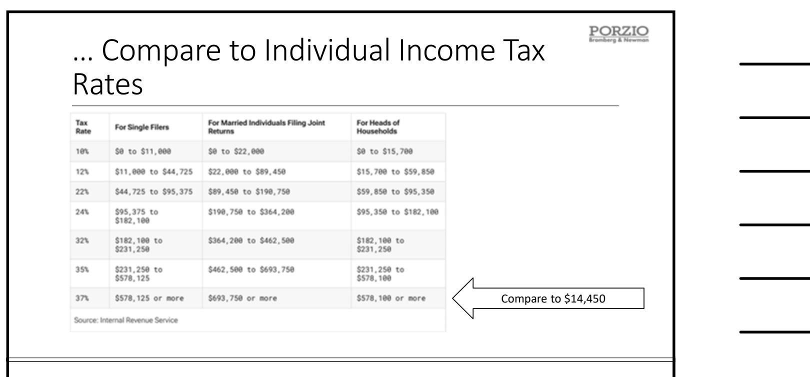
… Compare to Individual Income Tax Rates



Tax Rate	For Single Filers	For Married Individuals Filing Joint Returns	For Heads of Households
10%	$0 to $11,000	$0 to $22,000	$0 to $15,700
12%	$11,000 to $44,725	$22,000 to $89,450	$15,700 to $59,850
22%	$44,725 to $95,375	$89,450 to $190,750	$59,850 to $95,350
24%	$95,375 to $182,100	$190,750 to $364,200	$95,350 to $182,100
32%	$182,100 to $231,250	$364,200 to $462,500	$182,100 to $231,250
35%	$231,250 to $578,125	$462,500 to $693,750	$231,250 to $578,100
37%	$578,125 or more	$693,750 or more	$578,100 or more

Source: Internal Revenue Service

Compare to $14,450

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… Compare to Individual Capital Gain Tax Rates

	For Unmarried Individuals, Taxable Income Over	For Married Individuals Filing Joint Returns, Taxable Income Over	For Heads of Households, Taxable Income Over
0 %	$0	$0	$0
15 %	$44,625	$89,250	$59,750
20 %	$492,300	$553,850	$523,050

Source: Internal Revenue Service

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Estates/Non-Grantor Trusts – Income Tax Issues

- ❑**Fiduciary Accounting Income** – Income defined under the Uniform Principal and Income Act and the Estate/Trust governing documents.
- ❑**Taxable Income** – Income defined under the Internal Revenue Code.
- ❑**Distributable Net Income** – Income that can be "shifted" from the Estate/Trust to the Beneficiary's income tax bracket.

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Fiduciary Accounting Income

Income	Principal
Interest	Capital Gains
Dividends	Insurance Proceeds
Rent	
Administration Expenses	Principal Debt Payments
50% Fiduciary Commissions	50% Fiduciary Commissions
50% Attorneys Fees	50% Attorneys Fees
50% Property Insurance	50% Property Insurance

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Taxable Income

Taxable Income
Interest
Dividends
Rent
Capital Gains
Administration Expenses
Fiduciary Commissions
Attorneys Fees
Property Insurance
Capital Losses

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Distributable Net Income ("DNI")

Taxable income with modifications:

Adjusted Taxable Income (taxable income minus deductions)

+ Capital Losses

+ Tax Exempt Interest

- Capital Gains not paid or distributed to a beneficiary

Distributable Net Income (for tax purposes)

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Example - DNI Difference

DNI	$	100,000.00
Tax - Retained by Trust	$	31,653.00
Tax - Paid to Beneficiary	$	14,768.00
Difference	$	16,885.00

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DNI – 65 Day Rule § 663(b)

- **Election** – A Fiduciary may make a distribution within the first 65 days of the new tax year and treat that distribution as if it was made on the last day of the prior tax year.
- **Election Date** –
  - Calendar year returns – March 6 of the following year (unless a leap year, then March 5).
  - Fiscal year returns – 65 days after the end of the Fiscal Year.
- Practice Tip:
  - In the 4th quarter of the current tax year, estimate Accounting Income, Taxable Income, and DNI. Consider making distributions of DNI to beneficiaries in lower income tax bracket.
  - 30 days into the next tax year, calculate Accounting Income, Taxable Income, and DNI. Consider making distributions of remaining DNI to beneficiaries in lower income tax bracket before 65 days.
  - Consider combining a Fiscal Year election of an Estate with DNI distributions to lower the overall tax on the Estate's taxable income and push the taxation of the DNI distribution to a future tax year of the beneficiary.
  - Consider the state of residency of any beneficiary in doing DNI calculations.

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Estate Tax Return

- **Due** - 9 months after date of death.
  - Automatic 6-month extension of time to File.
  - No automatic extension of time to Pay.
- **Required** for taxable estates (gross estate plus prior taxable gifts is in excess of the exemption amount at date of death).
- **Strongly recommended** where there is a surviving spouse for Portability of the deceased spouse's Estate Tax Exemption Amount (currently $12,920,000).
  - Practice Tip – Revenue Procedure 2022–32 allows for a late estate tax exemption for portability to be made up to 5 years from a deceased spouse's date of death.
  - Practice Tip – If the surviving spouse chooses not to file a federal estate tax return to elect Portability, obtain written confirmation of their informed decision not to file for Portability.
- **Strongly recommended** where there are assets subject to an appraisal for valuation purposes (business, real estate, litigation proceeds, etc.). There is a 3-year statute of limitations for the IRS to challenge any valuations. Thereafter, the beneficiaries may rely on the valuations for establishing basis of assets.

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Step-Up in Basis - § 1014 – General Rule

(a) In general - Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be— **(1) the fair market value of the property at the date of the decedent's death,**

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Step-Up in Basis - § 1014 – Property Acquired From Decedent

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

- (1) Property acquired by **bequest, devise, or inheritance, or by the decedent's estate from the decedent**;
- (2) Property transferred by the decedent during his lifetime in trust **to pay the income for life to or on the order or direction of the decedent**, with the **right reserved to the decedent at all times before his death to revoke the trust**
- (3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime **in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust**;
- (4) Property passing without full and adequate consideration under a **general power of appointment exercised by the decedent by will**;

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Step-Up in Basis - § 1014 – Property Acquired From Decedent (cont'd)

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

- (6) … property which **represents the surviving spouse's one-half share of community property** held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, **if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate** under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) …;
- (9) …**property acquired from the decedent by reason of death**, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), **if by reason thereof the property is required to be included in determining the value of the decedent's gross estate** under chapter 11 of subtitle B ….
- (10) Property includible in the gross estate of the decedent under section 2044 (**relating to certain property for which marital deduction was previously allowed**). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

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Step-Up in Basis - § 1014 – Transfers Within One Year of Death

(e) …if— (A) appreciated property was **acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death**, and (B) such property is acquired from the decedent by (or **passes from the decedent to) the donor of such property** (or the spouse of such donor),

- **the basis of such property** in the hands of such **donor (or spouse)** shall be the **adjusted basis of such property in the hands of the decedent immediately before the death of the decedent**.

❑ Practice Tip – Always have a disclaimer trust available in the Foundation Estate Plan so assets shifted from well spouse to ill spouse will can pass to a trust (a separate taxpayer from the donor spouse).

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Qualified Disclaimers §2518

- ❑ **Requirements** –
  - ❑ Irrevocable and unqualified.
  - ❑ In writing.
  - ❑ Within nine (9) months of date of death.
  - ❑ Disclaimant cannot have accepted any interest disclaimed or any of its benefits.
  - ❑ The interest disclaimed must pass either (1) to the spouse of the decedent, or (2) to a person other than the disclaimant, without any direction on the part of the person making the disclaimer.
- ❑ **Opportunities** –
  - ❑ Disclaim retirement account to an individual in a lower tax bracket.
  - ❑ Disclaim property transfered to the ill spouse by the well spouse within 1 year of date of death to a Credit Shelter Trust to get a basis step-up.

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State Tax Issues

- ❑ Depending on the state of residency of the decedent, state income tax returns may need to be filed (equivalent of Form 1040, Form 1041).
- ❑ Determine the state of residency of the beneficiaries to give guidance on Distributable Net Income.
- ❑ Consider if any additional estate tax/inheritance tax returns are due the timeframe for filing the same.

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Action Plan

Documentation:

- ❑ Three (3) prior year file tax returns.
- ❑ Tax transcript if no prior returns.
- ❑ Beneficiary state of residency.

Tax Elections:

- ❑Estate Fiscal Year.
- ❑ Revocable Trust treated as an Estate.

Grantor Trusts (Revocable and Irrevocable):

- ❑ New EIN to report income as of date of death through the end of the trusts tax year.

Carryforward Losses:

- ❑ Examine prior years 1040 determine if there are any carryforward losses and plan to generate income to offset them before lost.

Tax Return Filings:

- ❑ Final Form 1040
- ❑Estate First Year Form 1041
- ❑Grantor Trust Final Form 1041
- ❑ IrrevocableTrust First Year Form 1041
- ❑ Estate Tax Return

Distributable Net Income:

- ❑ Consider in the fourth quarter of the Estate/Trust tax year.
- ❑ Calculate and distribute within 65 days of the end of the Estate/Trust tax year.

Qualified Disclaimer:

- ❑ Consider within 9 months of date of death.

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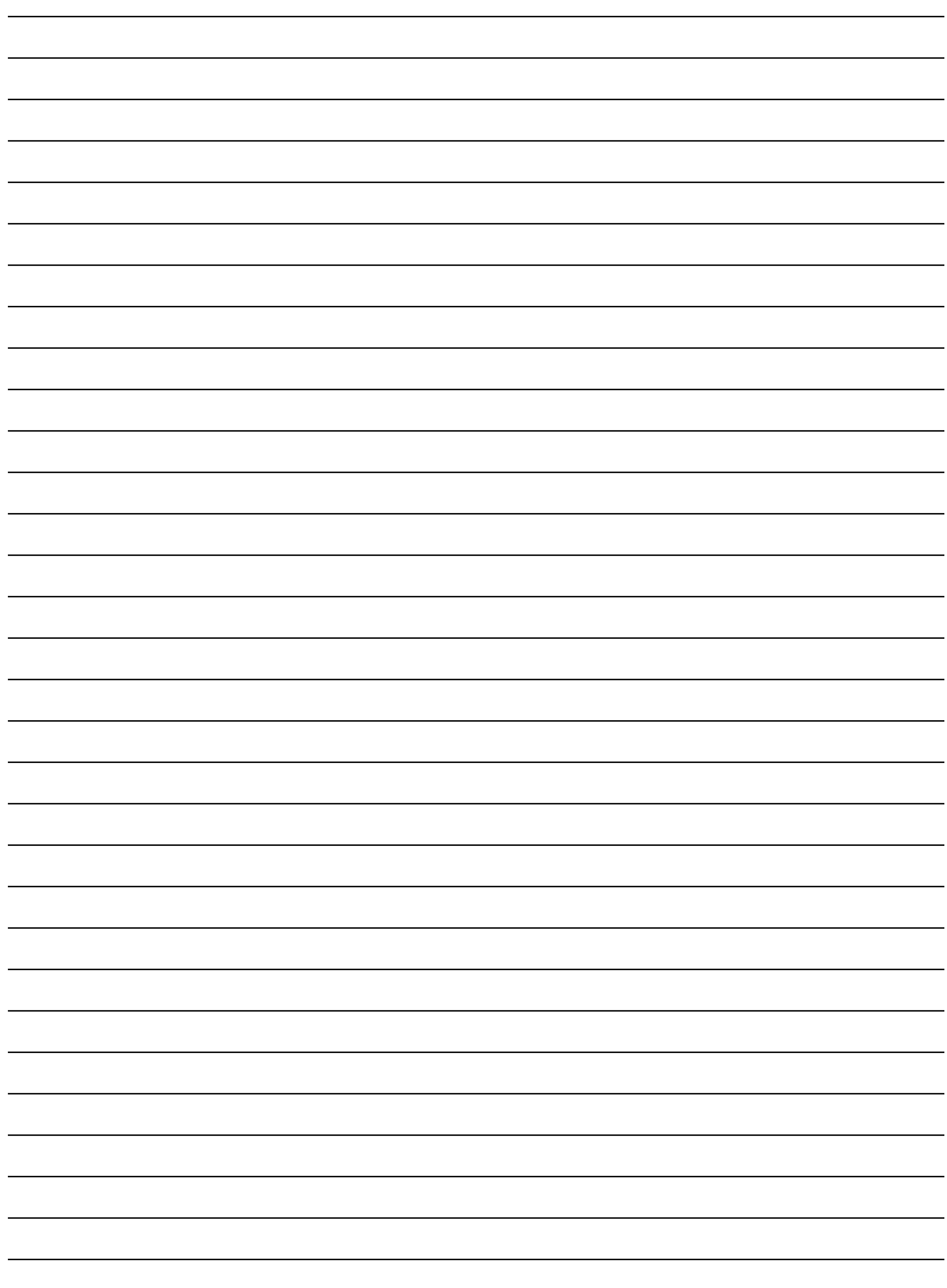
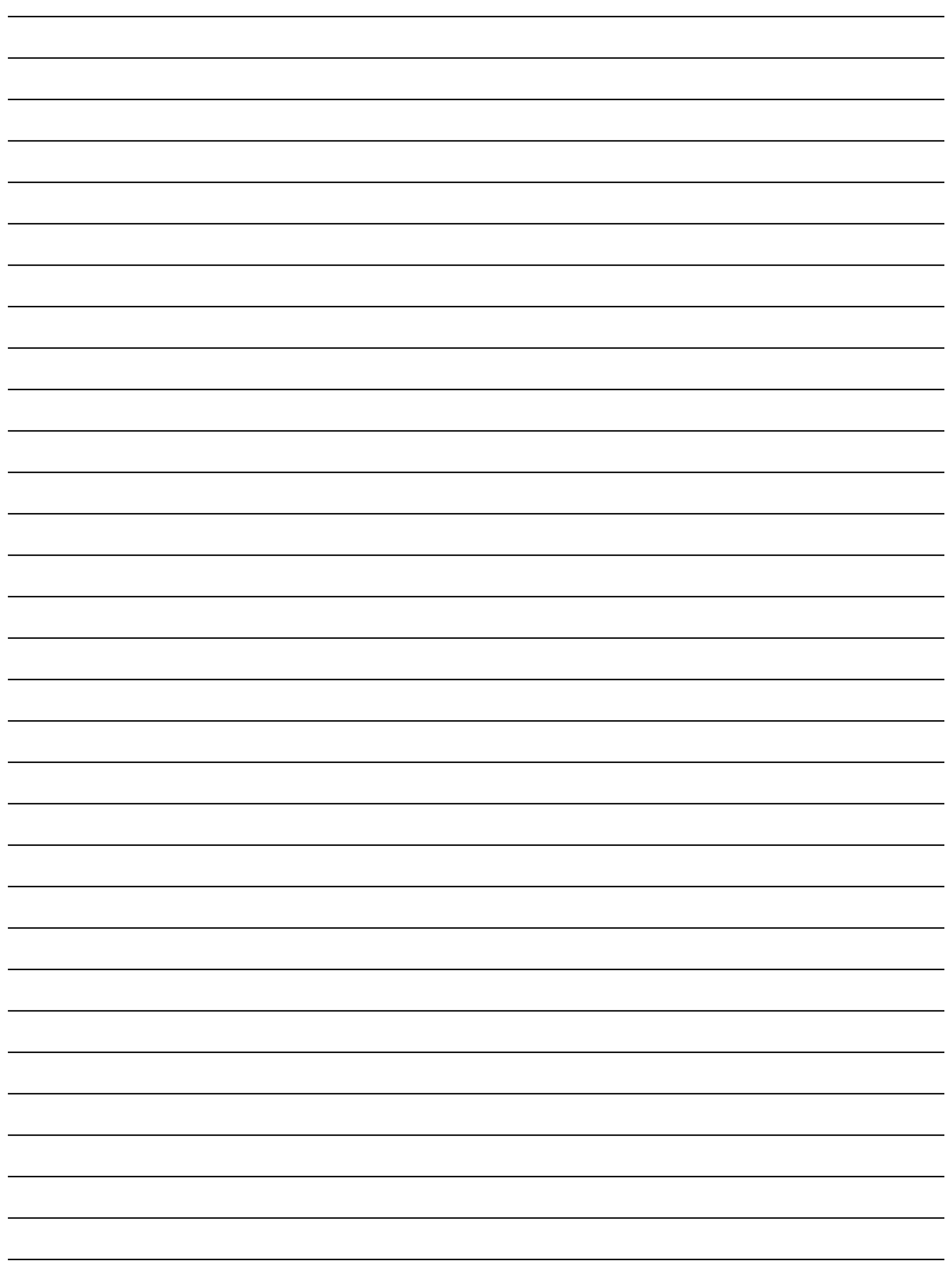
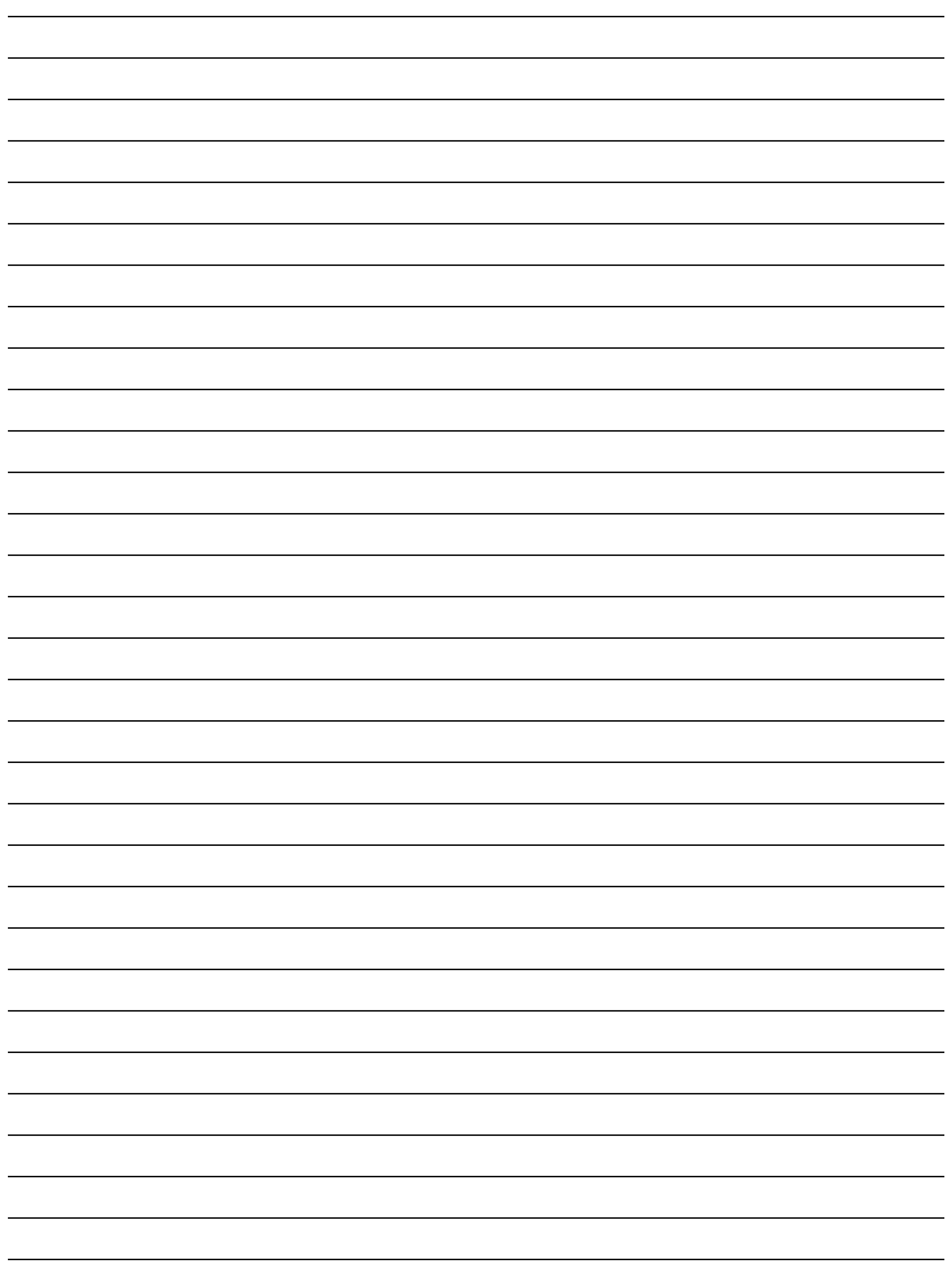
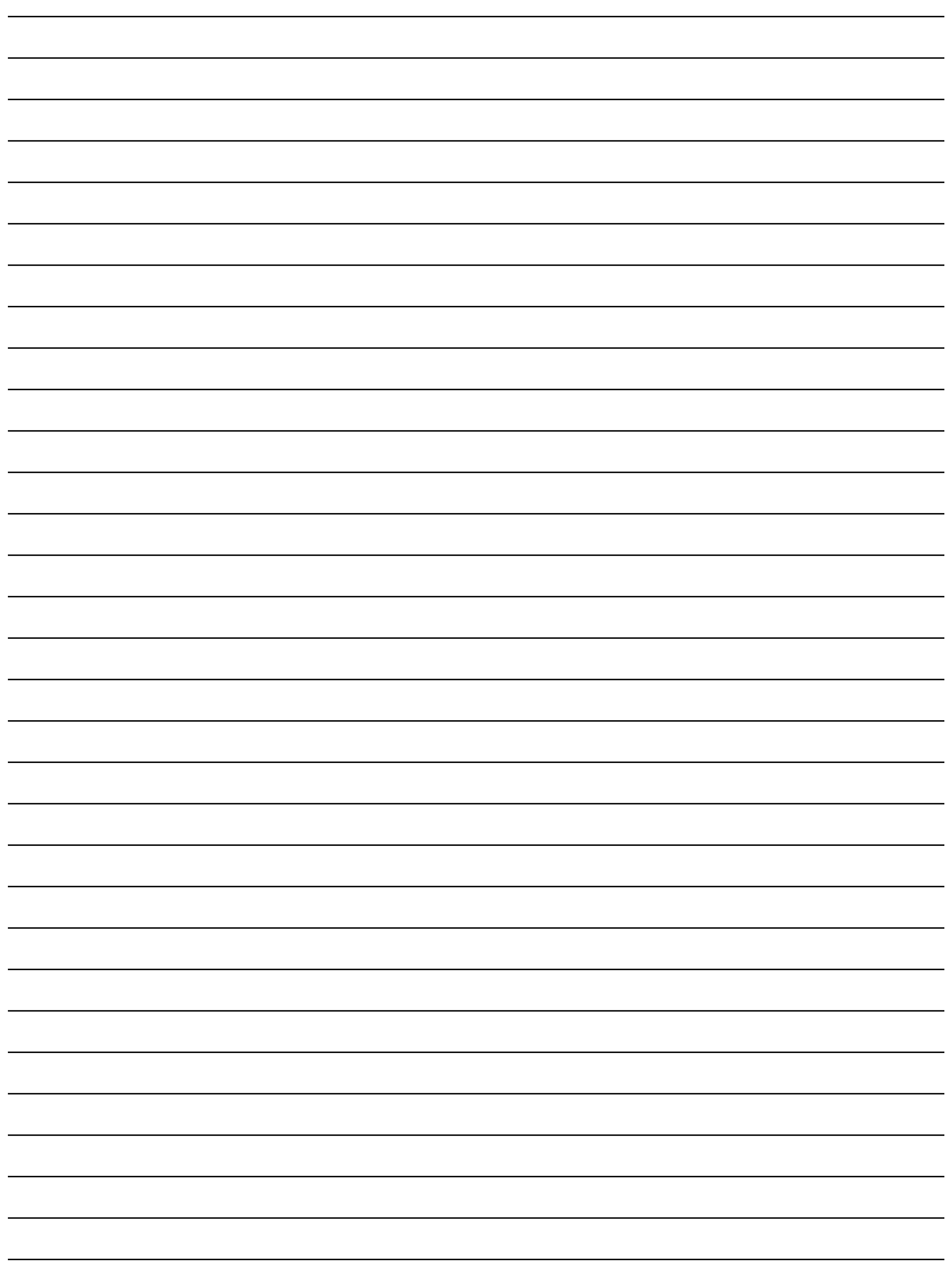
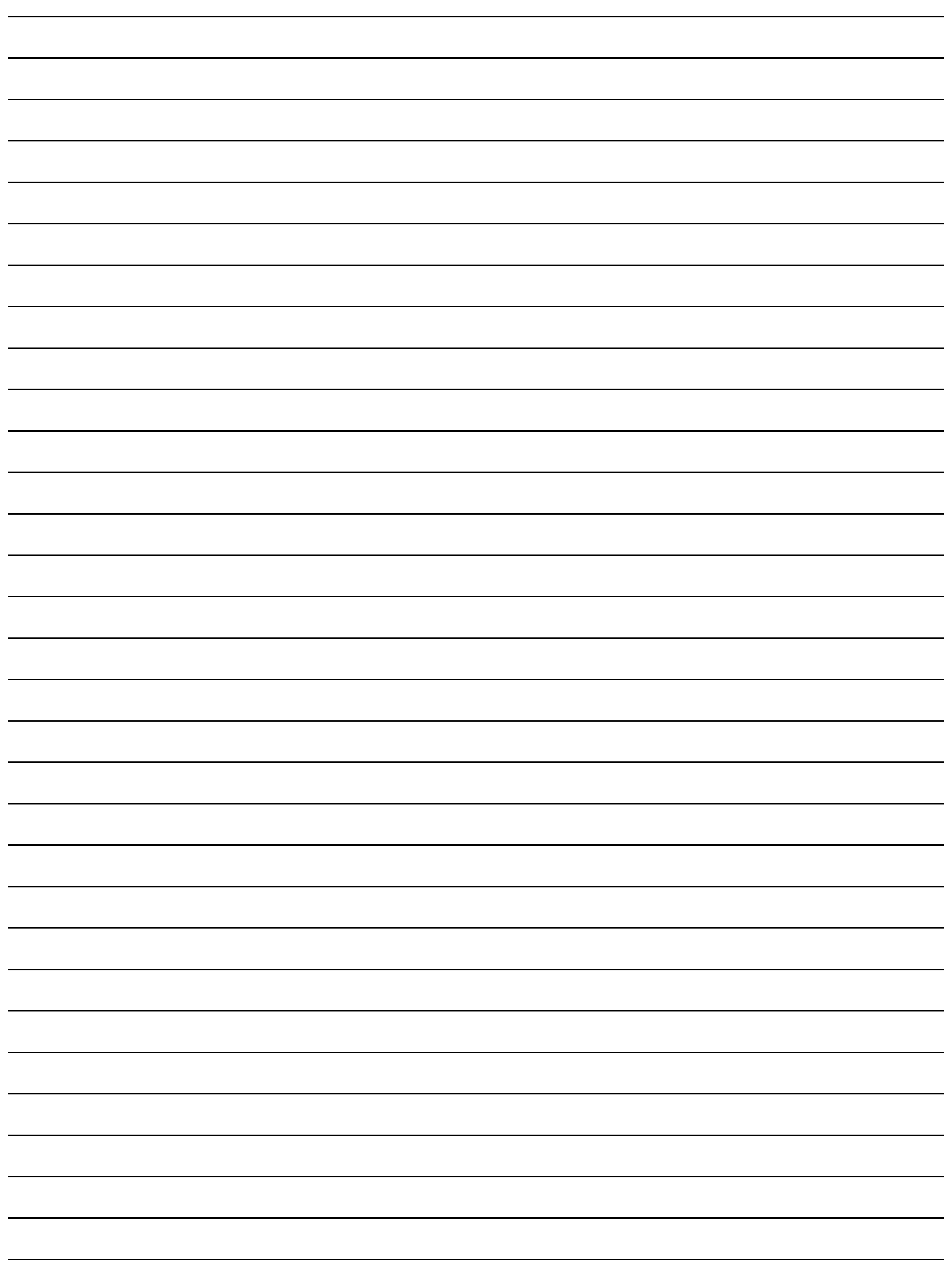










Tax Intensive

Wednesday
October 18, 2023

Fiduciary Tax Returns - Tips and Tricks

SAMPLE

FORM 706

242075362

Form 706

(Rev. August 2019)
Department of the Treasury
Internal Revenue Service

United States Estate (and Generation-Skipping Transfer) Tax Return

▶ Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2018.
▶ Go to *www.irs.gov/Form706* for instructions and the latest information.

OMB No. 1545-0015

Part 1—Decedent and Executor

1a Decedent's first name and middle initial (and maiden name, if any) MARY B	1b Decedent's last name			2 Decedent's SSN
3a City, town, or post office; county; state or province; country; and ZIP or foreign postal code ST PETERSBURG PINELLAS, FL 33711	3b Year domicile established 1972	4 Date of birth		5 Date of death /21
6a Name of executor (see instructions)	6b Executor's address (number and street including apartment or suite no., city, town, or post office, state or province, country, and ZIP or foreign postal code) and phone no. 5328 CENTRAL AVE ST PETERSBURG FL 33707 Phone no.			
6c Executor's social security number (see instructions)				

6d If there are multiple executors, check here ☐ and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.

7a Name and location of court where will was probated or estate administered: THERE ARE NO ASSETS FOR PROBATE; NO PROBATE INITIATED

7b Case number: NONE

8 If decedent died testate, check here ▶ [X] and attach a certified copy of the will.

9 If you extended the time to file this Form 706, check here ▶ [X]

10 If Schedule R-1 is attached, check here ▶ ☐

11 If you are estimating the value of assets included in the gross estate on line 1 pursuant to the special rule of Reg. section 20.2010-2(a)(7)(ii), check here ▶ ☐

Part 2—Tax Computation

Line	Description		Amount	Line	Amount
1	Total gross estate less exclusion (from Part 5—Recapitulation, item 13)			1	12,922,019
2	Tentative total allowable deductions (from Part 5—Recapitulation, item 24)			2	1,193,714
3a	Tentative taxable estate (subtract line 2 from line 1)			3a	11,728,305
b	State death tax deduction			3b	
c	Taxable estate (subtract line 3b from line 3a)			3c	11,728,305
4	Adjusted taxable gifts (see instructions)			4	
5	Add lines 3c and 4			5	11,728,305
6	Tentative tax on the amount on line 5 from Table A in the instructions			6	4,637,122
7	Total gift tax paid or payable (see instructions)			7	
8	Gross estate tax (subtract line 7 from line 6)			8	4,637,122
9a	Basic exclusion amount	9a	11,700,000		
b	Deceased spousal unused exclusion (DSUE) amount from predeceased spouse(s), if any (from Section D, Part 6–Portability of Deceased Spousal Unused Exclusion)	9b			
c	Restored exclusion amount (see instructions)	9c			
d	Applicable exclusion amount (add lines 9a, 9b, and 9c)	9d	11,700,000		
e	Applicable credit amount (tentative tax on the amount in line 9d from Table A in the instructions)	9e	4,625,800		
10	Adjustment to applicable credit amount (May not exceed $6,000. See instructions.)	10	0		
11	Allowable applicable credit amount (subtract line 10 from line 9e)			11	4,625,800
12	Subtract line 11 from line 8 (but do not enter less than zero)			12	11,322
13	Credit for foreign death taxes (from Schedule P). (Attach Form(s) 706-CE.)	13			
14	Credit for tax on prior transfers (from Schedule Q)	14			
15	Total credits (add lines 13 and 14)			15	
16	Net estate tax (subtract line 15 from line 12)			16	11,322
17	Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)			17	
18	Total transfer taxes (add lines 16 and 17)			18	11,322
19	Prior payments (explain in an attached statement)			19	11,322
20	Balance due (or overpayment) (subtract line 19 from line 18)			20	0

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the executor) is based on all information of which preparer has any knowledge.

Sign Here

▶ Signature of executor ▶ Date 1/28/22

▶ Signature of executor ▶ Date

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
MICHAEL HAJEK	MICHAEL HAJEK			

Firm's name ▶ HAJEK & ASSOCIATES, LLC — Firm's EIN ▶

Firm's address ▶ 5308 CENTRAL AVE ST PETERSBURG, FL 33707 — Phone no. 727-327-1239

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

DAA

Form 706 (Rev. 8-2019)

Estate of: [redacted] | Decedent's social security number [redacted]

Part 3—Elections by the Executor

Note: For information on electing portability of the decedent's DSUE amount, including how to opt out of the election, see Part 6—Portability of Deceased Spousal Unused Exclusion.
Note: Some of the following elections may require the posting of bonds or liens.

Please check "Yes" or "No" for each question. See instructions.

			Yes	No
1	Do you elect alternate valuation?	1		X
2	Do you elect special-use valuation? If "Yes," you must complete and attach Schedule A-1	2		X
3	Do you elect to pay the taxes in installments as described in section 6166? If "Yes," you must attach the additional information described in the instructions. **Note: By electing section 6166 installment payments, you may be required to provide security for estate tax deferred under section 6166 and interest in the form of a surety bond or a section 6324A lien.**	3		X
4	Do you elect to postpone the part of the taxes due to a reversionary or remainder interest as described in section 6163?	4		X

Part 4—General Information

Note: Please attach the necessary supplemental documents. **You must attach the death certificate.** See instructions.

Authorization to receive confidential tax information under Reg. section 601.504(b)(2)(i); to act as the estate's representative before the IRS; and to make written or oral presentations on behalf of the estate:

Name of representative (print or type)	State	Address (number, street, and room or suite no., city, state, and ZIP code)
KAREN HAJEK	FL	5308 CENTRAL AVE ST PETERSBURG FL 33707

I declare that I am the ☐ attorney/ ☒ certified public accountant/ ☐ enrolled agent (check the applicable box) for the executor. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the state shown above.

Signature	CAF number	Date	Telephone number
	[redacted]		727-327-1239

1 Death certificate number and issuing authority (attach a copy of the death certificate to this return)
[redacted] FLORIDA BUREAU OF VITAL STATISTICS

2 Decedent's business or occupation. If retired, check here ▶ ☒ and state decedent's former business or occupation.
RETAIL SALES

3a Marital status of the decedent at time of death:
☐ Married ☒ Widow/widower ☐ Single ☐ Legally separated ☐ Divorced

3b For all prior marriages, list the name and SSN of the former spouse, the date the marriage ended, and whether the marriage ended by annulment, divorce, or death. Attach additional statements of the same size if necessary.
[redacted] [redacted]

4a Surviving spouse's name	4b Social security number	4c Amount received (see instructions)
NONE		

5 Individuals (other than surviving spouse), trusts, or other estates who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule O) (see instructions).

Name of individual, trust, or estate receiving $5,000 or more	Identifying number	Relationship to decedent	Amount (see instructions)
[redacted] RVOC TRUST	[redacted]	TRUST	12,910,697
All unascertainable beneficiaries and those who receive less than $5,000 ▶			
Total			12,910,697

If you answer "Yes" to any of the following questions, you must attach additional information as described.

		Yes	No
6	Is the estate filing a protective claim for refund? If "Yes," complete and attach two copies of Schedule PC for each claim.		X
7	Does the gross estate contain any section 2044 property (qualified terminable interest property (QTIP) from a prior gift or estate)? See instructions		X
8a	Have federal gift tax returns ever been filed? If "Yes," attach copies of the returns, if available, and furnish the following information.		X
b	Period(s) covered / c Internal Revenue office(s) where filed		
9a	Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?		X
b	Did the decedent own any insurance on the life of another that is not included in the gross estate?		X

DAA

Estate of: [redacted] | **Decedent's social security number** [redacted]

Part 4—General Information *(continued)*

If you answer "Yes" to any of the following questions, you must attach additional information as described.	Yes	No
10 Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent's spouse, and (b) less than the full value of the property is included on the return as part of the gross estate? If "Yes," you must complete and attach Schedule E		X
11a Did the decedent, at the time of death, own any interest in a partnership (for example, a family limited partnership), an unincorporated business, or a limited liability company; or own any stock in an inactive or closely held corporation?		X
b If "Yes," was the value of any interest owned (from above) discounted on this estate tax return? If "Yes," see the instructions on reporting the total accumulated or effective discounts taken on Schedule F or G		X
12 Did the decedent make any transfer described in sections 2035, 2036, 2037, or 2038? See instructions. If "Yes," you must complete and attach Schedule G	X	
13a Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime?	X	
b Were there in existence at the time of the decedent's death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?		X
c Was the decedent receiving income from a trust created after October 22, 1986, by a parent or grandparent?		X
If "Yes," was there a GST taxable termination (under section 2612) on the death of the decedent?		X
d If there was a GST taxable termination (under section 2612), attach a statement to explain. Provide a copy of the trust or will creating the trust, and give the name, address, and phone number of the current trustee(s).		
e Did the decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in lines 13a or 13b?		X
If "Yes," provide the EIN for this transferred/sold item. ▶		
14 Did the decedent ever possess, exercise, or release any general power of appointment? If "Yes," you must complete and attach Schedule H		X
15 Did the decedent have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?		X
16 Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I or a private annuity? If "Yes," you must complete and attach Schedule I		X
17 Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a predeceased spouse under section 2056(b)(7) and which is not reported on this return? If "Yes," attach an explanation		X

Part 5—Recapitulation.

Note: If estimating the value of one or more assets pursuant to the special rule of Reg. section 20.2010-2(a)(7)(ii), enter on both lines 10 and 23 the amount noted in the instructions for the corresponding range of values. See instructions for details.

Item no.	Gross estate		Alternate value	Value at date of death
1	Schedule A—Real Estate	1		0
2	Schedule B—Stocks and Bonds	2		0
3	Schedule C—Mortgages, Notes, and Cash	3		0
4	Schedule D—Insurance on the Decedent's Life (attach Form(s) 712)	4		0
5	Schedule E—Jointly Owned Property (attach Form(s) 712 for life insurance)	5		0
6	Schedule F—Other Miscellaneous Property (attach Form(s) 712 for life insurance)	6		0
7	Schedule G—Transfers During Decedent's Life (att. Form(s) 712 for life insurance)	7		12,922,019
8	Schedule H—Powers of Appointment	8		0
9	Schedule I—Annuities	9		0
10	Estimated value of assets subject to the special rule of Reg. section 20.2010-2(a)(7)(ii)	10		0
11	Total gross estate (add items 1 through 10)	11		12,922,019
12	Schedule U—Qualified Conservation Easement Exclusion	12		0
13	Total gross estate less exclusion (subtract item 12 from item 11). Enter here and on line 1 of Part 2—Tax Computation	13		12,922,019

Item no.	Deductions		Amount
14	Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	14	13,603
15	Schedule K—Debts of the Decedent	15	2,688
16	Schedule K—Mortgages and Liens	16	
17	Total of items 14 through 16	17	16,291
18	Allowable amount of deductions from item 17 (see the instructions for item 18 of the Recapitulation)	18	16,291
19	Schedule L—Net Losses During Administration	19	
20	Schedule L—Expenses Incurred in Administering Property Not Subject to Claims	20	130,825
21	Schedule M—Bequests, etc., to Surviving Spouse	21	
22	Schedule O—Charitable, Public, and Similar Gifts and Bequests	22	1,046,598
23	Estimated value of deductible assets subject to the special rule of Reg. section 20.2010-2(a)(7)(ii)	23	0
24	Tentative total allowable deductions (add items 18 through 23). Enter here and on line 2 of the Tax Computation	24	1,193,714

Estate of: [redacted] | **Decedent's social security number** [redacted]

Part 6—Portability of Deceased Spousal Unused Exclusion (DSUE)

Portability Election

A decedent with a surviving spouse elects portability of the DSUE amount, if any, by completing and timely filing this return. No further action is required to elect portability of the DSUE amount to allow the surviving spouse to use the decedent's DSUE amount.

Section A. Opting Out of Portability

The estate of a decedent with a surviving spouse may opt out of electing portability of the DSUE amount. Check here and do not complete Sections B and C of Part 6 only if the estate opts NOT to elect portability of the DSUE amount. ☐

Section B. Qualified Domestic Trust (QDOT)

	Yes	No
Are any assets of the estate being transferred to a QDOT?		X

If "Yes," the DSUE amount portable to a surviving spouse (calculated in Section C, below) is preliminary and shall be redetermined at the time of the final distribution or other taxable event imposing estate tax under section 2056A. See instructions for more details.

Section C. DSUE Amount Portable to the Surviving Spouse (To be completed by the estate of a decedent making a portability election.)

Complete the following calculation to determine the DSUE amount that can be transferred to the surviving spouse.

		Line	Amount
1	Enter the amount from line 9d, Part 2—Tax Computation	1	
2	Reserved	2	
3	Enter the value of the cumulative lifetime gifts on which tax was paid or payable. See instructions	3	
4	Add lines 1 and 3	4	
5	Enter amount from line 10, Part 2—Tax Computation	5	
6	Divide amount on line 5 by 40% (0.40) (do not enter less than zero)	6	
7	Subtract line 6 from line 4	7	
8	Enter the amount from line 5, Part 2—Tax Computation	8	
9	Subtract line 8 from line 7 (do not enter less than zero)	9	
10	DSUE amount portable to surviving spouse (Enter lesser of line 9 or line 9a, Part 2—Tax Computation)	10	

Section D. DSUE Amount Received From Predeceased Spouse(s) (To be completed by the estate of a deceased surviving spouse with DSUE amount from predeceased spouse(s))

Provide the following information to determine the DSUE amount received from deceased spouses.

A Name of Deceased Spouse (dates of death after December 31, 2010, only)	B Date of Death (enter as mm/dd/yy)	C Portability Election Made? Yes	C No	D If "Yes," DSUE Amount Received From Spouse	E DSUE Amount Applied by Decedent to Lifetime Gifts	F Year of Form 709 Reporting Use of DSUE Amount Listed in col. E	G Remaining DSUE Amount, if any (subtract col. E from col. D)
Part 1 — DSUE RECEIVED FROM LAST DECEASED SPOUSE							
STEPHEN [redacted]	[redacted]/14		X				
Part 2 — DSUE RECEIVED FROM OTHER PREDECEASED SPOUSE(S) AND USED BY DECEDENT							
Total (for all DSUE amounts from predeceased spouse(s) applied)							

Add the amount from Part 1, column D, and the total from Part 2, column E. Enter the result on line 9b, Part 2—Tax Computation ▶

Estate of: [redacted] | Decedent's social security number [redacted]

SCHEDULE F — Other Miscellaneous Property Not Reportable Under Any Other Schedule

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

(If you elect section 2032A valuation, you must complete Schedule F and Schedule A-1.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

		Yes	No
1	Did the decedent own any works of art, items, or any collections whose artistic or collectible value at date of death exceeded $3,000? If "Yes," submit full details on this schedule and attach appraisals.		X
2	Has the decedent's estate, spouse, or any other person received (or will receive) any bonus or award as a result of the decedent's employment or death? If "Yes," submit full details on this schedule.		X
3	Did the decedent at the time of death have, or have access to, a safe deposit box? If "Yes," state location, and if held jointly by decedent and another, state name and relationship of joint depositor. If any of the contents of the safe deposit box are omitted from the schedules in this return, explain fully why omitted.		X

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	CUSIP number or EIN, where applicable	Alternate valuation date	Alternate value	Value at date of death
	Total from continuation schedules (or additional statements) attached to this schedule				
	TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 6.)				0

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

DAA THERE ARE NO CONTINUATION SCHEDULES ATTACHED

Estate of: [redacted]

Decedent's social security number [redacted]

SCHEDULE G—Transfers During Decedent's Life

(If you elect section 2032A valuation, you must complete Schedule G and Schedule A-1.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Alternate valuation date	Alternate value	Value at date of death
A.	Gift tax paid or payable by the decedent or the estate for all gifts made by the decedent or his or her spouse within 3 years before the decedent's death (section 2035(b))	X X X X X		
B.	Transfers includible under sections 2035(a), 2036, 2037, or 2038:			
1	[redacted] R REVOCABLE TRUST, DATED APRIL 14, 2014 (AS AMENDED BY FIRST AMENDMENT DATED MAY 25, 2016; BY SECOND AMENDMENT DATED AUGUST 5, 2016; AND AS REFORMED BY ORDER DATED JAN 18, 2022) (EIN 86-6649824) (COPY ATTACHED)			
	ASSETS:			
2	RESIDENCE-[redacted] ST PETERSBURG, FL 33711 SEE APPRAISAL, EXHIBIT G-1			440,000
3	CHARLES SCHWAB ACCOUNT [redacted]			12,376,593
	THERE IS 1 CONTINUATION SCHEDULE ATTACHED Total from continuation schedules (or additional statements) attached to this schedule			105,426
	TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 7.)			12,922,019

SCHEDULE H—Powers of Appointment

(Include "5 and 5 lapsing" powers (section 2041(b)(2)) held by the decedent.)
(If you elect section 2032A valuation, you must complete Schedule H and Schedule A-1.)

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last three columns.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
	THERE ARE NO CONTINUATION SCHEDULES ATTACHED Total from continuation schedules (or additional statements) attached to this schedule			
	TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 8.)			0

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

242075362

Form 706 (Rev. 8-2019)

Estate of: [redacted] | Decedent's social security number [redacted]

SCHEDULE G CONTINUATION SCHEDULE

Continuation Schedule 1 of 1

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Alternate valuation date	Alternate value	Value at date of death
	[redacted]			
	SEE ATTACHED-EXHIBIT G-2			
4	CHECKING ACCOUNT - JP MORGAN CHASE BANK, N.A., [redacted]			105,426
	SEE EXHIBIT G-3			
TOTAL. (Carry forward to main schedule.)				105,426

Form 706 (Rev. 8-2019)

Estate of: [redacted] | Decedent's social security number [redacted]

SCHEDULE J — Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims

▶ Use Schedule PC to make a protective claim for refund due to an expense not currently deductible. For such a claim, report the expense on Schedule J but without a value in the last column.

Note: Do not list expenses of administering property not subject to claims on this schedule. To report those expenses, see instructions.

If executors' commissions, attorney fees, etc., are claimed and allowed as a deduction for estate tax purposes, they are not allowable as a deduction in computing the taxable income of the estate for federal income tax purposes. They are allowable as an income tax deduction on Form 1041, U.S. Income Tax Return for Estates and Trusts, if a waiver is filed to forgo the deduction on Form 706. See the Instructions for Form 1041.

	Yes	No
Are you aware of any actual or potential reimbursement to the estate for any expense claimed as a deduction on this schedule? If "Yes," attach a statement describing the expense(s) subject to potential reimbursement. See instructions.		X

Item number	Description	Expense amount	Total amount
	A. Funeral expenses:		
1			
	Total funeral expenses ▶		0
	B. Administration expenses:		
	1 Executors' commissions — . (Strike out the words that do not apply.)		0
	2 Attorney fees — . (Strike out the words that do not apply.)		0
	3 Accountant fees — . (Strike out the words that do not apply.) PAID		7,600
	4 Miscellaneous expenses:	Expense amount	
	APPRAISAL FEES-RESIDENCE	450	
	ADMINISTRATIVE FEES	5,553	
	Total miscellaneous expenses from continuation schedules (or additional statements) attached to this schedule		
	Total miscellaneous expenses ▶		6,003
	TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 14.) ▶		13,603

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

DAA THERE ARE NO CONTINUATION SCHEDULES ATTACHED

Estate of: [redacted] | **Decedent's social security number** [redacted]

SCHEDULE K — Debts of the Decedent, and Mortgages and Liens

▶ **Use Schedule PC to make a protective claim for refund due to a claim not currently deductible. For such a claim, report the expense on Schedule K but without a value in the last column.**

	Yes	No
Are you aware of any actual or potential reimbursement to the estate for any debt of the decedent, mortgage, or lien claimed as a deduction on this schedule? If "Yes," attach a statement describing the items subject to potential reimbursement. See instructions.		X
Are any of the items on this schedule deductible under Reg. section 20.2053-4(b) and Reg. section 20.2053-4(c)? If "Yes," attach a statement indicating the applicable provision and documenting the value of the claim.		X

Item number	Debts of the Decedent — Creditor and nature of debt, and allowable death taxes	Amount
1	DEBTS-BILLS PAYABLE AT DOD	2,688
	THERE ARE NO CONTINUATION SCHEDULES ATTACHED Total from continuation schedules (or additional statements) attached to this schedule	
	TOTAL (Also enter on Part 5 — Recapitulation, page 3, at item 15.)	2,688

Item number	Mortgages and Liens — Description	Amount
	THERE ARE NO CONTINUATION SCHEDULES ATTACHED Total from continuation schedules (or additional statements) attached to this schedule	
	TOTAL (Also enter on Part 5 — Recapitulation, page 3, at item 16.)	0

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Estate of: [redacted] | Decedent's social security number [redacted]

SCHEDULE L—Net Losses During Administration and Expenses Incurred in Administering Property Not Subject to Claims

▶ **Use Schedule PC to make a protective claim for refund due to an expense not currently deductible. For such expenses, report the expense on Schedule L but without a value in the last column.**

Item number	Net losses during administration (**Note:** Do not deduct losses claimed on a federal income tax return.)	Amount
	THERE ARE NO CONTINUATION SCHEDULES ATTACHED Total from continuation schedules (or additional statements) attached to this schedule	
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 19.)		0

Item number	Expenses incurred in administering property not subject to claims. (Indicate whether estimated, agreed upon, or paid.)	Amount
1	TRUSTEE FEES	130,825
	THERE ARE NO CONTINUATION SCHEDULES ATTACHED Total from continuation schedules (or additional statements) attached to this schedule	
TOTAL (Also enter on Part 5—Recapitulation, page 3, at item 20.)		130,825

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

Form 706 (Rev. 8-2019)

Estate of: [redacted] | Decedent's social security number [redacted]

SCHEDULE O — Charitable, Public, and Similar Gifts and Bequests

Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entry in the last column.

		Yes	No
1a	If the transfer was made by will, has any action been instituted to contest or have interpreted any of its provisions affecting the charitable deductions claimed in this schedule? If "Yes," full details must be submitted with this schedule. SEE STATEMENT 1	X	
b	According to the information and belief of the person or persons filing this return, is any such action planned? If "Yes," full details must be submitted with this schedule.		X
2	Did any property pass to charity as the result of a qualified disclaimer? If "Yes," attach a copy of the written disclaimer required by section 2518(b).		X

Item number	Name and address of beneficiary	Character of institution	Amount
1	[redacted] WASHINGTON DC 20036	501(C)3 PUBLIC CHAR	149,514
2	[redacted] WASHINGTON DC 20037	501(C)3 PUBLIC CHAR	149,514
3	[redacted] RESTON VA 20190	501(C)3 PUBLIC CHAR	149,514
4	[redacted] LAKELAND FL 33813	501(C)3 PUBLIC CHAR	149,514
5	[redacted] ARLINGTON VA 22203	501(C)3 PUBLIC CHAR	149,514
6	[redacted] WASHINGTON DC 20036	501(C)3 PUBLIC CHAR	149,514
	Total from continuation schedules (or additional statements) attached to this schedule		149,514

3	Total	3	1,046,598
4a	Federal estate tax payable out of property interests listed above	4a	0
b	Other death taxes payable out of property interests listed above	4b	0
c	Federal and state GST taxes payable out of property interests listed above	4c	0
d	Add items 4a, 4b, and 4c	4d	0
5	Net value of property interests listed above (subtract item 4d from item 3). Also enter on Part 5—Recapitulation, page 3, at item 22	5	1,046,598

(If more space is needed, attach the continuation schedule from the end of this package or additional statements of the same size.)

DAA THERE IS 1 CONTINUATION SCHEDULE ATTACHED

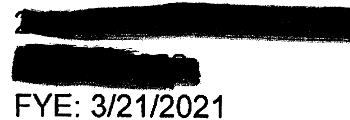
Estate of: [redacted] | Decedent's social security number [redacted]

SCHEDULE O CONTINUATION SCHEDULE

Continuation Schedule 1 of 1

Item number	Name and address of beneficiary	Character of institution	Amount
7	[redacted] N [redacted] TALLAHASSEE FL 32314	501(C)3 PUBLIC CHAR	149,514

TOTAL. (Carry forward to main schedule.) 149,514



FYE: 3/21/2021

Federal Statements

Statement 1 - Schedule O, Line 1a - Action Instituted Affecting Charitable Deduction

Description
THE TRANSFERS TO CHARITABLE ORGANIZATIONS WERE MADE PURSUANT TO THE TERMS OF THE S[redacted] IRREVOCABLE TRUST DATED APRIL 24, 2014, AS REFORMED BY THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA, PROBATE DIVISION, ON JANUARY 18, 2022. A COPY OF THE TRUST AGREEMENT (INCLUDING THE REFORMATION ORDER) HAS BEEN ATTACHED HERETO.

SAMPLE

FORM 1041

Form **1041** Department of the Treasury—Internal Revenue Service
U.S. Income Tax Return for Estates and Trusts
2022 OMB No. 1545-0092

Go to *www.irs.gov/Form1041* for instructions and the latest information.

For calendar year 2022 or fiscal year beginning , and ending

A Check all that apply:
- [ ] Decedent's estate
- [ ] Simple trust
- [X] Complex trust
- [ ] Qualified disability trust
- [ ] ESBT (S portion only)
- [ ] Grantor type trust
- [ ] Bankruptcy estate-Ch. 7
- [ ] Bankruptcy estate-Ch. 11
- [ ] Pooled income fund

Name of estate or trust (If a grantor type trust, see the instructions.)
[redacted] TRUST

Name and title of fiduciary
KATHRYN EVERLOVE-STONE, TRUSTEE

Number, street, and room or suite no. (If a P.O. box, see the instructions.)
5328 CENTRAL AVE

City or town, state or province, country, and ZIP or foreign postal code
ST. PETERSBURG FL 33707-6130

C Employer identification number [redacted]

D Date entity created 12/11/2021

E Nonexempt charitable and split-interest trusts, check applicable box(es). See instructions.
- [ ] Described in sec. 4947(a)(1). Check here if not a private foundation [ ]
- [ ] Described in sec. 4947(a)(2)

B Number of Schedules K-1 attached (see instructions) 2

F Check applicable boxes: [ ] Initial return [ ] Final return [ ] Amended return [ ] Net operating loss carryback [ ] Change in trust's name [ ] Change in fiduciary [ ] Change in fiduciary's name [ ] Change in fiduciary's address

G Check here if the estate or filing trust made a section 645 election [ ] Trust TIN

Section	Line	Description		Amount
Income	1	Interest income	1	737
	2a	Total ordinary dividends	2a	18,000
	b	Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust 18,000		
	3	Business income or (loss). Attach Schedule C (Form 1040)	3	
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4	-3,000
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	
	6	Farm income or (loss). Attach Schedule F (Form 1040)	6	
	7	Ordinary gain or (loss). Attach Form 4797	7	
	8	Other income. List type and amount	8	
	9	**Total income.** Combine lines 1, 2a, and 3 through 8	9	15,737
Deductions	10	Interest. Check if Form 4952 is attached [ ]	10	
	11	Taxes	11	2,638
	12	Fiduciary fees. If only a portion is deductible under section 67(e), see instructions	12	
	13	Charitable deduction (from Schedule A, line 7)	13	
	14	Attorney, accountant, and return preparer fees. If only a portion is deductible under section 67(e), see instructions	14	
	15a	Other deductions (attach schedule). See instructions for deductions allowable under section 67(e) SEE STATEMENT 1	15a	8,090
	b	Net operating loss deduction. See instructions	15b	
	16	Add lines 10 through 15b	16	10,728
	17	Adjusted total income or (loss). Subtract line 16 from line 9 — 17: 5,009		
	18	Income distribution deduction (from Sch. B, line 15). Attach Schedules K-1 (Form 1041)	18	
	19	Estate tax deduction including certain generation-skipping taxes (attach computation)	19	
	20	Qualified business income deduction. Attach Form 8995 or 8995-A	20	
	21	Exemption	21	100
	22	Add lines 18 through 21	22	100
Tax and Payments	23	Taxable income. Subtract line 22 from line 17. If a loss, see instructions	23	4,909
	24	**Total tax** (from Schedule G, Part I, line 9)	24	399
	25	Current year net 965 tax liability paid from Form 965-A, Part II, column (k) (see instructions)	25	
	26	**Total payments** (from Schedule G, Part II, line 19)	26	963
	27	Estimated tax penalty. See instructions	27	
	28	**Tax due.** If line 26 is smaller than the total of lines 24, 25, and 27, enter amount owed	28	
	29	**Overpayment.** If line 26 is larger than the total of lines 24, 25, and 27, enter amount overpaid	29	564
	30	Amount of line 29 to be: a **Credited to 2023** ; b **Refunded**	30	564

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of fiduciary or officer representing fiduciary | Date | EIN of fiduciary if a financial institution

May the IRS discuss this return with the preparer shown below? See instructions. [X] Yes [ ] No

Paid Preparer Use Only

Print/Type preparer's name: JOSEPH A MEYERS II, CPA | Preparer's signature | Date | Check [ ] if self-employed | PTIN [redacted]

Firm's name: HURD, HAWKINS, MEYERS & RADOSEVICH,PA | Firm's EIN [redacted]

Firm's address: 2299 TALL PINES DRIVE LARGO, FL 33771 | Phone no. 727-501-1111

For Paperwork Reduction Act Notice, see the separate instructions. Form **1041** (2022)

CLIENT COPY

DAA

Form **7004**
(Rev. December 2018)
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns

▶ File a separate application for each return.
▶ Go to *www.irs.gov/Form7004* for instructions and the latest information.

OMB No. 1545-0233

Print or Type

Name: [redacted]

Identifying number: [redacted]

Number, street, and room or suite no. (If P.O. box, see instructions.)
5328 CENTRAL AVE

City, town, state, and ZIP code (If a foreign address, enter city, province or state, and country (follow the country's practice for entering postal code).)
ST. PETERSBURG FL 33707-6130

Note: File request for extension by the due date of the return. See instructions before completing this form.

Part I **Automatic Extension for Certain Business Income Tax, Information, and Other Returns.** See instructions.

1 Enter the form code for the return listed below that this application is for 05

Application Is For:	Form Code	Application Is For:	Form Code
Form 706-GS(D)	01	Form 1120-ND (section 4951 taxes)	20
Form 706-GS(T)	02	Form 1120-PC	21
Form 1041 (bankruptcy estate only)	03	Form 1120-POL	22
Form 1041 (estate other than a bankruptcy estate)	04	Form 1120-REIT	23
Form 1041 (trust)	05	Form 1120-RIC	24
Form 1041-N	06	Form 1120S	25
Form 1041-QFT	07	Form 1120-SF	26
Form 1042	08	Form 3520-A	27
Form 1065	09	Form 8612	28
Form 1066	11	Form 8613	29
Form 1120	12	Form 8725	30
Form 1120-C	34	Form 8804	31
Form 1120-F	15	Form 8831	32
Form 1120-FSC	16	Form 8876	33
Form 1120-H	17	Form 8924	35
Form 1120-L	18	Form 8928	36
Form 1120-ND	19		

Part II **All Filers Must Complete This Part**

2 If the organization is a foreign corporation that does not have an office or place of business in the United States, check here .... ▶ ☐

3 If the organization is a corporation and is the common parent of a group that intends to file a consolidated return, check here .... ▶ ☐
If checked, attach a statement listing the name, address, and employer identification number (EIN) for each member covered by this application.

4 If the organization is a corporation or partnership that qualifies under Regulations section 1.6081-5, check here .... ▶ ☐

5a The application is for calendar year 2022 , or tax year beginning .... , and ending ....

b **Short tax year.** If this tax year is less than 12 months, check the reason: ☐ Initial return ☐ Final return
☐ Change in accounting period ☐ Consolidated return to be filed ☐ Other (See instructions–attach explanation.)

6	Tentative total tax	6	963
7	**Total** payments and credits. See instructions	7	
8	**Balance due.** Subtract line 7 from line 6. See instructions	8	963

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Schedule A Charitable Deduction. Don't complete for a simple trust or a pooled income fund.

Line	Description	Box	Amount
1	Amounts paid or permanently set aside for charitable purposes from gross income. See instructions	1	
2	Tax-exempt income allocable to charitable contributions. See instructions	2	
3	Subtract line 2 from line 1	3	
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes. See instructions	6	
7	**Charitable deduction.** Subtract line 6 from line 5. Enter here and on page 1, line 13	7	

Schedule B Income Distribution Deduction

Line	Description	Box	Amount
1	Adjusted total income. See instructions	1	5,009
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 19, column (1). See instructions	3	0
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1. See instructions	5	0
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	3,000
7	**Distributable net income.** Combine lines 1-6. If zero or less, enter -0-	7	8,009
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law — 8: 0		
9	Income required to be distributed currently	9	0
10	Other amounts paid, credited, or otherwise required to be distributed	10	0
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11	
12	Enter the amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	8,009
15	**Income distribution deduction.** Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	

Schedule G Tax Computation and Payments (see instructions)

Part I — Tax Computation

Line	Description	Box	Inner amount	Box	Amount
1	**Tax:**				
a	Tax on taxable income. See instructions	1a	316		
b	Tax on lump-sum distributions. Attach Form 4972	1b			
c	Alternative minimum tax (from Schedule I (Form 1041), line 54)	1c	0		
d	**Total.** Add lines 1a through 1c			1d	316
2a	Foreign tax credit. Attach Form 1116	2a			
b	General business credit. Attach Form 3800	2b			
c	Credit for prior year minimum tax. Attach Form 8801	2c			
d	Bond credits. Attach Form 8912	2d			
e	**Total credits.** Add lines 2a through 2d			2e	0
3	Subtract line 2e from line 1d. If zero or less, enter -0-			3	316
4	Tax on the ESBT portion of the trust (from ESBT Tax Worksheet, line 17). See instructions			4	
5	Net investment income tax from Form 8960, line 21			5	83
6	Recapture taxes. Check if from: ☐ Form 4255 ☐ Form 8611			6	
7	Household employment taxes. Attach Schedule H (Form 1040)			7	
8	Other taxes and amounts due			8	
9	**Total tax.** Add lines 3 through 8. Enter here and on page 1, line 24			9	399

Part II — Payments

Line	Description	Box	Amount
10	2022 estimated tax payments and amount applied from 2021 return	10	
11	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	11	
12	Subtract line 11 from line 10	12	
13	Tax paid with Form 7004. See instructions	13	963
14	Federal income tax withheld. If any is from Form(s) 1099, check here ☐	14	
15	Current year net 965 tax liability from Form 965-A, Part I, column (f) (see instructions)	15	
16	Other payments: a Form 2439 ; b Form 4136 ; Total	16c	
17	Credit for qualified sick and family leave wages for leave taken before April 1, 2021	17	
18	Credit for qualified sick and family leave wages for leave taken after March 31, 2021, and before October 1, 2021	18	
19	**Total payments.** Add lines 12 through 15 and 16c through 18. Enter here and on page 1, line 26	19	963

Other Information

		Yes	No
1	Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses.		X
	Enter the amount of tax-exempt interest income and exempt-interest dividends $		
2	Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		X
3	At any time during calendar year 2022, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country?		X
	See the instructions for exceptions and filing requirements for FinCEN Form 114. If "Yes," enter the name of the foreign country		
4	During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions		X
5	Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see the instructions for the required attachment		X
6	If this is an estate or a complex trust making the section 663(b) election, check here. See instructions ☐		
7	To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here. See instructions ☐		
8	If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here ☐		
9	Are any present or future trust beneficiaries skip persons? See instructions		X
10	Was the trust a specified domestic entity required to file Form 8938 for the tax year? See the Instructions for Form 8938		X
11a	Did the estate or trust distribute S corporation stock for which it made a section 965(i) election?		X
b	If "Yes," did each beneficiary enter into an agreement to be liable for the net tax liability? See instructions		
12	Did the estate or trust either make a section 965(i) election or enter into a transfer agreement as an eligible 965(i) transferee for S corporation stock held on the last day of the tax year? See instructions		X
13	**ESBTs only.** Does the ESBT have a nonresident alien grantor? If "Yes," see instructions		
14	**ESBTs only.** Did the S portion of the trust claim a qualified business income deduction? If "Yes," see instructions		

SCHEDULE D (Form 1041)

Department of the Treasury
Internal Revenue Service

Capital Gains and Losses

Attach to Form 1041, Form 5227, or Form 990-T.
Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.
Go to *www.irs.gov/F1041* for instructions and the latest information.

OMB No. 1545-0092

2022

Name of estate or trust: [redacted]

Employer identification number: [redacted]

Did you dispose of any investment(s) in a qualified opportunity fund during the tax year? ☐ Yes ☒ No

If "Yes," attach Form 8949 and see its instructions for additional requirements for reporting your gain or loss.

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

Part I Short-Term Capital Gains and Losses - Generally Assets Held 1 Year or Less (see instructions)

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked	1,828,863	3,588,295	1,759,432	0
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				

	Line	Amount
4 Short-term capital gain or (loss) from Forms 4684, 6252, 6781, and 8824	4	
5 Net short-term gain or (loss) from partnerships, S corporations, and other estates or trusts	5	
6 Short-term capital loss carryover. Enter the amount, if any, from line 9 of the 2021 Capital Loss Carryover Worksheet	6	( )
7 **Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). Enter here and on Part III, line 17, column (3)	7	

Part II Long-Term Capital Gains and Losses - Generally Assets Held More Than 1 Year (see instructions)

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked	520,629	600,054	79,425	0
9 Totals for all transactions reported on Form(s) 8949 with Box E checked	2,349,492	3,311,770		-962,278
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				

	Line	Amount
11 Long-term capital gain or (loss) from Forms 2439, 4684, 6252, 6781, and 8824	11	
12 Net long-term gain or (loss) from partnerships, S corporations, and other estates or trusts	12	
13 Capital gain distributions	13	
14 Gain from Form 4797, Part I	14	
15 Long-term capital loss carryover. Enter the amount, if any, from line 14 of the 2021 Capital Loss Carryover Worksheet	15	( )
16 **Net long-term capital gain or (loss).** Combine lines 8a through 15 in column (h). Enter here and on Part III, line 18a, column (3)	16	-962,278

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

Part III Summary of Parts I and II

Caution: Read the instructions before completing this part.		(1) Beneficiaries' (see instr.)	(2) Estate's or trust's	(3) Total
17 Net short-term gain or (loss)	17			
18 Net long-term gain or (loss):				
a Total for year	18a		-962,278	-962,278
b Unrecaptured section 1250 gain (see line 18 of the worksheet.)	18b			
c 28% rate gain	18c			
19 Total net gain or (loss). Combine lines 17 and 18a	19		-962,278	-962,278

Note: *If line 19, column (3), is a net gain, enter the gain on Form 1041, line 4 (or Schedule A (Form 990-T), Part I, line 4a). If lines 18a and 19, column (2), are net gains, go to Part V, and **don't** complete Part IV. If line 19, column (3), is a net loss, complete Part IV and the **Capital Loss Carryover Worksheet**, as necessary.*

Part IV Capital Loss Limitation

20 Enter here and enter as a (loss) on Form 1041, line 4 (or Schedule A (Form 990-T), Part I, line 4c, if a trust), the **smaller** of:		
a The loss on line 19, column (3) **or b** $3,000	20	(3,000)

Note: *If the loss on line 19, column (3), is more than $3,000, **or** if Form 1041, page 1, line 23 (or Form 990-T, Part I, line 11), is a loss, complete the **Capital Loss Carryover Worksheet** in the instructions to figure your capital loss carryover.*

Part V Tax Computation Using Maximum Capital Gains Rates

Form 1041 filers. Complete this part **only** if both lines 18a and 19 in column (2) are gains, or an amount is entered in Part I or Part II and there is an entry on Form 1041, line 2b(2), **and** Form 1041, line 23, is more than zero.

Caution: *Skip this part and complete the **Schedule D Tax Worksheet** in the instructions if:*

- *Either line 18b, col. (2), or line 18c, col. (2), is more than zero, or*
- *Both Form 1041, line 2b(1), and Form 4952, line 4g, are more than zero, or*
- *There are amounts on lines 4e and 4g of Form 4952.*

Form 990-T trusts. Complete this part **only** if both lines 18a and 19 are gains, or qualified dividends are included in income in Part I of Form 990-T, **and** Form 990-T, Part I, line 11, is more than zero. Skip this part and complete the **Schedule D Tax Worksheet** in the instructions if either line 18b, col. (2) or line 18c, col. (2), is more than zero.

Line	Description						
21	Enter taxable income from Form 1041, line 23 (or Form 990-T, Part I, line11)			21	4,909		
22	Enter the **smaller** of line 18a or 19 in column (2) but not less than zero	22					
23	Enter the estate's or trust's qualified dividends from Form 1041, line 2b(2) (or enter the qualified dividends included in income in Part I of Form 990-T)	23	18,000				
24	Add lines 22 and 23	24	18,000				
25	If the estate or trust is filing Form 4952, enter the amount from line 4g; otherwise, enter -0-	25	0				
26	Subtract line 25 from line 24. If zero or less, enter -0-			26	18,000		
27	Subtract line 26 from line 21. If zero or less, enter -0-			27	0		
28	Enter the **smaller** of the amount on line 21 or $2,800			28	2,800		
29	Enter the **smaller** of the amount on line 27 or line 28			29			
30	Subtract line 29 from line 28. If zero or less, enter -0-. This amount is taxed at 0%					30	2,800
31	Enter the **smaller** of line 21 or line 26			31	4,909		
32	Subtract line 30 from line 26			32	15,200		
33	Enter the **smaller** of line 21 or $13,700			33	4,909		
34	Add lines 27 and 30			34	2,800		
35	Subtract line 34 from line 33. If zero or less, enter -0-			35	2,109		
36	Enter the **smaller** of line 32 or line 35			36	2,109		
37	Multiply line 36 by 15% (0.15)					37	316
38	Enter the amount from line 31			38	4,909		
39	Add lines 30 and 36			39	4,909		
40	Subtract line 39 from line 38. If zero or less, enter -0-			40	0		
41	Multiply line 40 by 20% (0.20)					41	
42	Figure the tax on the amount on line 27. Use the 2022 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the Instructions for Form 1041)			42			
43	Add lines 37, 41, and 42			43	316		
44	Figure the tax on the amount on line 21. Use the 2022 Tax Rate Schedule for Estates and Trusts (see the Schedule G instructions in the Instructions for Form 1041)			44	793		
45	**Tax on all taxable income.** Enter the **smaller** of line 43 or line 44 here and on Form 1041, Schedule G, Part I, line 1a (or Form 990-T, Part II, line 2)					45	316

DAA

Form **8960**

Department of the Treasury
Internal Revenue Service

Net Investment Income Tax— Individuals, Estates, and Trusts

Attach to your tax return.

Go to *www.irs.gov/Form8960* for instructions and the latest information.

OMB No. 1545-2227

2022

Attachment Sequence No. **72**

Name(s) shown on your tax return: [redacted]

Your social security number or EIN: [redacted]

Part I Investment Income

☐ Section 6013(g) election (see instructions)
☐ Section 6013(h) election (see instructions)
☐ Regulations section 1.1411-10(g) election (see instructions)

Line	Description	Box	Inner amount	Line	Amount
1	Taxable interest (see instructions)			1	737
2	Ordinary dividends (see instructions)			2	18,000
3	Annuities (see instructions)			3	
4a	Rental real estate, royalties, partnerships, S corporations, trusts, etc. (see instructions)	4a			
b	Adjustment for net income or loss derived in the ordinary course of a non-section 1411 trade or business (see instructions)	4b			
c	Combine lines 4a and 4b			4c	
5a	Net gain or loss from disposition of property (see instructions)	5a	-3,000		
b	Net gain or loss from disposition of property that is not subject to net investment income tax (see instructions)	5b			
c	Adjustment from disposition of partnership interest or S corporation stock (see instructions)	5c			
d	Combine lines 5a through 5c			5d	-3,000
6	Adjustments to investment income for certain CFCs and PFICs (see instructions)			6	
7	Other modifications to investment income (see instructions)			7	
8	Total investment income. Combine lines 1, 2, 3, 4c, 5d, 6, and 7			8	15,737

Part II Investment Expenses Allocable to Investment Income and Modifications

Line	Description	Box	Inner amount	Line	Amount
9a	Investment interest expenses (see instructions)	9a			
b	State, local, and foreign income tax (see instructions)	9b			
c	Miscellaneous investment expenses (see instructions)	9c			
d	Add lines 9a, 9b, and 9c			9d	
10	Additional modifications (see instructions)			10	2,709
11	Total deductions and modifications. Add lines 9d and 10			11	2,709

Part III Tax Computation

Line	Description	Box	Inner amount	Line	Amount
12	Net investment income. Subtract Part II, line 11, from Part I, line 8. Individuals, complete lines 13-17. Estates and trusts, complete lines 18a–21. If zero or less, enter -0-			12	13,028
	Individuals:				
13	Modified adjusted gross income (see instructions)	13			
14	Threshold based on filing status (see instructions)	14			
15	Subtract line 14 from line 13. If zero or less, enter -0-	15			
16	Enter the smaller of line 12 or line 15			16	
17	Net investment income tax for individuals. Multiply line 16 by 3.8% (0.038). **Enter here and include on your tax return** (see instructions)			17	
	Estates and Trusts:				
18a	Net investment income (line 12 above)	18a	13,028		
b	Deductions for distributions of net investment income and deductions under section 642(c) (see instructions)	18b			
c	Undistributed net investment income. Subtract line 18b from line 18a (see instructions). If zero or less, enter -0-	18c	13,028		
19a	Adjusted gross income (see instructions)	19a	15,637		
b	Highest tax bracket for estates and trusts for the year (see instructions)	19b	13,450		
c	Subtract line 19b from line 19a. If zero or less, enter -0-	19c	2,187		
20	Enter the smaller of line 18c or line 19c			20	2,187
21	Net investment income tax for estates and trusts. Multiply line 20 by 3.8% (0.038). **Enter here and include on your tax return** (see instructions)			21	83

For Paperwork Reduction Act Notice, see your tax return instructions.

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

Attach to Form 1040, 1040-SR, 1040-NR, or 1041.

Go to *www.irs.gov/ScheduleE* for instructions and the latest information.

OMB No. 1545-0074

2022

Attachment Sequence No. **13**

Name(s) shown on return: [redacted]

Your social security number: [redacted]

Part I Income or Loss From Rental Real Estate and Royalties

Note: If you are in the business of renting personal property, use **Schedule C.** See instructions. If you are an individual, report farm rental income or loss from **Form 4835** on page 2, line 40.

A Did you make any payments in 2022 that would require you to file Form(s) 1099? See instructions ☐ Yes ☐ No

B If "Yes," did you or will you file required Form(s) 1099? ☐ Yes ☐ No

1a Physical address of each property (street, city, state, ZIP code)

A	[redacted] BAR HARBOR ME [redacted]
B	
C	

1b	Type of Property (from list below)
A	4
B	
C	

2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.

	Fair Rental Days	Personal Use Days	QJV
A			☐
B			☐
C			☐

Type of Property:
1 Single Family Residence
2 Multi-Family Residence
3 Vacation/Short-Term Rental
4 Commercial
5 Land
6 Royalties
7 Self-Rental
8 Other (describe)

	Line	Properties: A	B	C
Income:				
3 Rents received	3	55,437		
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6			
7 Cleaning and maintenance	7	2,982		
8 Commissions	8	8,316		
9 Insurance	9	536		
10 Legal and other professional fees	10	4,500		
11 Management fees	11			
12 Mortgage interest paid to banks, etc. (see instructions)	12	51,396		
13 Other interest	13			
14 Repairs	14	1,561		
15 Supplies	15			
16 Taxes	16	4,409		
17 Utilities	17	6,442		
18 Depreciation expense or depletion	18	15,846		
19 Other (list) SEE STATEMENT 2	19	1,846		
20 Total expenses. Add lines 5 through 19	20	97,834		
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file **Form 6198**	21	-42,397		
22 Deductible rental real estate loss after limitation, if any, on **Form 8582** (see instructions)	22	(0)	( )	( )

23a Total of all amounts reported on line 3 for all rental properties	23a	55,437
b Total of all amounts reported on line 4 for all royalty properties	23b	
c Total of all amounts reported on line 12 for all properties	23c	51,396
d Total of all amounts reported on line 18 for all properties	23d	15,846
e Total of all amounts reported on line 20 for all properties	23e	97,834
24 **Income.** Add positive amounts shown on line 21. **Do not** include any losses	24	0
25 **Losses.** Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25	( )
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Schedule 1 (Form 1040), line 5. Otherwise, include this amount in the total on line 41 on page 2	26	

661117

BENEFICIARY 1

Schedule K-1 (Form 1041)

Department of the Treasury
Internal Revenue Service

2022

For calendar year 2022, or tax year

NO TAXABLE INCOME

beginning ______ ending ______

Beneficiary's Share of Income, Deductions, Credits, etc.

See back of form and instructions.

☐ Final K-1 ☐ Amended K-1

OMB No. 1545-0092

Part I Information About the Estate or Trust

A Estate's or trust's employer identification number

[redacted]

B Estate's or trust's name

[redacted]

C Fiduciary's name, address, city, state, and ZIP code

KATHRYN EVERLOVE-STONE
TRUSTEE
5328 CENTRAL AVE
ST. PETERSBURG FL 33707-6130

D ☐ Check if Form 1041-T was filed and enter the date it was filed

E ☐ Check if this is the final Form 1041 for the estate or trust

Part II Information About the Beneficiary

F Beneficiary's identifying number

[redacted]

G Beneficiary's name, address, city, state, and ZIP code

[redacted]

H [X] Domestic beneficiary ☐ Foreign beneficiary

Part III Beneficiary's Share of Current Year Income, Deductions, Credits, and Other Items

1	Interest income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
6	Ordinary business income		
7	Net rental real estate income	13	Credits and credit recapture
8	Other rental income		
9	Directly apportioned deductions		
		14	Other information
10	Estate tax deduction		

*See attached statement for additional information.

Note: A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

661117

BENEFICIARY 2

Schedule K-1 (Form 1041)

2022

For calendar year 2022, or tax year

Department of the Treasury
Internal Revenue Service

NO TAXABLE INCOME

beginning ____ ending ____

Final K-1 ☐ Amended K-1 ☐

OMB No. 1545-0092

Beneficiary's Share of Income, Deductions, Credits, etc.

See back of form and instructions.

Part I Information About the Estate or Trust

A Estate's or trust's employer identification number

[redacted]

B Estate's or trust's name

M[redacted]

C Fiduciary's name, address, city, state, and ZIP code

KATHRYN EVERLOVE-STONE
TRUSTEE
5328 CENTRAL AVE
ST. PETERSBURG FL 33707-6130

D ☐ Check if Form 1041-T was filed and enter the date it was filed

E ☐ Check if this is the final Form 1041 for the estate or trust

Part II Information About the Beneficiary

F Beneficiary's identifying number

[redacted]

G Beneficiary's name, address, city, state, and ZIP code

S[redacted]
[redacted]
S[redacted] FL 33704-3515

H [X] Domestic beneficiary ☐ Foreign beneficiary

Part III Beneficiary's Share of Current Year Income, Deductions, Credits, and Other Items

1	Interest income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
6	Ordinary business income		
7	Net rental real estate income	13	Credits and credit recapture
8	Other rental income		
9	Directly apportioned deductions		
		14	Other information
10	Estate tax deduction		

*See attached statement for additional information.

Note: A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

Form **8582**

Department of the Treasury
Internal Revenue Service

Passive Activity Loss Limitations

See separate instructions.
Attach to Form 1040, 1040-SR, or 1041.
Go to *www.irs.gov/Form8582* for instructions and the latest information.

OMB No. 1545-1008
2022
Attachment Sequence No. **858**

Name(s) shown on return | Identifying number

Part I 2022 Passive Activity Loss

Caution: Complete Parts IV and V before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see *Special Allowance for Rental Real Estate Activities* in the instructions.)

Line	Description		Amount		Amount
1a	Activities with net income (enter the amount from Part IV, column (a))	1a			
b	Activities with net loss (enter the amount from Part IV, column (b))	1b	( )		
c	Prior years' unallowed losses (enter the amount from Part IV, column (c))	1c	( )		
d	Combine lines 1a, 1b, and 1c			1d	

All Other Passive Activities

Line	Description		Amount		Amount
2a	Activities with net income (enter the amount from Part V, column (a))	2a			
b	Activities with net loss (enter the amount from Part V, column (b))	2b	(42,397)		
c	Prior years' unallowed losses (enter the amount from Part V, column (c))	2c	(1,184)		
d	Combine lines 2a, 2b, and 2c			2d	-43,581
3	Combine lines 1d and 2d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c or 2c. Report the losses on the forms and schedules normally used			3	-43,581

If line 3 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2d is a loss (and line 1d is zero or more), skip Part II and go to line 10.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II. Instead, go to line 10.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

Line	Description		Amount		Amount
4	Enter the **smaller** of the loss on line 1d or the loss on line 3			4	
5	Enter $150,000. If married filing separately, see instructions	5			
6	Enter modified adjusted gross income, but not less than zero. See instructions	6			
	Note: If line 6 is greater than or equal to line 5, skip lines 7 and 8, enter -0- on line 9. Otherwise, go to line 7.				
7	Subtract line 6 from line 5	7			
8	Multiply line 7 by 50% (0.50). **Do not** enter more than $25,000. If married filing separately, see instructions			8	
9	Enter the **smaller** of line 4 or line 8			9	0

Part III Total Losses Allowed

Line	Description		Amount
10	Add the income, if any, on lines 1a and 2a and enter the total	10	
11	**Total losses allowed from all passive activities for 2022.** Add lines 9 and 10. See instructions to find out how to report the losses on your tax return	11	0

Part IV Complete This Part Before Part I, Lines 1a, 1b, and 1c. See instructions.

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	**(b)** Net loss (line 1b)	**(c)** Unallowed loss (line 1c)	**(d)** Gain	**(e)** Loss
Total. Enter on Part I, lines 1a, 1b, and 1c ▶					

For Paperwork Reduction Act Notice, see instructions.

DAA

Part V Complete This Part Before Part I, Lines 2a, 2b, and 2c. See instructions.

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 2a)	**(b)** Net loss (line 2b)	**(c)** Unallowed loss (line 2c)	**(d)** Gain	**(e)** Loss
[redacted] MAIN ST		42,397	1,184		43,581
Total. Enter on Part I, lines 2a, 2b, and 2c		42,397	1,184		

Part VI Use This Part if an Amount Is Shown on Part II, Line 9. See instructions.

Name of activity	Form or schedule and line number to be reported on (see instructions)	**(a)** Loss	**(b)** Ratio	**(c)** Special allowance	**(d)** Subtract column (c) from column (a).
Total			1.00		

Part VII Allocation of Unallowed Losses. See instructions

Name of activity	Form or schedule and line number to be reported on (see instructions)	**(a)** Loss	**(b)** Ratio	**(c)** Unallowed loss
[redacted] MAIN ST	SCH E1	43,581	1.0000	43,581
Total		43,581	1.00	43,581

Part VIII Allowed Losses. See instructions.

Name of activity	Form or schedule and line number to be reported on (see instructions)	**(a)** Loss	**(b)** Unallowed loss	**(c)** Allowed loss
[redacted] MAIN ST	SCH E1	43,581	43,581	
Total		43,581	43,581	

Part IX Activities With Losses Reported on Two or More Forms or Schedules. See instructions.

Name of activity:	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total			1.00		

AMT VERSION

Form **8582**

Department of the Treasury
Internal Revenue Service

Passive Activity Loss Limitations

See separate instructions.
Attach to Form 1040, 1040-SR, or 1041.
Go to *www.irs.gov/Form8582* for instructions and the latest information.

OMB No. 1545-1008
2022
Attachment Sequence No. 858

Name(s) shown on return: [redacted]
Identifying number: [redacted]

Part I 2022 Passive Activity Loss

Caution: Complete Parts IV and V before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see *Special Allowance for Rental Real Estate Activities* in the instructions.)

Line	Description	Box	Amount	Line	Total
1a	Activities with net income (enter the amount from Part IV, column (a))	1a			
b	Activities with net loss (enter the amount from Part IV, column (b))	1b	( )		
c	Prior years' unallowed losses (enter the amount from Part IV, column (c))	1c	( )		
d	Combine lines 1a, 1b, and 1c			1d	

All Other Passive Activities

Line	Description	Box	Amount	Line	Total
2a	Activities with net income (enter the amount from Part V, column (a))	2a			
b	Activities with net loss (enter the amount from Part V, column (b))	2b	(42,397)		
c	Prior years' unallowed losses (enter the amount from Part V, column (c))	2c	(1,184)		
d	Combine lines 2a, 2b, and 2c			2d	-43,581
3	Combine lines 1d and 2d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c or 2c. Report the losses on the forms and schedules normally used			3	-43,581

If line 3 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2d is a loss (and line 1d is zero or more), skip Part II and go to line 10.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II. Instead, go to line 10.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

Line	Description	Box	Amount	Line	Total
4	Enter the **smaller** of the loss on line 1d or the loss on line 3			4	
5	Enter $150,000. If married filing separately, see instructions	5			
6	Enter modified adjusted gross income, but not less than zero. See instructions	6			
	Note: If line 6 is greater than or equal to line 5, skip lines 7 and 8, enter -0- on line 9. Otherwise, go to line 7.				
7	Subtract line 6 from line 5	7			
8	Multiply line 7 by 50% (0.50). **Do not** enter more than $25,000. If married filing separately, see instructions			8	
9	Enter the **smaller** of line 4 or line 8			9	0

Part III Total Losses Allowed

Line	Description	Line	Amount
10	Add the income, if any, on lines 1a and 2a and enter the total	10	
11	**Total losses allowed from all passive activities for 2022.** Add lines 9 and 10. See instructions to find out how to report the losses on your tax return	11	0

Part IV Complete This Part Before Part I, Lines 1a, 1b, and 1c. See instructions.

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Part I, lines 1a, 1b, and 1c ▶					

For Paperwork Reduction Act Notice, see instructions.

AMT VERSION

Part V Complete This Part Before Part I, Lines 2a, 2b, and 2c. See instructions.

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 2a)	**(b)** Net loss (line 2b)	**(c)** Unallowed loss (line 2c)	**(d)** Gain	**(e)** Loss
MAIN ST		42,397	1,184		43,581
Total. Enter on Part I, lines 2a, 2b, and 2c		42,397	1,184		

Part VI Use This Part if an Amount Is Shown on Part II, Line 9. See instructions.

Name of activity	Form or schedule and line number to be reported on (see instructions)	**(a)** Loss	**(b)** Ratio	**(c)** Special allowance	**(d)** Subtract column (c) from column (a).
Total			1.00		

Part VII Allocation of Unallowed Losses. See instructions

Name of activity	Form or schedule and line number to be reported on (see instructions)	**(a)** Loss	**(b)** Ratio	**(c)** Unallowed loss
MAIN ST	SCH E1	43,581	1.0000	43,581
Total		43,581	1.00	43,581

Part VIII Allowed Losses. See instructions.

Name of activity	Form or schedule and line number to be reported on (see instructions)	**(a)** Loss	**(b)** Unallowed loss	**(c)** Allowed loss
MAIN ST	SCH E1	43,581	43,581	
Total		43,581	43,581	

DAA

Form **8949**

Department of the Treasury
Internal Revenue Service

Sales and Other Dispositions of Capital Assets

Go to *www.irs.gov/Form8949* for instructions and the latest information.

File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D.

OMB No. 1545-0074

2022

Attachment Sequence No. **12A**

Name(s) shown on return | Social security number or taxpayer identification number

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are generally short-term (see instructions). For long-term transactions, see page 2.

Note: You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 1a; you aren't required to report these transactions on Form 8949 (see instructions).

You *must* check Box A, B, *or* C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

- [X] **(A)** Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)
- [ ] **(B)** Short-term transactions reported on Form(s) 1099-B showing basis **wasn't** reported to the IRS
- [ ] **(C)** Short-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed of (Mo., day, yr.)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the Note below and see *Column (e)* in the separate instructions	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). **See the separate instructions.** (f) Code(s) from instructions	(g) Amount of adjustment	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g).
1155.000 SH MICROSTRATEGY INC	11/30/21	01/28/22	381,782	944,707	O	562,925	
1500.000 SH META PLATEFORMS INC	11/25/21	08/10/22	268,059	556,800	O	288,741	
2845.000 SH MICROSTRATEGY INC	VARIOUS	04/22/22	1,179,022	2,086,788	O	907,766	
2 Totals. Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 1b** (if **Box A** above is checked), **line 2** (if **Box B** above is checked), or **line 3** (if **Box C** above is checked)			1,828,863	3,588,295		1,759,432	0

Note: If you checked Box A above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See *Column (g)* in the separate instructions for how to figure the amount of the adjustment.

Name(s) shown on return. Name and SSN or taxpayer identification no. not required if shown on other side

Social security number or taxpayer identification number

Before you check Box D, E, or F below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

Part II **Long-Term.** Transactions involving capital assets you held more than 1 year are generally long-term (see instructions). For short-term transactions, see page 1.

Note: You may aggregate all long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 8a; you aren't required to report these transactions on Form 8949 (see instructions).

You *must* check Box D, E, *or* F below. Check only one box. If more than one box applies for your long-term transactions, complete a separate Form 8949, page 2, for each applicable box. If you have more long-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

- [X] **(D)** Long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)
- [ ] **(E)** Long-term transactions reported on Form(s) 1099-B showing basis **wasn't** reported to the IRS
- [ ] **(F)** Long-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed of (Mo., day, yr.)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the Note below and see *Column (e)* in the separate instructions	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). **See the separate instructions.** (f) Code(s) from instructions	(g) Amount of adjustment	(h) **Gain or (loss)** Subtract column (e) from column (d) and combine the result with column (g).
10000.000 SH ALTRIA GROUP INC	03/19/21	05/24/22	520,629	600,054	O	79,425	
2 Totals. Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 8b** (if **Box D** above is checked), **line 9** (if **Box E** above is checked), or **line 10** (if **Box F** above is checked)			520,629	600,054		79,425	0

Note: If you checked Box D above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See *Column (g)* in the separate instructions for how to figure the amount of the adjustment.

Name(s) shown on return. Name and SSN or taxpayer identification no. not required if shown on other side

Social security number or taxpayer identification number

Before you check Box D, E, or F below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

Part II **Long-Term.** Transactions involving capital assets you held more than 1 year are generally long-term (see instructions). For short-term transactions, see page 1.

Note: You may aggregate all long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 8a; you aren't required to report these transactions on Form 8949 (see instructions).

You *must* check Box D, E, *or* F below. Check only one box. If more than one box applies for your long-term transactions, complete a separate Form 8949, page 2, for each applicable box. If you have more long-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

☐ **(D)** Long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)

☒ **(E)** Long-term transactions reported on Form(s) 1099-B showing basis **wasn't** reported to the IRS

☐ **(F)** Long-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed of (Mo., day, yr.)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the Note below and see *Column (e)* in the separate instructions	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). **See the separate instructions.** (f) Code(s) from instructions	(g) Amount of adjustment	(h) **Gain or (loss)** Subtract column (e) from column (d) and combine the result with column (g).
1155.000 SH MICROSTRATEGY INC	INHERIT	01/28/22	381,782	681,866			-300,084
1500.000 SH META PLATEFORMS INC	INHERIT	08/10/22	268,059	499,530			-231,471
2845.000 SH MICROSTRATEGY INC	INHERIT	04/22/22	1,179,022	1,679,574			-500,552
10000.000 SH ALTRIA GROUP INC	INHERIT	05/24/22	520,629	450,800			69,829
2 **Totals.** Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 8b** (if **Box D** above is checked), **line 9** (if **Box E** above is checked), or **line 10** (if **Box F** above is checked)			2,349,492	3,311,770			-962,278

Note: If you checked Box D above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See *Column (g)* in the separate instructions for how to figure the amount of the adjustment.

Statement 1 - Form 1041, Page 1, Line 15a - Other Deductions

Description	Amount
PROPERTY MAINTENANCE	$ 8,090
ALLOWABLE DEDUCTIONS	$ 8,090

7 Main St

Statement 2 - Schedule E, Page 1, Line 19 - Other Expenses

Description	Amount
LICENSES & PERMITS	$ 250
INTERNET	1,596
TOTAL	$ 1,846

Federal Asset Report

Main St

Asset	Description	Date In Service	Cost	Bus %	Sec 179	Bonus	Basis for Depr	Per	Conv	Meth	Prior	Current
Prior MACRS:												
1	Building - Main St	12/11/21	618,000				618,000	39	MM	S/L	660	15,846
			618,000				618,000				660	15,846
	Fiduciary's portion of depreciation expense (100.0000)											15,846
Other Depreciation:												
2	Land	12/11/21	572,000				572,000	0	--	Land	0	0
	Total Other Depreciation		572,000				572,000				0	0
	Fiduciary's portion of depreciation expense (100.0000)											0
	Total ACRS and Other Depreciation		572,000				572,000				0	0
	Grand Totals		1,190,000				1,190,000				660	15,846
	Less: Dispositions and Transfers		0				0				0	0
	Less: Start-up/Org Expense		0				0				0	0
	Net Grand Totals		1,190,000				1,190,000				660	15,846

AMT Asset Report

Main St

Asset	Description	Date In Service	Cost	Bus %	Sec 179	Bonus	Basis for Depr	Per	Conv	Meth	Prior	Current
Prior MACRS:												
1	Building - Main St	12/11/21	618,000				618,000	39	MM	S/L	660	15,846
			618,000				618,000				660	15,846
	Fiduciary's portion of depreciation expense (100.0000)											15,846
Other Depreciation:												
2	Land	12/11/21	0				0	0	HY		0	0
	Total Other Depreciation		0				0				0	0
	Fiduciary's portion of depreciation expense (100.0000)											0
	Total ACRS and Other Depreciation		0				0				0	0
	Grand Totals		618,000				618,000				660	15,846
	Less: Dispositions and Transfers		0				0				0	0
	Net Grand Totals		618,000				618,000				660	15,846

Carryover Report

Form **1041**

For calendar year 2022, or tax year beginning , and ending

2022

Name: [redacted]

Taxpayer Identification Number: [redacted]

	Available to 2022		2022 Amounts	Carryover to 2023
Form 8801				
Minimum tax credit				
ESBT - Minimum tax credit				
Form 4952				
Investment interest				
Investment interest - AMT				
ESBT - Investment interest				
ESBT - Investment interest - AMT				
Schedule D				
Short-term capital loss				
Long-term capital loss		GENERATED	959,278	959,278
ESBT - Short-term capital loss				
ESBT - Long-term capital loss				
Short-term capital loss - AMT				
Long-term capital loss - AMT		GENERATED	959,278	959,278
Form 1041-A				
Income set aside				

Nonrecaptured Section 1231 Losses

Year		ESBT		Non-ESBT
2017				
2018				
2019				
2020				
2021				
Available to 2022				0
2022 Amounts				
2017 Unused amount				
Carryover to 2023				

Form **1041**

Passive Activity Deduction and Credit Worksheet

2022

For calendar year 2022, or tax year beginning , and ending

Name

[redacted]

Taxpayer Identification Number

[redacted]

Activity [redacted]MAIN ST
Type OTHER PASSIVE

Form SCH E Unit 2
Entire disposition of activity

Regular Tax Loss Calculations

	Prior Year Suspended Losses	Current Year Generated	Current Year Utilized	Suspended Losses To Next Year
Operating - Ordinary business				
Operating - Rental real estate	1,184	42,397		43,581
Operating - Other rental				
Schedule D - Short-term				
Schedule D - Long-term				
Schedule D - 28% rate				
Form 4797 - Part I				
Form 4797 - Part II				

Alternative Minimum Tax Loss Calculations

	Prior Year Suspended Losses	Current Year Generated	Current Year Utilized	Suspended Losses To Next Year
Operating - Ordinary business				
Operating - Rental real estate	1,184	42,397		43,581
Operating - Other rental				
Schedule D - Short-term				
Schedule D - Long-term				
Schedule D - 28% rate				
Form 4797 - Part I				
Form 4797 - Part II				

Passive Activity Credits

Description	Prior Year Suspended Credits	Current Year Generated	Current Year Utilized	Suspended Credits To Next Year

Form **1041**

Accounting Income and Distributable Net Income Detail Information Worksheet

2022

For calendar year 2022, or tax year beginning , and ending

Name: [redacted]

Taxpayer Identification Number: [redacted]

Income	Accounting Income	Distributable Net Income
Interest income	737	737
Dividend income	18,000	18,000
Business income / loss		
Capital gain / loss		-3,000
Rents, royalties, partnerships, other estates and trusts	-42,397	
Farm income / loss		
Ordinary gain / loss		
Other income		
Deductions		
Interest expense		
Less: Allocated to tax-exempt income	( )	( )
Taxes	2,638	2,638
Less: Allocated to tax-exempt income	( )	( )
Fiduciary fees		
Less: Allocated to tax-exempt income	( )	( )
Charitable deduction		
Attorney / Accountant fees		
Less: Allocated to tax-exempt income	( )	( )
Other deductions	8,090	8,090
Less: Allocated to tax-exempt income	( )	( )
Miscellaneous deductions		
Less: Allocated to tax-exempt income	( )	
Taxable income	-34,388	5,009
Net gain shown on Schedule D, line 19, column (1)		
Enter amount from Schedule A, line 4		
Long-term capital gain included on Schedule A, line 1		
Short-term capital gain included on Schedule A, line 1		
Capital loss from Form 1041 page 1, line 4		3,000
Less capital gain from Form 1041 page 1, line 4		( )
Net taxable income	-34,388	8,009

Tax-Exempt Income

	Accounting Income	Distributable Net Income
Interest, dividends, and other nontaxable income		
Allocated direct expenses	( )	
Allocated indirect expenses	( )	
Net tax-exempt income		
Subtotal	-34,388	
Additions: Items not on the return affecting accounting income		
Subtractions: Items on the return not affecting accounting income	( )	
Total. Net taxable income plus estate tax deduction and net tax-exempt income	-34,388	8,009

Summary

Accounting Income	
Taxable income	-34,388
Tax-exempt income	
Net accounting income	-34,388

Distributable Net Income	
Taxable income	8,009
Tax-exempt interest and dividends	
Distributable net income	8,009

Form **1041**

Allocation of Expenses by Income Type
Tax Basis

2022

For calendar year 2022, or tax year beginning , and ending

Name: [redacted]

Taxpayer Identification Number: [redacted]

	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Income	737			18,000	
Less deductions:					
Interest					
Taxes	26			640	
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions	80			1,963	
Reserved					
Total deductions	106			2,603	
Subtotal	631			15,397	
Reclassified losses	-631			-7,388	
Net income (Calculated)				8,009	
Net income (Force)					

	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT / QSST
Income					
Less deductions:					
Interest					
Taxes			1,972		
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions			6,047		
Reserved					
Total deductions			8,019		
Subtotal			-8,019		
Reclassified losses			8,019		
Net income (Calculated)					
Net income (Force)					

	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Other Nontaxable	Tax-Exempt
Income		-962,278			
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Reserved					
Total deductions					
Net income (Calculated)		-962,278			
Net income (Force)					

Form **1041**

Allocation of Expenses by Income Type
Accounting Income Basis

2022

For calendar year 2022, or tax year beginning , and ending

Name

[redacted]

Taxpayer Identification Number

[redacted]

	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Income	737			18,000	
Less deductions:					
Interest					
Taxes	26			640	
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions	80			1,963	
Miscellaneous deductions					
Total deductions	106			2,603	
Additions					
Subtractions					
Subtotal	631			15,397	
Reclassified losses	-631			-15,397	
Net income (Calculated)					
Net income (Force)					

	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT / QSST
Income			-42,397		
Less deductions:					
Interest					
Taxes			1,972		
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions			6,047		
Miscellaneous deductions					
Total deductions			8,019		
Additions					
Subtractions					
Subtotal			-50,416		
Reclassified losses			50,416		
Net income (Calculated)					
Net income (Force)					

	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Other Nontaxable	Tax-Exempt
Income					
Less deductions:					
Interest					
Taxes					
Fiduciary fees					
Charitable deduction					
Attorney, accountant fees					
Other deductions					
Miscellaneous deductions					
Total deductions					
Additions					
Subtractions					
Net income (Calculated)					
Net income (Force)					

Form **1041**

Schedule D Capital Loss Carryover Worksheet

2022

For calendar year 2022, or tax year beginning , and ending

Name

[redacted]

Taxpayer Identification Number

[redacted]

Use this worksheet to figure your capital loss carryovers from 2022 to 2023 if Schedule D line 20, is a loss and **(a)** the loss on Schedule D, line 19, column (3), is more than $3,000, OR **(b)** Form 1041, line 23 is a loss.

		Line	Regular Tax	AMT
1.	Enter taxable income or (loss) from Form 1041, line 23	**1.**	4,909	7,647
2.	Enter loss from line 20 of Schedule D as a positive amount	**2.**	3,000	3,000
3.	Enter amount from Form 1041, line 21	**3.**	100	
4.	Adjusted taxable income. Combine lines 1, 2, and 3. If zero or less, enter -0-	**4.**	8,009	10,647
5.	Enter the **smaller** of line 2 or line 4	**5.**	3,000	3,000
	Note: If line 7 of Schedule D is a loss, go to line 6; otherwise, enter -0- on line 6 and go to line 10.			
6.	Enter loss from Schedule D, line 7, as a positive amount	**6.**	0	0
7.	Enter gain, if any, from Schedule D, line 16. If that line is blank or shows a loss, enter -0-	**7.**	0	0
8.	Add lines 5 and 7	**8.**		
9.	**Short-term capital loss carryover to 2023**. Subtract line 8 from line 6. If zero or less, enter -0-. If this is the final return of the estate or trust, also enter on Schedule K-1 (Form 1041), box 11, using code C	**9.**	0	0
	Note: If line 16 of Schedule D is a loss, go to line 10; otherwise, skip lines 10 through 14.			
10.	Enter loss from Schedule D, line 16, as a positive amount	**10.**	962,278	962,278
11.	Enter gain, if any, from Schedule D, line 7. If that line is blank or shows a loss, enter -0-	**11.**	0	0
12.	Subtract line 6 from line 5. If zero or less, enter -0-	**12.**	3,000	3,000
13.	Add lines 11 and 12	**13.**	3,000	3,000
14.	**Long-term capital loss carryover to 2023**. Subtract line 13 from line 10. If zero or less, enter -0-. If this is the final return of the estate or trust, also enter on Schedule K-1 (Form 1041), box 11, using code D	**14.**	959,278	959,278

Form **8960**

Net Investment Income Distributions Worksheet

2022

For calendar year 2022, or tax year beginning , and ending

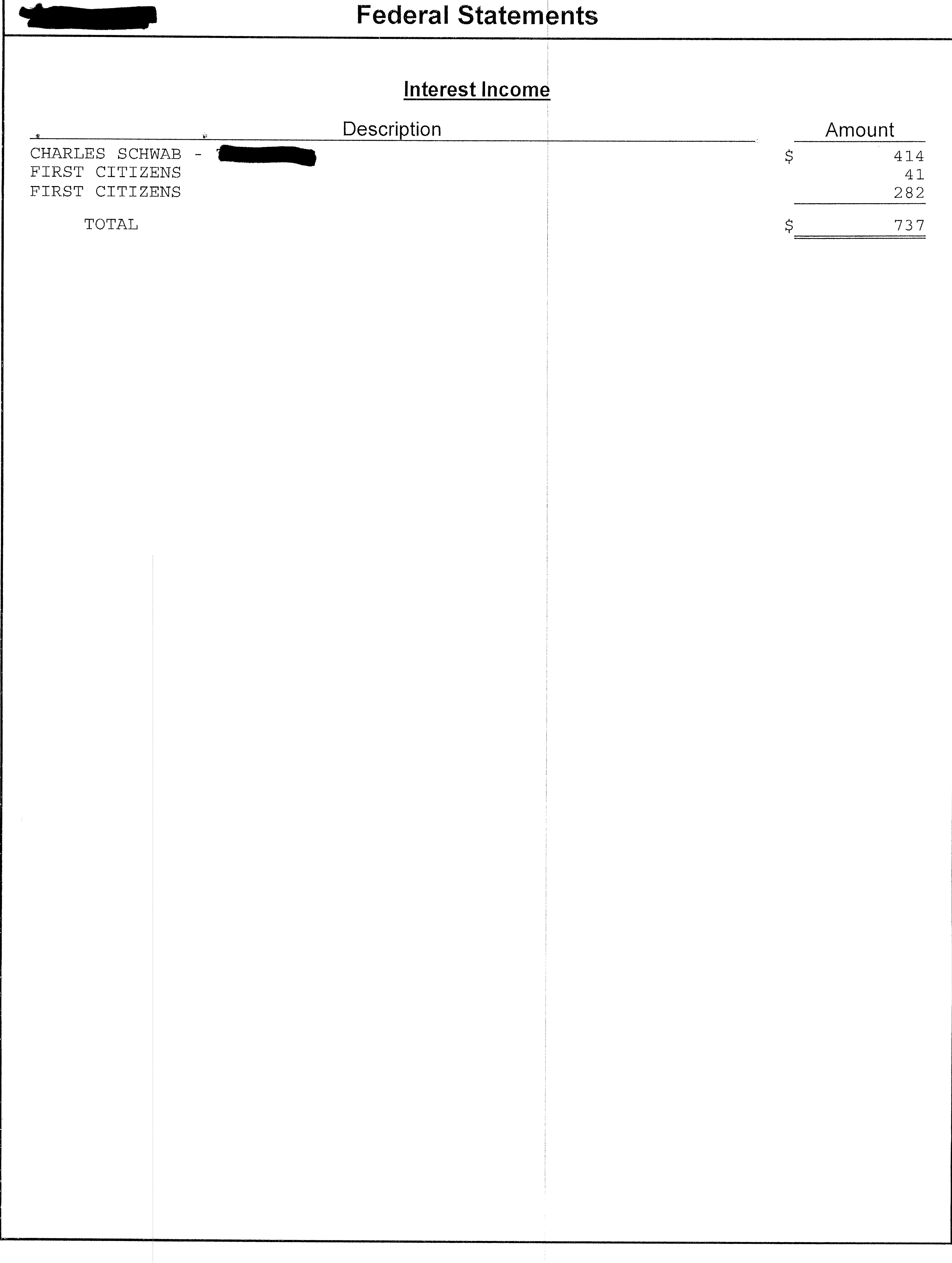
Name: [redacted]

Taxpayer Identification Number: [redacted]

Income:	Interest	U.S. Interest	Dividends	Qualified Dividends	U.S. Dividends
Investment income	737			18,000	
Adjustments					
Total investment income	737			18,000	
Less deductions:					
Investment interest					
State taxes					
Charitable deduction					
Other deductions	106			2,603	
Total deductions	106			2,603	
Net investment income	631			15,397	
Distributed to beneficiaries					
Undistributed	631			15,397	

Income:	Other	Ordinary Business	Rental Real Estate	Other Rental	ESBT
Investment income					
Adjustments					
Total investment income					
Less deductions:					
Investment interest					
State taxes					
Charitable deduction					
Other deductions					
Total deductions					
Net investment income					
Distributed to beneficiaries					
Undistributed					

Income:	Short-Term Gains	Long-Term Gains	Section 1231 Gains	Total
Investment income		-962,278		
Adjustments				
Total investment income		-962,278		-943,541
Less deductions:				
Investment interest				
State taxes				
Charitable deduction				
Other deductions				2,709
Total deductions				2,709
Net investment income		-962,278		-946,250
Distributed to beneficiaries				
Undistributed		-962,278		-946,250



Federal Statements

Interest Income

Description	Amount
CHARLES SCHWAB -	$ 414
FIRST CITIZENS	41
FIRST CITIZENS	282
TOTAL	$ 737

Federal Statements

Dividend Income

Description	Total Dividends	Qualified Dividends
CHARLES SCHWAB - [redacted]	$ 18,000	$ 18,000
TOTAL	$ 18,000	$ 18,000

Form 1041, Page 1, Line 11 - Taxes

Description	Amount
REAL ESTATE TAX	$ 2,638
SUBTOTAL	$ 2,638
PAGE 1 - TAX EXPENSE	$ 2,638

TIPS AND TRICKS FOR FIDUCIARY TAX RETURNS

KATIE EVERLOVE-STONE, JD, LL.M.
EVERLOVE LEGAL, ST. PETERSBURG, FL

1

The Best Advice I Can Give You…

Is to hire a competent, experienced CPA. Don't worry about what it costs. It's worth it to avoid IRS problems that can end up costing far more than just accounting fees.

2

Types of Fiduciary Tax Returns

- ESTATE TAX RETURNS – FORM 706
  - Due within 9 months of Date of Death
  - Required when the value of the estate exceeds the exemption amount ($12.92m for 2023)

3

FEDERAL ESTATE TAX RETURN

- You might also consider filing one when:
  - There is a surviving spouse, so you can port the first spouse's unused exemption to the surviving spouse.
  - The value of the estate is close to the exemption amount. If the IRS determines the estate is over the exemption amount, at least you won't get a failure-to-file penalty.
  - You want the comfort of an estate tax closing letter so you know it won't come back up as an issue again later.

4

Federal Estate Tax

- Sunset is around the corner!
  - **The estate tax exemption this year is $12.92m per person, adjusted for inflation each year.**
  - **At the end of 2025, it is scheduled to go down to $5m per person.**
  - **Fingers crossed that Congress can get its act together to address this early and without much drama. (lol)**
  - **In 2020, the estate tax applied to only 0.1% of the people who died that year.**
  - **If the exemption reduces to $5m, the estate tax will apply to a higher percentage of the population, especially if real estate values remain high.**

5

Portability of the DSUE Amount

- **As mentioned earlier, it may be a good idea to file an estate tax return when the first spouse dies, even if no estate tax is due, so you can elect portability of the Deceased Spouse Unused Exclusion (DSUE) amount.**
- **If I die in 2023 and my estate is worth $2m, my husband can file an estate tax return for me to preserve the remaining $10.92m of my unused estate tax exemption, so his estate can use it down the road when he dies.**
- **IRS recently issued Rev. Proc. 2022-32 which gives a simplified method for certain estates to obtain an extension of time to file a return by the 5th anniversary of the decedent's death to elect portability of the DSUE amount.**

6

Types of Fiduciary Tax Returns

- **INCOME TAX RETURN – FORM 1041**
  - **REPORTS INCOME TAX FOR AN ESTATE OR AN IRREVOCABLE TRUST**
  - **If the estate/trust generates more than $600 in annual gross income, you are required to file Form 1041.**
  - **The reporting period may be on a calendar year ending December 31st, or on a fiscal year period. The fiscal year period ends on the last day of the month before the Decedent's date of death and is due to be filed four and a half months after the close of the tax year.**

7

Ordinary Income Tax Brackets of Trust and Individual Beneficiaries

If Taxable Income Is Between		Individual	Trust
		MFJ	
647,850	Over	37%	37%
431,900	647,850	35%	37%
340,100	431,900	32%	37%
178,150	340,100	24%	37%
83,550	178,150	22%	37%
20,550	83,550	12%	37%
13,450	20,550	10%	37%
9,850	13,450	10%	35%
2,750	9,850	10%	24%
-	$2,750	10%	10%

Source: IRS

Bloomberg

8

Allowable Deductions:

- **Administration fees and expenses, such as attorney, accountant and tax preparer fees, administration costs that would not have been incurred if the property were not held in the Estate and so on.**
- **Other allowable deductions may include appraisal fees, or fiduciary fees that are established under the *reasonableness* standard.**

9

Deductions Not Allowed

- **The key is to know what is not deductible on the Fiduciary Income Tax Return, so determining which of the following deductions would be best utilized on the other tax returns discussed above.**
- **Those deductions not allowed on Form 1041's include:**
  - **Funeral expenses;**
  - **Medical and Dental expenses of the Decedent;**
  - **Personal Interest (credit cards, etc.); and**
  - **Expenses attributable to tax-exempt income, such as brokerage commissions for tax-exempt bonds.**

10

Income Distribution Deduction

- **Trusts and Estates are allowed an income distribution deduction for distributions made to beneficiaries during the administration.**
- **The beneficiary, and not the Trust or Estate, pays the income tax on their distributive share of income, which is reported on a Schedule K-1 (Form 1041).**

11

Other Possible Deductions

- **The 645-Election is for treating the Trust as part of the Estate, thereby filing only one Fiduciary Income Tax Return for Trusts and Estates, rather than one for each entity. This saves time and money for the fiduciary and the beneficiaries of an Estate or Trust.**
- **The 65-Day Rule election: If a distribution is made within the first 65 days of the end of the tax period, for instance on a calendar year with the year-end being December 31st, i.e., distributing by March 5th, the distribution is treated as a deduction in the prior tax year.**

12

What if you need an extension?

- **Form 1041 has an automatic extension of time to file, which is 5 ½ months and is completed by filing Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.**
- **If there is any income tax liability owing, at least 90% of estimated taxes must be paid before the original filing deadline, or late payment interest and penalties will be applied.**

13

What if you need an extension?

- **Apply for an automatic 6-month extension of time to file Form 706.**
- **Apply for a discretionary (additional) extension of time to file Form 706 (Part II of Form 4768).**
- **Apply for a discretionary (for cause) extension of time to file Form 706.**
- **Interest must be paid on any estate and GST taxes that aren't paid in full by the original due date of the tax return, regardless of whether an extension of time to file and/or pay has been obtained.**

14

Case Law Update

- **Stanojevich v. Commissioner, U.S. Tax Court, April 10, 2023**
  - **Trustee filed a tax return determined to be frivolous by the IRS.**
  - **IRS imposed a § 6702(a) penalty on the Trustee personally, rather than the trust.**
  - **Tax Court held that the Trustee was liable for the penalties.**
  - **The fact that Congress has directly placed on a trustee the duties and responsibilities associated with the filing of the trust's income tax return supports the conclusion that Congress considered it appropriate also to impose § 6702(a) liability on a trustee who files a frivolous income tax return on behalf of the trust.**

15

Hoensheid v. Commissioner

- U.S. Tax Court, March 15, 2023
- Held that an Estate was not entitled to a charitable contribution deduction pursuant to § 170 because they did not have reasonable cause for their failure to procure a qualified appraisal.
- IRS's determination to disallow the charitable deduction was upheld by the tax court.
- Without an appraisal prepared by a qualified appraiser, the IRS can't effectively verify whether a reported charitable contribution has been properly valued.

16

Estate of MacElhenny v. Commissioner

- U.S. Tax Court, March 15, 2023
- Decedent defaulted on two loans and judgments were entered against him.
- Decedent's children purchased the judgments from the banks at highly discounted prices, and then sought to deduct the judgments on the Decedent's estate tax return under § 2053(a)(3).
- The deduction was disallowed by the IRS, which was upheld by the tax court.
- Treas. Reg. § 20.2053-1(d)(4) requires that the debt actually be paid by the estate, which did not occur here.

17

Estate of Spizzirri v. Commissioner

- U.S. Tax Court, February 28, 2023
- Decedent's estate argued that payments the Decedent made during his lifetime to his daughter, stepdaughter, and seven other women, were payments for care and companionship. Tax Court ruled in favor of the IRS holding that these payments were gifts, subject to gift tax.
- The Estate did not call any of the women to give testimony as to the nature of the payments. The Decedent did not issue any 1099's or W-2's, and did not report these payments on his income tax return.

18

Demuth v. Commissioner (In re E/O Demuth)

- **U.S. Tax Court, July 12, 2022**
- **Tax Court held that checks written by the Decedent's son/POA as gifts made before the Decedent died, but paid after his death, were includible in the decedent's gross estate.**
- **Under Pennsylvania law, these checks were not completed gifts prior to the decedent's death because they were not accepted, certified or final payment made before he died.**

19

Larson v. Commissioner (In re E/O Levine)

- **U.S. Tax Court, February 28, 2022**
- **The Tax Court held that a decedent's estate did not include the cash surrender value of life insurance policies owned by an insurance trust. The decedent had no right to terminate the policies, and under § 2036, she did not retain any right to possession or enjoyment of the life insurance policies transferred to the insurance trust.**
- **The decedent had irrevocably surrendered her interest in the insurance trust and had no right to change, modify, amend or revoke its terms.**

20

Estate of Grossman v. Commissioner

- U.S. Tax Court, May 27, 2021
- Commissioner argued that the decedent was never properly divorced from his first wife, so only transfers to her would qualify for the marital exemption.
- The Tax Court ruled in favor of the Estate, holding that the decedent had obtained a *get*, a Jewish religious divorce, which would be honored by the courts in New York (the decedent's state of residence). Thus, his later marriage was legal, and that wife was his legal surviving spouse, eligible for the marital exemption.
- Court commented that no one raised this as an issue until the IRS did, and the first wife had filed her tax returns as single for many years (even prior to the *get*).

21

Estate of Warne v. Commissioner

- **U.S. Tax Court, February 18, 2021**
- **This one involves valuation issues – discounts for properties in a family trust.**
- **Valuation issues are “easy pickings” for IRS auditors. It’s imperative to have appraisals that are solid. This is another area where you don’t want to be cheap. Spend the money and get really good appraisals.**
- **Discounts on valuations include things like lack of marketability, lack of control, and built-in capital gains. These discounts can result in huge tax savings in the right circumstances.**

22

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