

## 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 health 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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# 2023 TAX TABLES

Including Certain Provisions in SECURE 2.0  
Relating to Plan Distributions

COMPILING EDITORS  
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## SELECTED FEDERAL<sup>1</sup> TAX RETURN DUE DATES

April 18, 2023	First estimated installment, calendar year 1041s, and 709s
April 18, 2023 <sup>2</sup>	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

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<sup>1</sup> State tax deadline extensions may vary.

<sup>2</sup> Table does not include extensions for certain disaster areas.

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## TAX TABLES

Revised through April 18, 2023

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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).

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\*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)].

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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).

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\*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.\*\*\*

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\*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 <sup>2</sup>	\$0–89,250	\$0–59,750	\$0–44,625
15% tax bracket	\$44,625– 492,300 <sup>3</sup>	\$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 LTCL) and net LTCL (the excess of LTCL over STCL) 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)].

<sup>2</sup> \$2,800 for an estate or trust.

<sup>3</sup> \$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 transferor'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 transferor'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 ( $l_x$ ) 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  $l_x$  value for the older age by the  $l_x$  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)**

<b>Age x</b>	<b>I<sub>x</sub></b>	<b>Age x</b>	<b>I<sub>x</sub></b>	<b>Age x</b>	<b>I<sub>x</sub></b>
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 <sup>1</sup>	Female <sup>1</sup>	Unisex <sup>2</sup>	Age	Male <sup>1</sup>	Female <sup>1</sup>	Unisex <sup>2</sup>
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

<b>Traditional IRA [IRC 408]</b>	<b>2023</b>	<b>2022</b>
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.

<b>Roth IRA [IRC 408A]</b>	<b>2023</b>	<b>2022</b>
*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.

<b>Simplified Employee Pension IRA (SEP-IRA) [IRC 408(k)]</b>	<b>2023</b>	<b>2022</b>
Employer's Maximum Contribution	\$66,000	\$61,000

<b>Simple IRA [IRC 408(p)]</b>		
Employee's Maximum Contribution	\$15,500	\$14,000
Employee Catch-Up Contribution (Age 50 or more)	\$3,500	\$3,000

<b>IRC 403(b), 401(k) and Roth 401(k) Plans</b>		
Keogh Profit-Sharing Plan Contribution Limit	\$66,000	\$61,000

<b>IRC 403(b) and 401(k) Plans</b>		
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 designated 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 10<sup>th</sup> 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 10<sup>th</sup> 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 10<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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 10<sup>th</sup> 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 10<sup>th</sup> 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. Prior to SECURE 2.0, 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 NMTTYB. 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 NMTTYB is named as the outright beneficiary or a conduit trust for the NMTTYB 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 NMTTYB uses the longer of the NMTTYB’s life expectancy or the participant’s ghost life expectancy. If the participant dies before RBD, the NMTTYB may be required to use or may have the option to use the 10 year rule, rather than the NMTTYB’s life expectancy, depending on the terms of the retirement plan (or the participant’s election). Assuming a life expectancy distribution based on the NMTTYB’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 NMTTYB is using the participant's ghost life expectancy (rather than the NMTTYB's life expectancy), when the applicable denominator would have been one or less than one had the NMTTYB'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 NMTTYB.

**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 EDB 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 10<sup>th</sup> 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 10<sup>th</sup> 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

Not over 3 Years  
Over 3 Years, not over 9 Years  
Over 9 Years

### AFR to Be Used by Taxpayers

The Short-Term AFR  
The Mid-Term AFR  
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

- Charitable remainder trust
- Charitable gift annuity (for larger deduction)

### Use Lowest Possible Rate

- 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](https://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](https://actec.org/professionals/wealth-advisors-resources).



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

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

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

# 2024

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

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








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

# Bases of State Income Taxation of Nongrantor Trusts 2022

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March 29, 2023

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>.









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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
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	 <sup>1</sup>	 <sup>1</sup>			
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	 <sup>2</sup>	 <sup>2</sup>			
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					 <sup>3</sup>

<sup>1</sup> Provided that trust has domiciliary or resident fiduciary or current beneficiary for more than seven months during taxable year.

<sup>2</sup> Provided that trust has resident fiduciary.











<sup>3</sup> Other than beneficiary whose interest is contingent.

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		 <sup>4</sup>			
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	 <sup>5</sup>	 <sup>5</sup>		 <sup>5</sup>	
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.						

<sup>4</sup> Provided that trust has resident noncontingent beneficiary.

<sup>5</sup> Provided that trust has resident beneficiary.











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					 <sup>2</sup>
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			 <sup>5</sup>	 <sup>5</sup>	
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	 <sup>6</sup>	 <sup>6</sup>	 <sup>6</sup>	 <sup>6</sup>	
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					

<sup>2</sup> Provided that trust has resident fiduciary.

<sup>5</sup> Provided that trust has resident beneficiary.

<sup>6</sup> Provided that other requirements are met.











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			 <sup>6</sup>	 <sup>6</sup>	
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				 <sup>5</sup>	
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			 <sup>7,8</sup>		
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					

<sup>5</sup> Provided that trust has resident beneficiary.

<sup>6</sup> Provided that other requirements are met.

<sup>7</sup> Unless trust designates governing law other than Louisiana.

<sup>8</sup> Testamentary trust created by non resident; inter vivos trust created by resident or nonresident.

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
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	 <sup>5</sup>	 <sup>5</sup>	 <sup>5</sup>		
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)	 <sup>5</sup>	 <sup>2, 5</sup>			
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		 <sup>9</sup>			
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	 <sup>10</sup>	 <sup>10</sup>	 <sup>11</sup>		

<sup>2</sup> Provided that trust has resident fiduciary.

<sup>5</sup> Provided that trust has resident beneficiary.

<sup>9</sup> Unless trustee, assets, administration, and beneficiaries are outside Michigan.










<sup>10</sup> Post-1995 trust only.

<sup>11</sup> Pre-1996 trust only.

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
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)	<sup>12</sup>	<sup>12</sup>			
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	<sup>6</sup>	<sup>6</sup>	<sup>6</sup>	<sup>6</sup>	<sup>6</sup>
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.						












<sup>6</sup> Provided that other requirements are met.

<sup>12</sup> Provided that trust has resident income beneficiary on last day of taxable year.

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
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	 <sup>13</sup>	 <sup>13</sup>			
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	 <sup>13</sup>	 <sup>13</sup>			
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	 <sup>13</sup>	 <sup>13</sup>			
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					 <sup>14</sup>

<sup>13</sup> Unless trust has no trustee, asset, or source income in state and trustee files informational return.







<sup>14</sup> 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.

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
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			 <sup>6</sup>	 <sup>6</sup>	 <sup>6</sup>
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		 <sup>5</sup>			
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	 <sup>15</sup>	 <sup>15</sup>			

<sup>5</sup> Provided that trust has resident beneficiary.

<sup>6</sup> Provided that other requirements are met.

<sup>15</sup> Unless settlor is no longer resident or is deceased and trust lacks sufficient contact with Pennsylvania to establish nexus.

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
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	 <sup>5</sup>	 <sup>5</sup>			
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	 <sup>16</sup>		 <sup>8, 16</sup>		

<sup>5</sup> Provided that trust has resident beneficiary.

<sup>8</sup> Testamentary trust created by nonresident; inter vivos trust created by resident or nonresident.

<sup>16</sup> Post-2003 trust having Utah corporate trustee may deduct all nonsource income but must file Utah return if must file federal return.

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
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			<sup>17</sup>		
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		<sup>18</sup>	<sup>19</sup>		
Wyoming	revenue.wyo.gov	No income tax imposed.						

<sup>17</sup> Until July 1, 2019

<sup>18</sup> Trust created or first administered in Wisconsin after October 28, 1999, only.

<sup>19</sup> Irrevocable inter vivos trust administered in Wisconsin before October 29, 1999, only.



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