

1995



Department of the Treasury Internal Revenue Service

Instructions for Form 1041 and Schedules A, B, D, G, I, J, and K-1

U.S. Income Tax Return for Estates and Trusts

Section references are to the Internal Revenue Code unless otherwise noted.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated average times are:

Table with 5 columns: Activity, Form 1041, Schedule D, Schedule J, Schedule K-1. Rows include Recordkeeping, Learning about the law or the form, Preparing the form, Copying, assembling, and sending the form to the IRS.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. DO NOT send the tax form to this address. Instead, see Where To File on page 3.

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Pending Legislation

At the time these instructions were printed, Congress was considering legislation that would:

- Change the tax treatment of capital gains effective for gains and losses after December 31, 1994.
• Limit the tax year of a new estate to a year ending on October 31, November 30, or December 31.
• Treat certain revocable trusts as part of the decedent's estate at the election of the executor of the estate and the trustee of the trust.
• Extend to estates the section 663(b) election to treat any amount paid or credited to a beneficiary within 65 days following the close of the tax year as being paid or credited on the last day of that year.
• Extend to estates the rule in section 663(c) to treat separate shares as separate estates when figuring distributable net income.
• Generally treat as related persons an executor of an estate and a beneficiary of that estate for purposes of sections 267 and 1239.
• Provide special rules for the taxation of qualified funeral trusts for trustees that elect these rules.

Get Pub. 553, Highlights of 1995 Tax Changes, for more information.

Changes To Note

- Employment taxes on wages paid to household employees are now reported on Form 1041, Schedule G, line 7, using new Schedule H (Form 1040). Prior to 1995, some of these taxes were reported and paid quarterly using Form 942, which is now obsolete. An estate that maintained a private home for the decedent's family (or a trust that maintained a private home for a beneficiary) may owe employment taxes if the estate or trust paid someone to work in or around that home. See the instructions for Schedule G, line 7 on page 17. If the estate or trust paid these taxes in 1994, the IRS will send it a separate package in January containing Schedule H, Form W-2, and other needed items. If the estate or trust doesn't receive a package, it can be ordered by calling 1- 800-TAX-FORM (1-800-829-3676).
• Former Schedule H of Form 1041, Alternative Minimum Tax, has been redesignated as Schedule I.
• For tax years beginning in 1995, the requirement to file a return for a

bankruptcy estate applies only if gross income is at least \$5,775.

## General Instructions

### Purpose of Form

The fiduciary of a domestic decedent's estate, trust, or bankruptcy estate uses Form 1041 to report: **(a)** the income, deductions, gains, losses, etc. of the estate or trust; **(b)** the income that is either accumulated or held for future distribution or distributed currently to the beneficiaries; **(c)** any income tax liability of the estate or trust; and **(d)** employment taxes on wages paid to household employees.

### Income Taxation of Trusts and Decedents' Estates

A trust (except a grantor type trust) or a decedent's estate is a separate legal entity for Federal tax purposes. A decedent's estate comes into existence at the time of death of an individual. A trust may be created during an individual's life (inter vivos) or at the time of his or her death under a will (testamentary). If the trust instrument contains certain provisions, then the person creating the trust (the grantor) is treated as the owner of the trust's assets. Such a trust is a grantor type trust.

A trust or decedent's estate figures its gross income in much the same manner as an individual. Most deductions and credits allowed to individuals are also allowed to estates and trusts. However, there is one major distinction. A trust or decedent's estate is allowed an income distribution deduction for distributions to beneficiaries. To figure this deduction, the fiduciary must complete Schedule B. The income distribution deduction determines the amount of the distribution that is taxed to the beneficiaries.

For this reason, a trust or decedent's estate sometimes is referred to as a "pass-through" entity. The beneficiary, and not the trust or decedent's estate, pays income tax on his or her distributive share of income. Schedule K-1 (Form 1041) is used to notify the beneficiaries of the amounts to be included on their income tax returns.

Before preparing Form 1041, the fiduciary must figure the accounting income of the estate or trust under the will or trust instrument and applicable local law to determine the amount, if any, of income that is required to be distributed because the income distribution deduction is based, in part, on that amount.

## Definitions

### Beneficiary

A beneficiary is an heir, a legatee, or a devisee.

### Distributable Net Income (DNI)

The income distribution deduction allowable to estates and trusts for amounts paid, credited, or required to be distributed to beneficiaries is limited to distributable net income (DNI). This amount, which is figured on Schedule B, line 9, is also used to determine how much of an amount paid, credited, or required to be distributed to a beneficiary will be includible in his or her gross income.

### Income and Deductions in Respect of a Decedent

When completing Form 1041, you must take into account any items that are income in respect of a decedent (IRD).

In general, income in respect of a decedent is income that a decedent was entitled to receive but that was not properly includible in the decedent's final Form 1040 under the decedent's method of accounting.

IRD includes: **(a)** all accrued income of a decedent who reported his or her income on a cash method of accounting; **(b)** income accrued solely because of the decedent's death in the case of a decedent who reported his or her income on the accrual method of accounting; and **(c)** income to which the decedent had a contingent claim at the time of his or her death.

Some examples of IRD of a decedent who kept his or her books on a cash method are:

- Deferred salary payments that are payable to the decedent's estate.
- Uncollected interest on U.S. savings bonds.
- Proceeds from the completed sale of farm produce.
- The portion of a lump sum distribution to the beneficiary of a decedent's IRA that equals the balance in the IRA at the time of the owner's death. This includes unrealized appreciation and income accrued to that date, less the aggregate amount of the owner's nondeductible contributions to the IRA. Such amounts are included in the beneficiary's gross income in the tax year that the distribution is received.

The IRD has the same character it would have had if the decedent lived and received such amount.

The following deductions and credits, when paid by the decedent's estate, are allowed on Form 1041 even though they were not allowable on the decedent's final Form 1040:

- Business expenses deductible under section 162.

- Interest deductible under section 163.
- Taxes deductible under section 164.
- Investment expenses described in section 212 (in excess of 2% of AGI).
- Percentage depletion allowed under section 611.
- Foreign tax credit.

For more information, see section 691.

### Income Required To Be Distributed Currently

Income required to be distributed currently is income that is required to be distributed in the year it is received. The fiduciary must be under a duty to distribute the income currently, even if the actual distribution is not made until after the close of the trust's tax year. See Regulations section 1.651(a)-2.

### Fiduciary

A fiduciary is a trustee of a trust; or an executor, executrix, administrator, administratrix, personal representative, or person in possession of property of a decedent's estate.

**Note:** Any reference in these instructions to "you" means the fiduciary of the estate or trust.

### Trust

A trust is an arrangement created either by a will or by an inter vivos declaration by which trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts.

## Who Must File

### Decedent's Estate

The fiduciary (or one of the joint fiduciaries) must file Form 1041 for the estate of a domestic decedent that has:

1. Gross income for the tax year of \$600 or more, or
2. A beneficiary who is a nonresident alien.

### Trust

The fiduciary (or one of the joint fiduciaries) must file Form 1041 for a domestic trust taxable under section 641 that has:

1. Any taxable income for the tax year, or
2. Gross income of \$600 or more (regardless of taxable income), or
3. A beneficiary who is a nonresident alien.

Two or more trusts are treated as one trust if such trusts have substantially the same grantor(s) and substantially the same primary beneficiary(ies), and a principal purpose of such trusts is avoidance of tax. This provision applies only to that portion of the trust that is

attributable to contributions to corpus made after March 1, 1984.

If you are a fiduciary of a nonresident alien estate or foreign trust with U.S. source income, file **Form 1040NR**, U.S. Nonresident Alien Income Tax Return.

## Bankruptcy Estate

The bankruptcy trustee or debtor-in-possession must file Form 1041 for the estate of an individual involved in bankruptcy proceedings under chapter 7 or 11 of title 11 of the United States Code if the estate has gross income for the tax year of \$5,775 or more. See **Of Special Interest To Bankruptcy Trustees and Debtors-in-Possession** on page 6 for other details.

## Qualified Settlement Funds

The trustee of a designated or qualified settlement fund should file **Form 1120-SF**, U.S. Income Tax Return for Settlement Funds. See Regulations section 1.468B-5.

## Electronic and Magnetic Media Filing

Qualified fiduciaries or transmitters may be able to file Form 1041 and related schedules electronically or on magnetic media. Tax return data may be filed electronically using telephone lines or on magnetic media using magnetic tape or floppy diskette.

If you wish to do this, **Form 9041**, Application for Electronic/Magnetic Media Filing of Business and Employee Benefit Plan Returns, must be filed. If Form 1041 is filed electronically or on magnetic media, **Form 8453-F**, U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing, must also be filed. For more details, get **Pub. 1437**, Procedures for Electronic and Magnetic Media Filing of U.S. Income Tax Returns for Estates and Trusts, Form 1041, for Tax Year 1995, and **Pub. 1438**, File Specifications, Validation Criteria, and Record Layouts for Electronic and Magnetic Media Filing of Estate and Trust Returns, Form 1041. To order these forms and publications, or for more information on electronic and magnetic media filing of Form 1041, call the Magnetic Media Unit at the Philadelphia Service Center at (215) 516-7533 (not a toll-free number), or write to:

Internal Revenue Service  
Philadelphia Service Center  
ATTN: Magnetic Media Unit—DP 115  
11601 Roosevelt Blvd.  
Philadelphia, PA 19154

## When To File

For calendar year estates and trusts, file Form 1041 and Schedules K-1 on or before April 15, 1996. For fiscal year

estates and trusts, file Form 1041 by the 15th day of the 4th month following the close of the tax year. If the due date falls on a Saturday, Sunday, or legal holiday, file on the next business day. For example, an estate that has a tax year that ends on June 30, 1996, must file Form 1041 by October 15, 1996.

## Extension of Time To File

**Estates.**—Use **Form 2758**, Application for Extension of Time To File Certain Excise, Income, Information, and Other Returns, to apply for an extension of time to file.

**Trusts.**—Use **Form 8736**, Application for Automatic Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts, to request an automatic 3-month extension of time to file.

If more time is needed, file **Form 8800**, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts, for an additional extension of up to 3 months. To obtain this additional extension of time to file, you must show reasonable cause for the additional time you are requesting. Form 8800 must be filed by the extended due date for Form 1041.

## Period Covered

File the 1995 return for calendar year 1995 and fiscal years beginning in 1995 and ending in 1996. If the return is for a fiscal year or a short tax year, fill in the tax year space at the top of the form.

The 1995 Form 1041 may also be used for a tax year beginning in 1996 if:

1. The estate or trust has a tax year of less than 12 months that begins and ends in 1996; and
2. The 1996 Form 1041 is not available by the time the estate or trust is required to file its tax return. However, the estate or trust must show its 1996 tax year on the 1995 Form 1041 and incorporate any tax law changes that are effective for tax years beginning after December 31, 1995.

## Where To File

For all estates and trusts, except charitable and split-interest trusts and pooled income funds:

### If you are located in

New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)

New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

### Please mail to the following Internal Revenue Service Center

Holtsville, NY 00501

Andover, MA 05501

Florida, Georgia, South Carolina	Atlanta, GA 39901
Indiana, Kentucky, Michigan, Ohio, West Virginia	Cincinnati, OH 45999
Kansas, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
California (all other counties), Hawaii	Fresno, CA 93888
Illinois, Iowa, Minnesota, Missouri, Wisconsin	Kansas City, MO 64999
Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee	Memphis, TN 37501
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, any U.S. possession, or foreign country	Philadelphia, PA 19255

For a charitable or split-interest trust described in section 4947(a) and a pooled income fund defined in section 642(c)(5):

### If you are located in

Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee	Atlanta, GA 39901
Arizona, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah, Wyoming	Austin, TX 73301
Indiana, Kentucky, Michigan, Ohio, West Virginia	Cincinnati, OH 45999
Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington	Fresno, CA 93888
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	Holtsville, NY 00501
Illinois, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin	Kansas City, MO 64999
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, any U.S. possession, or foreign country	Philadelphia, PA 19255

### Please mail to the following Internal Revenue Service Center

## Who Must Sign

The fiduciary, or an authorized representative, must sign Form 1041.

A financial institution that submitted estimated tax payments for trusts for which it is the trustee must enter its EIN in the space provided for the EIN of the fiduciary. Do not enter the EIN of the trust. For this purpose, a financial institution is one that maintains a Treasury Tax and Loan account. If you are an attorney or other individual functioning in a fiduciary capacity, leave this space blank. DO NOT enter your individual social security number (SSN).

If you, as fiduciary, fill in Form 1041, leave the Paid Preparer's space blank. If someone prepares this return and does not charge you, that person should not sign the return.

Generally, anyone who is paid to prepare a tax return must sign the return and fill in the other blanks in the Paid Preparer's Use Only area of the return.

The person required to sign the return must complete the required preparer information and:

- Sign it in the space provided for the preparer's signature. A facsimile signature is acceptable if certain conditions are met. See Regulations section 1.6695-1(b)(4)(iv) for details.
- Give you a copy of the return in addition to the copy to be filed with the IRS.

## Accounting Methods

Figure taxable income using the method of accounting regularly used in keeping the estate's or trust's books and records. Generally, permissible methods include the cash method, the accrual method, or any other method authorized by the Internal Revenue Code. In all cases, the method used must clearly reflect income.

Generally, the estate or trust may change its accounting method (for income as a whole or for any material item) only by getting consent on **Form 3115**, Application for Change in Accounting Method. For more information, get **Pub. 538**, Accounting Periods and Methods.

## Accounting Periods

For a decedent's estate, the moment of death determines the end of the decedent's tax year and the beginning of the estate's tax year. As executor or administrator, you choose the estate's tax period when you file its first income tax return. The estate's first tax year may be any period of 12 months or less that ends on the last day of a month. If you select the last day of any month other than December, you are adopting a fiscal tax year.

To change the accounting period of an estate, get **Form 1128**, Application To Adopt, Change, or Retain a Tax Year.

Generally, a trust must adopt a calendar year. The following trusts are exempt from this requirement:

- A trust that is exempt from tax under section 501(a);
- A charitable trust described in section 4947(a)(1); and
- A trust that is treated as wholly owned by a grantor under the rules of sections 671 through 679.

## Rounding Off to Whole Dollars

You may show the money items on the return and accompanying schedules as whole-dollar amounts. To do so, drop amounts less than 50 cents and increase any amounts from 50 to 99 cents to the next dollar.

## Estimated Tax

Generally, an estate or trust must pay estimated income tax for 1996 if it expects to owe, after subtracting any withholding and credits, at least \$500 in tax, and it expects the withholding and credits to be less than the smaller of:

1. 90% of the tax shown on the 1996 tax return, or
2. 100% of the tax shown on the 1995 tax return (110% of that amount if the estate's or trust's adjusted gross income on that return is more than \$150,000, and less than  $\frac{2}{3}$  of gross income for 1995 or 1996 is from farming or fishing).

However, if a return was not filed for 1995 or that return did not cover a full 12 months, item 2 does not apply.

## Exceptions

Estimated tax payments are not required from:

1. An estate of a domestic decedent or a domestic trust that had no tax liability for the full 12-month 1995 tax year;
2. A decedent's estate for any tax year ending before the date that is 2 years after the decedent's death; or
3. A trust that was treated as owned by the decedent if the trust will receive the residue of the decedent's estate under the will (or if no will is admitted to probate, the trust primarily responsible for paying debts, taxes, and expenses of administration) for any tax year ending before the date that is 2 years after the decedent's death.

For more information, get **Form 1041-ES**, Estimated Income Tax for Estates and Trusts.

## Section 643(g) Election

Fiduciaries of trusts that pay estimated tax may elect under section 643(g) to have any portion of their estimated tax payments allocated to any of the beneficiaries.

The fiduciary of a decedent's estate may make a section 643(g) election only for the final year of the estate.

See the instructions for line 24b for more details.

## Interest and Penalties

### Interest

Interest is charged on taxes not paid by the due date, even if an extension of time to file is granted.

Interest is also charged on the failure-to-file penalty, the accuracy-related penalty, and the fraud penalty. The interest charge is figured at a rate determined under section 6621.

### Late Filing of Return

The law provides a penalty of 5% a month, or part of a month, up to a maximum of 25%, for each month the return is not filed. The penalty is imposed on the net amount due. If the return is more than 60 days late, the minimum penalty is the smaller of \$100 or the tax due. The penalty will not be imposed if you can show that the failure to file on time was due to reasonable cause. If the failure is due to reasonable cause, attach an explanation to the return.

### Late Payment of Tax

Generally, the penalty for not paying tax when due is  $\frac{1}{2}$  of 1% of the unpaid amount for each month or part of a month it remains unpaid. The maximum penalty is 25% of the unpaid amount. The penalty is imposed on the net amount due. Any penalty is in addition to interest charges on late payments.

**Note:** If you include interest or either of these penalties with your payment, identify and enter these amounts in the bottom margin of Form 1041, page 1. Do not include the interest or penalty amount in the balance of tax due on line 27.

### Failure To Supply Schedule K-1

The fiduciary must provide Schedule K-1 (Form 1041) to each beneficiary who receives a distribution of property or an allocation of an item of the estate. A penalty of \$50 (not to exceed \$100,000 for any calendar year) will be imposed on the fiduciary for each failure to furnish Schedule K-1 to each beneficiary unless reasonable cause for each failure is established.

### Underpaid Estimated Tax

If the fiduciary underpaid estimated tax, get **Form 2210**, Underpayment of Estimated Tax by Individuals, Estates, and Trusts, to figure any penalty. Enter the amount of any penalty on line 26, Form 1041.

## Other Penalties

Other penalties can be imposed for negligence, substantial underpayment of tax, and fraud. Get **Pub. 17**, Your Federal Income Tax, for details on these penalties.

## Other Forms That May Be Required

**Forms W-2** and **W-3**, Wage and Tax Statement; and Transmittal of Income and Tax Statements.

**Form 56**, Notice Concerning Fiduciary Relationship.

**Form 706**, United States Estate (and Generation-Skipping Transfer) Tax Return; or **Form 706-NA**, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

**Form 706-GS(D)**, Generation-Skipping Transfer Tax Return For Distributions.

**Form 706-GS(D-1)**, Notification of Distribution From a Generation-Skipping Trust.

**Form 706-GS(T)**, Generation-Skipping Transfer Tax Return for Terminations.

**Form 720**, Quarterly Federal Excise Tax Return. Use Form 720 to report environmental excise taxes, communications and air transportation taxes, fuel taxes, luxury tax on passenger vehicles, manufacturers' taxes, ship passenger tax, and certain other excise taxes.

**Caution:** See *Trust fund recovery penalty* below.

**Form 940** or **Form 940-EZ**, Employer's Annual Federal Unemployment (FUTA) Tax Return. The estate or trust may be liable for FUTA tax and may have to file Form 940 or 940-EZ if it paid wages of \$1,500 or more in any calendar quarter during the calendar year (or the preceding calendar year) or one or more employees worked for the estate or trust for some part of a day in any 20 different weeks during the calendar year.

**Form 941**, Employer's Quarterly Federal Tax Return. Employers must file this form quarterly to report income tax withheld on wages and employer and employee social security and Medicare taxes. Agricultural employers must file **Form 943**, Employer's Annual Tax Return for Agricultural Employees, instead of Form 941, to report income tax withheld and employer and employee social security and Medicare taxes on farmworkers.

**Caution:** See *Trust fund recovery penalty* below.

**Form 945**, Annual Return of Withheld Federal Income Tax. Use this form to report income tax withheld from nonpayroll payments, including pensions, annuities, IRAs, gambling winnings, and backup withholding.

**Caution:** See *Trust fund recovery penalty* below.

**Form 1040**, U.S. Individual Income Tax Return.

**Form 1040NR**, U.S. Nonresident Alien Income Tax Return.

**Form 1041-A**, U.S. Information Return—Trust Accumulation of Charitable Amounts.

**Forms 1042** and **1042-S**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; and Foreign Person's U.S. Source Income Subject to Withholding. Use these forms to report and transmit withheld tax on payments or distributions made to nonresident alien individuals, foreign partnerships, or foreign corporations to the extent such payments or distributions constitute gross income from sources within the United States that is not effectively connected with a U.S. trade or business. For more information, see sections 1441 and 1442, and **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

**Forms 1099-A, B, INT, MISC, OID, R,** and **S**.—You may have to file these information returns to report abandonments, acquisitions through foreclosure, proceeds from broker and barter exchange transactions, interest payments, medical and dental health care payments, miscellaneous income, original issue discount, distributions from pensions, annuities, retirement or profit-sharing plans, individual retirement arrangements, insurance contracts, and proceeds from real estate transactions.

Also, use these returns to report amounts received as a nominee on behalf of another person, except amounts reported to beneficiaries on Schedule K-1 (Form 1041).

**Form 8275**, Disclosure Statement. File Form 8275 to disclose items or positions, except those contrary to a regulation, that are not otherwise adequately disclosed on a tax return. The disclosure is made to avoid parts of the accuracy-related penalty imposed for disregard of rules or substantial understatement of tax. Form 8275 is also used for disclosures relating to preparer penalties for understatements due to unrealistic positions or disregard of rules.

**Form 8275-R**, Regulation Disclosure Statement, is used to disclose any item on a tax return for which a position has been taken that is contrary to Treasury regulations.

**Forms 8288** and **8288-A**, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests; and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. Use these forms to report and transmit withheld tax on the sale of U.S. real property by a foreign person. Also, use

these forms to report and transmit tax withheld from amounts distributed to a foreign beneficiary from a "U.S. real property interest account" that a domestic estate or trust is required to establish under Regulations section 1.1445-5(c)(1)(iii).

**Form 8300**, Report of Cash Payments Over \$10,000 Received in a Trade or Business. Generally, this form is used to report the receipt of more than \$10,000 in cash or foreign currency in one transaction (or a series of related transactions).

**Trust fund recovery penalty.**—This penalty may apply if certain excise, income, social security, and Medicare taxes that must be collected or withheld are not collected or withheld, or these taxes are not paid to the IRS. These taxes are generally reported on Forms 720, 941, 943, or 945. The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to have been **responsible** for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so. The penalty is equal to the unpaid trust fund tax. See the instructions for Form 720, **Pub. 15 (Circular E)**, Employer's Tax Guide, or **Pub. 51 (Circular A)**, Agricultural Employer's Tax Guide, for more details, including the definition of responsible persons.

## Attachments

If you need more space on the forms or schedules, attach separate sheets. Use the same size and format as on the printed forms. **But show the totals on the printed forms.**

Attach these separate sheets after all the schedules and forms. Enter the estate's or trust's employer identification number on each sheet.

Do not file a copy of the decedent's will or the trust instrument unless the IRS requests it.

## Additional Information

The following publications may assist you in preparing Form 1041.

**Pub. 448**, Federal Estate and Gift Taxes;

**Pub. 550**, Investment Income and Expenses; and

**Pub. 559**, Survivors, Executors, and Administrators.

These and other publications may be obtained at most IRS offices. To order publications and forms, call 1-800-TAX-FORM (1-800-829-3676). Or, use your computer. If you subscribe to an on-line service, ask if IRS information is available and, if so, how to access it. You can also get information through IRIS, the Internal Revenue Information Services, on FedWorld, a government bulletin board. The tax forms,

instructions, publications, and other IRS information are available through IRIS.

IRIS is accessible directly by calling 703-321-8020. On the Internet, you can telnet to fedworld.gov or, for file transfer protocol services, connect to ftp.fedworld.gov. If using the World Wide Web, connect to <http://www.ustreas.gov>.

FedWorld's help desk offers technical assistance on accessing IRIS (not tax help) during regular business hours at 703-487-4608. The IRIS menus offer information on available file formats and software needed to read and print files. You must print the forms to use them; the forms are not designed to be filled in on-screen.

Tax forms, instructions, and publications are also available on CD-ROM, including prior-year forms starting with the 1991 tax year. For ordering information and software requirements, contact the Government Printing Office's Superintendent of Documents (202-512-1800) or Federal Bulletin Board (202-512-1387).

## Unresolved Tax Problems

The IRS has a Problem Resolution Program for taxpayers who have been unable to resolve their problems with the IRS. If you have a tax problem you have been unable to resolve through normal channels, write to your local IRS District Director, or call your local IRS office and ask for Problem Resolution assistance. Hearing-impaired persons who have access to TDD equipment may call 1-800-829-4059 to ask for help.

The Problem Resolution Office will ensure that your problem receives proper attention. Although the office cannot change the tax law or make technical decisions, it can help you clear up problems that resulted from previous contacts.

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## Of Special Interest to Bankruptcy Trustees and Debtors-in-Possession

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### Taxation of Bankruptcy Estates of an Individual

A bankruptcy estate is a separate taxable entity created when an individual debtor files a petition under either chapter 7 or 11 of title 11 of the U.S. Code. The estate is administered by a trustee, or a debtor-in-possession. If the case is later dismissed by the bankruptcy court, the debtor is treated as if the bankruptcy petition had never been filed. This provision does NOT apply to partnerships or corporations.

#### Who Must File

Every trustee (or debtor-in-possession) for an individual's bankruptcy estate under chapter 7 or 11 of title 11 of the

U.S. Code must file a return if the bankruptcy estate has gross income of \$5,775 or more for tax years beginning in 1995.

Failure to do so may result in an estimated Request for Administrative Expenses being filed by the IRS in the bankruptcy proceeding or a motion to compel filing of the return.

**Note:** *The filing of a tax return for the bankruptcy estate does not relieve the individual debtor of his or her (or their) individual tax obligations.*

#### Employer Identification Number

Every bankruptcy estate of an individual required to file a return must have its own employer identification number (EIN). You may apply for one on **Form SS-4**, Application for Employer Identification Number. The social security number (SSN) of the individual debtor cannot be used as the EIN for the bankruptcy estate.

#### Accounting Period

A bankruptcy estate is allowed to have a fiscal year. The period can be no longer than 12 months.

#### When To File

File Form 1041 on or before the 15th day of the 4th month following the close of the tax year. Use Form 2758 to apply for an extension of time to file.

#### Disclosure of Return Information

Under section 6103(e)(5), tax returns of individual debtors who have filed for bankruptcy under chapters 7 or 11 of title 11 are, upon written request, open to inspection by or disclosure to the trustee.

The returns subject to disclosure to the trustee are those for the year the bankruptcy begins and prior years. Use **Form 4506**, Request for Copy or Transcript of Tax Form, to request copies of the individual debtor's tax returns.

If the bankruptcy case was not voluntary, disclosure cannot be made before the bankruptcy court has entered an order for relief, unless the court rules that the disclosure is needed for determining whether relief should be ordered.

#### Transfer of Tax Attributes From the Individual Debtor to the Bankruptcy Estate

The bankruptcy estate succeeds to the following tax attributes of the individual debtor:

1. Net operating loss (NOL) carryovers;
2. Charitable contributions carryovers;
3. Recovery of tax benefit items;
4. Credit carryovers;
5. Capital loss carryovers;

6. Basis, holding period, and character of assets;

7. Method of accounting; and

8. Other tax attributes to the extent provided by regulations.

For bankruptcy cases beginning after November 8, 1992, the bankruptcy estate succeeds to the individual debtor's unused passive activity losses, unused passive activity credits, and unused section 465 losses. For cases beginning before November 9, 1992, the individual debtor and bankruptcy estate may jointly elect to have the estate succeed to these attributes. See Regulations sections 1.1398-1 and 1.1398-2 for more details.

#### Income, Deductions, and Credits

Under section 1398(c), the taxable income of the bankruptcy estate generally is figured in the same manner as an individual. The gross income of the bankruptcy estate includes any income included in property of the estate as defined in Bankruptcy Code section 541. Also included is gain from the sale of property. To figure gain, the trustee or debtor-in-possession must determine the correct basis of the property.

To determine whether any amount paid or incurred by the bankruptcy estate is allowable as a deduction or credit, or is treated as wages for employment tax purposes, treat the amount as if it were paid or incurred by the individual debtor in the same trade or business or other activity the debtor engaged in before the bankruptcy proceedings began.

**Administrative expenses.**—The bankruptcy estate is allowed a deduction for any administrative expense allowed under section 503 of title 11 of the U.S. Code, and any fee or charge assessed under chapter 123 of title 28 of the U.S. Code, to the extent not disallowed under an Internal Revenue Code provision (e.g., section 263, 265, or 275).

**Administrative expense loss.**—When figuring a net operating loss, nonbusiness deductions (including administrative expenses) are limited under section 172(d)(4) to the bankruptcy estate's nonbusiness income. The excess nonbusiness deductions are an administrative expense loss that may be carried back to each of the 3 preceding tax years and forward to each of the 7 succeeding tax years of the bankruptcy estate. The amount of an administrative expense loss that may be carried to any tax year is determined after the net operating loss deductions allowed for that year. An administrative expense loss is allowed only to the bankruptcy estate and cannot be carried to any tax year of the individual debtor.

**Carryback of net operating losses and credits.**—If the bankruptcy estate itself incurs a net operating loss (apart from losses carried forward to the estate from the individual debtor), it can carry back its net operating losses not only to previous tax years of the bankruptcy estate, but also to tax years of the individual debtor prior to the year in which the bankruptcy proceedings began. Excess credits, such as the foreign tax credit, also may be carried back to pre-bankruptcy years of the individual debtor.

**Exemption.**—For tax years beginning in 1995, a bankruptcy estate is allowed a personal exemption of \$2,500.

**Standard deduction.**—For tax years beginning in 1995, a bankruptcy estate that does not itemize deductions is allowed a standard deduction of \$3,275.

**Discharge of indebtedness.**—In a title 11 case, gross income does not include amounts that normally would be included in gross income resulting from the discharge of indebtedness. However, any amounts excluded from gross income must be applied to reduce certain tax attributes in a certain order. Attach **Form 982**, Reduction of Tax Attributes Due to Discharge of Indebtedness, to show the reduction of tax attributes.

### Tax Rate Schedule

Figure the tax for the bankruptcy estate using the tax rate schedule shown below. Enter the tax on Form 1040, line 38.

If taxable income is:

Over—	But not over—	The tax is:	Of the amount over—
\$0	\$19,500	15%	\$0
19,500	47,125	\$2,925.00 + 28%	19,500
47,125	71,800	10,660.00 + 31%	47,125
71,800	128,250	18,309.25 + 36%	71,800
128,250	-----	38,631.25 + 39.6%	128,250

### Prompt Determination of Tax Liability

To request a prompt determination of the tax liability of the bankruptcy estate, the trustee or debtor-in-possession must file a written application for the determination with the IRS District Director for the district in which the bankruptcy case is pending. The application must be submitted in duplicate and executed under the penalties of perjury. The trustee or debtor-in-possession must submit with the application an **exact copy** of the return (or returns) filed by the trustee with the IRS for a completed tax period, and a statement of the name and location of the office where the return was filed. The envelope should be marked, "Personal Attention of the Special Procedures Function (Bankruptcy Section). DO NOT OPEN IN MAILROOM."

The IRS will notify the trustee or debtor-in-possession within 60 days from receipt of the application whether the return filed by the trustee or debtor-in-possession has been selected for examination or has been accepted as filed. If the return is selected for examination, it will be examined as soon as possible. The IRS will notify the trustee or debtor-in-possession of any tax due within 180 days from receipt of the application or within any additional time permitted by the bankruptcy court.

See Rev. Proc. 81-17, 1981-1 C.B. 688.

### Special Filing Instructions for Bankruptcy Estates

Use Form 1041 only as a transmittal for Form 1040. In the top margin of Form 1040 write "Attachment to Form 1041. DO NOT DETACH." Attach Form 1040 to Form 1041. Complete only the identification area at the top of Form 1041. Enter the name of the individual debtor in the following format: "John Q. Public Bankruptcy Estate." Beneath, enter the name of the trustee in the following format: "Avery Snow, Trustee." In item D, enter the date the petition was filed or the date of conversion to a chapter 7 or 11 case. Enter on Form 1041, line 23, any tax due from line 54 of Form 1040. Sign and date Form 1041.

## Specific Instructions

### Name of Estate or Trust

Copy the exact name of the estate or trust from the **Form SS-4**, Application for Employer Identification Number, that you used to apply for the employer identification number (EIN).

If a grantor type trust (discussed below), write the name, identification number, and address of the grantor(s) or other person(s) in parentheses after the name of the trust.

### Address

Include the suite, room, or other unit number after the street address.

If the Post Office does not deliver mail to the street address and the fiduciary has a P.O. box, show the box number instead of the street address.

If you change your address after filing Form 1041, use **Form 8822**, Change of Address, to notify the IRS.

### A. Type of Entity

Check the appropriate box that describes the entity for which you are filing the return.

**Note:** *There are special filing requirements for grantor type trusts and bankruptcy estates (discussed below).*

### Decedent's Estate

An estate of a deceased person is a taxable entity separate from the decedent. It generally continues to exist until the final distribution of the assets of the estate is made to the heirs and other beneficiaries. The income earned from the property of the estate during the period of administration or settlement must be accounted for and reported by the estate.

### Simple Trust

A trust may qualify as a simple trust if:

1. The trust instrument requires that all income must be distributed currently;
2. The trust instrument does not provide that any amounts are to be paid, permanently set aside, or used for charitable purposes; and
3. The trust does not distribute amounts allocated to the corpus of the trust.

### Complex Trust

A complex trust is any trust that does not qualify as a simple trust as explained above.

### Grantor Type Trust

A grantor type trust is a legal trust under applicable state law that is not recognized as a separate taxable entity for income tax purposes because the grantor or other substantial owners have not relinquished complete dominion and control over the trust.

Generally, for transfers made in trust after March 1, 1986, the grantor is treated as the owner of any portion of a trust in which he or she has a reversionary interest in either the income or corpus therefrom, if, as of the inception of that portion of the trust, the value of that interest is more than 5% of the value of that portion. Also, the grantor is treated as holding any power or interest that was held by either the grantor's spouse at the time that the power or interest was created or who became the grantor's spouse after the creation of that power or interest.

Report on Form 1041 the part of the income that is taxable to the trust. Do not report on Form 1041 the income that is taxable to the grantor or another person. Instead, attach a separate sheet to report the following:

- The income of the trust that is taxable to the grantor or another person under sections 671 through 678;
- The name, identifying number, and address of the person(s) to whom the income is taxable; and
- Any deductions or credits applied to this income.

The income taxable to the grantor or another person under sections 671 through 678 and the deductions and credits applied to the income must be

reported on the income tax return that person files.

**Family estate trust.**—A family estate trust is also known as a family, family estate, pure, equity, equity pure, prime, or constitutional trust.

In most cases, the grantor transfers property to the trust or assigns to the trust the income for services the grantor performs. The trust instrument usually provides:

- Evidence of ownership, such as certificates of beneficial interest in the trust.
- That the grantor is a trustee and executive officer.
- That the trust pays the living expenses for the grantor and the grantor's family.
- That the corpus and undistributed income are distributed to the owners after the trust is terminated.

Generally, a family estate trust is treated as a grantor type trust. For more information, see Rev. Rul. 75-257, 1975-2 C.B. 251.

**Mortgage pools.**—The trustee of a mortgage pool, such as the Federal National Mortgage Association, collects principal and interest payments on each mortgage and makes distributions to the certificate holders. Each pool is considered a grantor type trust, and each certificate holder is treated as the owner of an undivided interest in the entire trust under the grantor trust rules. Certificate holders must report their proportionate share of the mortgage interest and other items of income on their individual tax returns.

**Pre-need funeral trusts.**—The purchasers of pre-need funeral services are the grantors and the owners of pre-need funeral trusts established under state laws. See Rev. Rul. 87-127, 1987-2 C.B. 156.

**Nonqualified deferred compensation plans.**—Taxpayers may adopt and maintain grantor trusts in connection with nonqualified deferred compensation plans (sometimes referred to as "rabbi trusts"). Rev. Proc. 92-64, 1992-2 C.B. 422, provides a "model grantor trust" for use in rabbi trust arrangements. The procedure also provides guidance for requesting rulings on the plans that use these trusts.

**Simplified filing requirement for certain grantor type trusts.**—The grantor/trustee for a trust described below that was created in a tax year beginning on or after January 1, 1981, should not file Form 1041 and therefore will not need an EIN for the trust. The grantor/trustee must furnish his or her social security number (SSN) to payers of income and report all items of income, deduction, and credit from the trust on his or her Form 1040.

This special rule applies to certain revocable trusts that are located in the

United States and have all assets located in the United States if:

- The same individual is both grantor and trustee (or co-trustee) of the trust; and
  - The individual is treated as owner of all trust assets under section 676 (power to revoke) for the tax year.
- These rules also apply to certain other revocable trusts in which:
- A husband and wife are the sole grantors;
  - One spouse is trustee or co-trustee with a third party or both spouses are trustees or co-trustees with a third party;
  - One or both spouses are treated as owners of all trust assets under section 676 (power to revoke) for the tax year; and
  - The husband and wife file a joint income tax return for the tax year.

**Grantor trusts created in tax years beginning before 1981.**—The grantor/trustee for a trust described above who has previously filed Form 1041 can take advantage of the simplified reporting requirements in the future by filing a Form 1041 for the current year, writing on it "Pursuant to section 1.671-4(b), this is the final return for this grantor trust," and checking the "Final return" box.

A grantor/trustee who chooses this option must furnish his or her SSN to payers of income for the next year and report the trust income on his or her Form 1040 for the next tax year and for future years. The grantor/trustee must not file Form 1041 for future years.

**Backup withholding.**—Generally, a grantor trust is considered a payor of reportable payments received by the trust for purposes of backup withholding. If the trust has 10 or fewer grantors, a reportable payment made to the trust is treated as a reportable payment of the same kind made to the grantors on the date the trust received the payment. If the trust has more than 10 grantors, a reportable payment made to the trust is treated as a payment of the same kind made by the trust to each grantor in an amount equal to the distribution made to each grantor on the date the grantor is paid or credited. The trustee must withhold 31% of reportable payments made to any grantor who is subject to backup withholding. For more information, see section 3406 and Temporary Regulations section 35a.9999-2, Q&A 20.

### Bankruptcy Estate

A chapter 7 or 11 bankruptcy estate is a separate and distinct taxable entity from the individual debtor for Federal income tax purposes. See **Of Special Interest to Bankruptcy Trustees and Debtors-in-Possession** on page 6.

For more information, see section 1398 and **Pub. 908**, Tax Information on Bankruptcy.

### Pooled Income Fund

A pooled income fund is a split-interest trust with a remainder interest for a public charity and a life income interest retained by the donor or for another person. The property is held in a pool with other pooled income fund property and does not include any tax-exempt securities. The income for a retained life interest is figured using the yearly rate of return earned by the trust. See section 642(c) and the related regulations for more information.

If you are filing for a pooled income fund, attach a statement to support the following:

- The calculation of the yearly rate of return.
- The computation of the deduction for distributions to the beneficiaries.
- The computation of any charitable deduction.

You do not have to complete Schedules A or B of Form 1041.

If the fund has accumulations of income, file Form 1041-A unless the fund is required to distribute all of its net income to beneficiaries currently.

You must also file **Form 5227**, Split-Interest Trust Information Return, for the pooled income fund.

### B. Number of Schedules K-1 Attached

Every trust or decedent's estate claiming an income distribution deduction on page 1, line 18, must enter the number of Schedules K-1 (Form 1041) that are attached to Form 1041.

### C. Employer Identification Number

Every estate or trust must have an EIN. To apply for one, use Form SS-4. You may get this form from the IRS or the Social Security Administration. See **Pub. 583**, Starting a Business and Keeping Records, for more information.

If you are filing a return for a mortgage pool, such as one created under the mortgage-backed security programs administered by the Federal National Mortgage Association ("Fannie Mae") or the Government National Mortgage Association ("Ginnie Mae"), the EIN stays with the pool if that pool is traded from one financial institution to another.

### D. Date Entity Created

Enter the date the trust was created, or, if a decedent's estate, the date of the decedent's death.



## E. Nonexempt Charitable and Split-Interest Trusts

### Section 4947(a)(1) Trust

Check this box if the trust is a nonexempt charitable trust within the meaning of section 4947(a)(1). A nonexempt charitable trust is a trust that is not exempt from tax under section 501(a); all of the unexpired interests are devoted to one or more charitable purposes described in section 170(c)(2)(B); and for which a deduction was allowed under section 170 (for individual taxpayers) or similar Code section for personal holding companies, foreign personal holding companies, or estates or trusts (including a deduction for estate or gift tax purposes).

### Not a Private Foundation

Check this box if the charitable trust is not treated as a private foundation under section 509. For more information, see Regulations section 53.4947-1.

If a nonexempt charitable trust is not treated as though it were a private foundation, the fiduciary must file **Form 990 (or Form 990-EZ)**, Return of Organization Exempt From Income Tax, and **Schedule A (Form 990)**, Organization Exempt Under Section 501(c)(3), in addition to Form 1041 if the trust's gross receipts are normally more than \$25,000.

If a nonexempt charitable trust is not treated as though it were a private foundation, and it has no taxable income under Subtitle A, it can file either Form 990 or Form 990-EZ instead of Form 1041 to meet its section 6012 filing requirement.

### Section 4947(a)(2) Trust

Check this box if the trust is a split-interest trust described in section 4947(a)(2). A split-interest trust is a trust that is not exempt from tax under section 501(a); has some unexpired interests that are devoted to purposes other than religious, charitable, or similar purposes described in section 170(c)(2)(B); and has amounts transferred in trust after May 26, 1969, for which a deduction was allowed under section 170 (for individual taxpayers) or similar Code section for personal holding companies, foreign personal holding companies, or estates or trusts (including a deduction for estate or gift tax purposes).

The fiduciary of a split-interest trust must also file Form 5227 (for amounts transferred in trust after May 26, 1969); and Form 1041-A if the trust's governing instrument does not require that all of the trust's income be distributed currently.

If a split-interest trust has any unrelated business taxable income,

however, it must file Form 1041 to report all of its income and to pay any tax due.

### Nonexempt Charitable Trust Treated as a Private Foundation

If a nonexempt charitable trust is treated as though it were a private foundation under section 509, then the fiduciary must file **Form 990-PF**, Return of Private Foundation, in addition to Form 1041.

If a nonexempt charitable trust is subject to any of the private foundation excise taxes, then it must also file **Form 4720**, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code. Any private foundation taxes paid by the trust cannot be taken as a deduction on Form 1041.

If a nonexempt charitable trust is treated as though it were a private foundation, and it has no taxable income under Subtitle A, it may file Form 990-PF instead of Form 1041 to meet its section 6012 filing requirement.

## F. Initial Return, Amended Return, Final Return; or Change in Fiduciary's Name or Address

### Amended Return

If you are filing an amended Form 1041, check the "Amended return" box. Complete the entire return, correct the appropriate lines with the new information, and refigure the estate's or trust's tax liability. On an attached sheet explain the reason for the amendments and identify the lines and amounts being changed on the amended return.

If the amended return results in a change to income, or a change in distribution of any income or other information provided to a beneficiary, an amended Schedule K-1 (Form 1041) must also be filed with the amended Form 1041 and given to each beneficiary. Check the "Amended K-1" box at the top of the amended Schedule K-1.

### Final Return

Check this box if this is a final return because the estate or trust has terminated. Also, check the "Final K-1" box at the top of Schedule K-1.

If, on the final return, there are excess deductions, an unused capital loss carryover, or a net operating loss carryover, see the discussion in the Schedule K-1 instructions on page 28. Figure the deductions on an attached sheet.

## G. Pooled Mortgage Account

If you bought a pooled mortgage account during the year, and still have that pool at the end of the tax year,

check the "Bought" box and enter the date of purchase.

If you sold a pooled mortgage account that was purchased during this, or a previous, tax year, check the "Sold" box and enter the date of sale.

If you neither bought nor sold a pooled mortgage account, skip this item.

## Income

### Special Rule for Blind Trust

If you are reporting income from a qualified blind trust (under the Ethics in Government Act of 1978), do not identify the payer of any income to the trust but complete the rest of the return as provided in the instructions. Also write "Blind Trust" at the top of page 1.

### Line 1—Interest Income

Report the estate's or trust's share of all taxable interest income that was received during the tax year. Examples of taxable interest include interest from:

- Accounts (including certificates of deposit and money market accounts) with banks, credit unions, and thrifts.
- Notes, loans, and mortgages.
- U.S. Treasury bills, notes, and bonds.
- U.S. savings bonds.
- Original issue discount.
- Income received as a regular interest holder of a real estate mortgage investment conduit (REMIC).

For taxable bonds acquired after 1987, amortizable bond premium is treated as an offset to the interest income instead of as a separate interest deduction. See Pub. 550.

For the year of the decedent's death, Forms 1099-INT issued in the decedent's name may include interest income earned after the date of death that should be reported on the income tax return of the decedent's estate. When preparing the decedent's final income tax return, report on line 1 of Schedule B (Form 1040) or Schedule 1 (Form 1040A) the total interest shown on Form 1099-INT. Under the last entry on line 1, subtotal all the interest reported on line 1. Below the subtotal, write "Form 1041" and the name and address shown on Form 1041 for the decedent's estate. Also, show the part of the interest reported on Form 1041 and subtract it from the subtotal.

### Line 2—Dividends

Report the estate's or trust's share of all ordinary dividends received during the tax year.

For the year of the decedent's death, Forms 1099-DIV issued in the decedent's name may include dividends earned after the date of death that should be reported on the income tax return of the decedent's estate. When preparing the decedent's final income

tax return, report on line 5 of Schedule B (Form 1040) or Schedule 1 (Form 1040A) the total dividends shown on Form 1099-DIV. Under the last entry on line 5, subtotal all the dividends reported on line 5. Below the subtotal, write "Form 1041" and the name and address shown on Form 1041 for the decedent's estate. Also, show the part of the dividends reported on Form 1041 and subtract it from the subtotal.

**Note:** Report capital gain distributions on Schedule D (Form 1041), line 10.

### Line 3—Business Income or (Loss)

If the estate or trust operated a business, report the income and expenses on **Schedule C (Form 1040)**, Profit or Loss From Business (or **Schedule C-EZ (Form 1040)**, Net Profit From Business). Enter the net profit or (loss) from Schedule C (or Schedule C-EZ) on line 3.

### Line 4—Capital Gain or (Loss)

Enter the gain from Schedule D (Form 1041), Part III, line 17, column (c); or the loss from Part IV, line 18.

**Note:** Do not substitute Schedule D (Form 1040) for Schedule D (Form 1041).

### Line 5—Rents, Royalties, Partnerships, Other Estates and Trusts, etc.

Use **Schedule E (Form 1040)**, Supplemental Income and Loss, to report the estate's or trust's share of income or (losses) from rents, royalties, partnerships, S corporations, other estates and trusts, and REMICs. Enter the net profit or (loss) from Schedule E on line 5. See the instructions for Schedule E (Form 1040) for reporting requirements.

If the estate or trust received a Schedule K-1 from a partnership, S corporation, or other flow-through entity, use the corresponding lines on Form 1041 to report the interest, dividends, capital gains, etc., from the flow-through entity.

### Line 6—Farm Income or (Loss)

If the estate or trust operated a farm, use **Schedule F (Form 1040)**, Profit or Loss From Farming, to report farm income and expenses. Enter the net profit or (loss) from Schedule F on line 6.

### Line 7—Ordinary Gain or (Loss)

Enter from line 20, **Form 4797**, Sales of Business Property, the ordinary gain or loss from the sale or exchange of property other than capital assets and also from involuntary conversions (other than casualty or theft).

### Line 8—Other Income

Enter other items of income not included on lines 1 through 7. List the type and

amount on an attached schedule if the estate or trust has more than one item.

Items to be reported on line 8 include:

- Unpaid compensation received by the decedent's estate that is income in respect of a decedent.
- Any part of a total distribution shown on **Form 1099-R**, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., that is treated as ordinary income. For more information, see the separate instructions for **Form 4972**, Tax on Lump-Sum Distributions.

## Deductions

### Amortization, Depletion, and Depreciation

A trust or decedent's estate is allowed a deduction for amortization, depletion, and depreciation only to the extent the deductions are not apportioned to the beneficiaries.

For a decedent's estate, the depreciation deduction is apportioned between the estate and the heirs, legatees, and devisees on the basis of the estate's income allocable to each.

For a trust, the depreciation deduction is apportioned between the income beneficiaries and the trust on the basis of the trust income allocable to each, unless the governing instrument (or local law) requires or permits the trustee to maintain a depreciation reserve. If the trustee is required to maintain a reserve, the deduction is first allocated to the trust, up to the amount of the reserve. Any excess is allocated among the beneficiaries in the same manner as the trust's accounting income. See Regulations section 1.167(h)-1(b).

For mineral or timber property held by a decedent's estate, the depletion deduction is apportioned between the estate and the heirs, legatees, and devisees on the basis of the estate's income from such property allocable to each.

For mineral or timber property held in trust, the depletion deduction is apportioned between the income beneficiaries and the trust based on the trust income from such property allocable to each, unless the governing instrument (or local law) requires or permits the trustee to maintain a reserve for depletion. If the trustee is required to maintain a reserve, the deduction is first allocated to the trust, up to the amount of the reserve. Any excess is allocated among the beneficiaries in the same manner as the trust's accounting income. See Regulations section 1.611-1(c)(4).

The deduction for amortization is apportioned between an estate or trust and its beneficiaries under the same principles for apportioning the

deductions for depreciation and depletion.

An estate or trust is not allowed to make an election under section 179 to expense certain tangible property.

The deduction for the amortization of reforestation expenditures under section 194 is allowed only to an estate.

The estate's or trust's share of amortization, depletion, and depreciation should be reported on the appropriate lines of Schedule C (or C-EZ), E, or F (Form 1040), the net income or loss from which is shown on line 3, 5, or 6 of Form 1041. If the deduction is not related to a specific business or activity, then report it on line 15a.

### Allocation of Deductions for Tax-Exempt Income

Generally, no deduction that would otherwise be allowable is allowed for any expense (whether for business or for the production of income) that is allocable to tax-exempt income.

Examples of tax-exempt income include:

- Certain death benefits (section 101);
- Interest on state or local bonds (section 103);
- Compensation for injuries or sickness (section 104); and
- Income from discharge of indebtedness in a title 11 case (section 108).

**Exception.** State income taxes and business expenses that are allocable to tax-exempt interest are deductible.

Expenses that are directly allocable to tax-exempt income are allocated only to tax-exempt income. A reasonable proportion of expenses indirectly allocable to both tax-exempt income and other income must be allocated to each class of income.

### Deductions That May Be Allowable for Estate Tax Purposes

Administration expenses and casualty and theft losses deductible on Form 706 may be deducted, to the extent otherwise deductible for income tax purposes, on Form 1041 if the fiduciary files a statement waiving the right to deduct the expenses and losses on Form 706. The statement must be filed before the expiration of the statutory period of limitations for the tax year the deduction is claimed. See Pub. 559 for more information.

### Accrued Expenses

Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year that: **(a)** all events have occurred that determine the liability; and **(b)** the amount of the liability can be figured with reasonable accuracy. However, all the events that establish liability are treated as occurring only when economic performance takes place.

There are exceptions for recurring items. See section 461(h).

## Limitations on Deductions

### At-Risk Loss Limitations

Generally, the amount the estate or trust has “at risk” limits the loss it can deduct for any tax year. Use **Form 6198**, At-Risk Limitations, to figure the deductible loss for the year and file it with Form 1041. For more information, get **Pub. 925**, Passive Activity and At-Risk Rules.

### Passive Activity Loss and Credit Limitations

Section 469 and the regulations thereunder generally limit losses from passive activities to the amount of income derived from all passive activities. Similarly, credits from passive activities are generally limited to the tax attributable to such activities. These limitations are first applied at the estate or trust level.

Generally, an activity is a passive activity if it involves the conduct of any trade or business, and the taxpayer does not materially participate in the activity. Passive activities do not include working interests in oil and gas properties. See section 469(c)(3).

For a grantor trust, material participation is determined at the grantor level.

Generally, rental activities are passive activities, whether or not the taxpayer materially participates. However, certain taxpayers who materially participate in real property trades or businesses are not subject to the passive activity limitations on losses from rental real estate activities in which they materially participate. For more details, see section 469(c)(7).

**Note:** *Material participation standards for estates and trusts had not been established by regulations at the time these instructions went to print.*

For tax years of an estate ending less than 2 years after the decedent’s date of death, up to \$25,000 of deductions and deduction equivalents of credits from rental real estate activities in which the decedent actively participated is allowed. Any excess losses and/or credits are suspended for the year and carried forward.

If the estate or trust distributes an interest in a passive activity, the basis of the property immediately before the distribution is increased by the passive activity losses allocable to the interest, and such losses cannot be deducted. See section 469(j)(12).

**Note:** *Losses from passive activities are first subject to the at-risk rules. When the losses are deductible under the at-risk rules, the passive activity rules then apply.*

Portfolio income is not treated as income from a passive activity, and passive losses and credits generally may not be applied to offset it. Portfolio income generally includes interest, dividends, royalties, and income from annuities. Portfolio income of an estate or trust must be accounted for separately. See **Form 8582**, Passive Activity Loss Limitations, to figure the amount of losses allowed from passive activities. See **Form 8582-CR**, Passive Activity Credit Limitations, to figure the amount of credit allowed for the current year.

### Transactions Between Related Taxpayers

Under section 267, a trust that uses the accrual method of accounting may only deduct business expenses and interest owed to a related party in the year the payment is included in the income of the related party. For this purpose, a related party includes:

1. A grantor and a fiduciary of any trust;
2. A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
3. A fiduciary of a trust and a beneficiary of such trust;
4. A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts; and
5. A fiduciary of a trust and a corporation more than 50% in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust.

### Line 10—Interest

Enter the amount of interest (subject to limitations) paid or incurred by the estate or trust on amounts borrowed by the estate or trust, or on debt acquired by the estate or trust (e.g., outstanding obligations from the decedent) that is not claimed elsewhere on the return.

If the proceeds of a loan were used for more than one purpose (e.g., to purchase a portfolio investment and to acquire an interest in a passive activity), the fiduciary must make an interest allocation according to the rules in Temporary Regulations section 1.163-8T.

Do not include interest paid on indebtedness incurred or continued to purchase or carry obligations on which the interest is wholly exempt from income tax.

Personal interest is not deductible. Examples of personal interest include interest paid on:

- Revolving charge accounts.
- Personal notes for money borrowed from a bank, credit union, or other person.

- Installment loans on personal use property.
- Underpayments of Federal, state, or local income taxes.

Interest that is paid or incurred on indebtedness allocable to a trade or business (including a rental activity) should be deducted on the appropriate line of Schedule C (or C-EZ), E, or F (Form 1040), the net income or loss from which is shown on line 3, 5, or 6 of Form 1041.

Types of interest to include on line 10 are:

1. Any investment interest (subject to limitations);
2. Any qualified residence interest; and
3. Any interest payable under section 6601 on any unpaid portion of the estate tax attributable to the value of a reversionary or remainder interest in property, or an interest in a closely held business for the period during which an extension of time for payment of such tax is in effect.

**Investment interest.**—Generally, investment interest is interest (including amortizable bond premium on taxable bonds acquired after October 22, 1986, but before January 1, 1988) that is paid or incurred on indebtedness that is properly allocable to property held for investment. Investment interest does not include any qualified residence interest, or interest that is taken into account under section 469 in figuring income or loss from a passive activity.

Generally, net investment income is the excess of investment income over investment expenses. Investment expenses are those expenses (other than interest) allowable after application of the 2% floor on miscellaneous itemized deductions.

The amount of the investment interest deduction may be limited. Use **Form 4952**, Investment Interest Expense Deduction, to figure the allowable investment interest deduction.

If you must complete Form 4952, check the box on line 10 and attach Form 4952. Then, add the deductible investment interest to the other types of deductible interest and enter the total on line 10.

**Qualified residence interest.**—Interest paid or incurred by an estate or trust on indebtedness secured by a qualified residence of a beneficiary of an estate or trust is treated as qualified residence interest if the residence would be a qualified residence (i.e., the principal residence or the second residence selected by the beneficiary) if owned by the beneficiary. The beneficiary must have a present interest in the estate or trust or an interest in the residuary of the estate or trust. See **Pub. 936**, Home Mortgage Interest Deduction, for an

explanation of the general rules for deducting home mortgage interest.

See section 163(h)(3) for a definition of qualified residence interest and for limitations on indebtedness.

### Line 11—Taxes

Enter any deductible taxes paid or incurred during the tax year that are not deductible elsewhere on Form 1041.

Deductible taxes include:

- State and local income or real property taxes.
- The generation-skipping transfer (GST) tax imposed on income distributions.

Do not deduct:

- Federal income taxes.
- Estate, inheritance, legacy, succession, and gift taxes.
- Federal duties and excise taxes.
- State and local sales taxes. Instead, treat these taxes as part of the cost of the property.

### Line 12—Fiduciary Fees

Enter the deductible fees paid or incurred to the fiduciary for administering the estate or trust during the tax year.

**Note:** *Fiduciary fees deducted on Form 706 cannot be deducted on Form 1041.*

### Line 15a—Other Deductions NOT Subject to the 2% Floor

Attach your own schedule, listing by type and amount, all allowable deductions that are not deductible elsewhere on Form 1041.

Do not include any losses on worthless bonds and similar obligations and nonbusiness bad debts. Report these losses on Schedule D (Form 1041).

Do not deduct medical or funeral expenses on Form 1041. Medical expenses of the decedent paid by the estate may be deductible on the decedent's income tax return for the year incurred. See section 213(c). Funeral expenses are deductible ONLY on Form 706.

The following are examples of deductions that are reported on line 15a.

**Bond premium(s).**—For taxable bonds acquired before October 23, 1986, if the fiduciary elected to amortize the premium, report the amortization on this line. For tax-exempt bonds, the amortization cannot be deducted. In all cases where the fiduciary has made an election to amortize the premium, the basis must be reduced by the amount of amortization.

For more information, see section 171 and Pub. 550.

If you claim a bond premium deduction for the estate or trust, figure the deduction on a separate sheet and attach it to Form 1041.

## Page 12

**Casualty and theft losses.**—Use **Form 4684**, Casualties and Thefts, to figure any deductible casualty and theft losses.

**Deduction for clean-fuel vehicles.**—Section 179A allows a deduction for part of the cost of qualified clean-fuel vehicle property. Get **Pub. 535**, Business Expenses, for more details.

**Net operating loss deduction (NOLD).**—An estate or trust is allowed the net operating loss deduction (NOLD) under section 172.

If you claim an NOLD for the estate or trust, figure the deduction on a separate sheet and attach it to this return.

**Estate's or trust's share of amortization, depreciation, and depletion not claimed elsewhere.**—If you cannot deduct the amortization, depreciation, and depletion as rent or royalty expenses on Schedule E (Form 1040), or as business or farm expenses on Schedule C, C-EZ, or F (Form 1040), itemize the fiduciary's share of the deductions on an attached sheet and include them on line 15a. Itemize each beneficiary's share of the deductions and report them on the appropriate line of Schedule K-1 (Form 1041).

### Line 15b—Allowable Miscellaneous Itemized Deductions Subject to the 2% Floor

Miscellaneous itemized deductions are deductible only to the extent that the aggregate amount of such deductions exceeds 2% of adjusted gross income (AGI).

Miscellaneous itemized deductions do not include deductions for:

- Interest under section 163.
- Taxes under section 164.
- The amortization of bond premium under section 171.
- Estate taxes attributable to income in respect of a decedent under section 691(c).

For other exceptions, see section 67(b).

For estates and trusts, the AGI is figured by subtracting the following from total income on line 9 of page 1:

1. The administration costs of the estate or trust (the total of lines 12, 14, and 15a to the extent they are costs incurred in the administration of the estate or trust) that would not have been incurred if the property were NOT held by the estate or trust;
2. The income distribution deduction (line 18);
3. The amount of the exemption (line 20);
4. The deduction for clean-fuel vehicles claimed on line 15a; and
5. The net operating loss deduction claimed on line 15a.

For those estates and trusts whose income distribution deduction is limited to the actual distribution, and NOT the DNI (i.e., the income distribution is less than the DNI), when computing the AGI, use the amount of the actual distribution.

For those estates and trusts whose income distribution deduction is limited to the DNI (i.e., the actual distribution exceeds the DNI), the DNI must be figured taking into account the allowable miscellaneous itemized deductions (AMID) after application of the 2% floor. In this situation there are two unknown amounts: **(a)** the AMID; and **(b)** the DNI.

The following example illustrates how an algebraic equation can be used to solve for these unknown amounts:

The Malcolm Smith Trust, a complex trust, earned \$20,000 of dividend income, \$20,000 of capital gains, and a fully deductible \$5,000 loss from XYZ partnership (chargeable to corpus) in 1995. The trust instrument provides that capital gains are added to corpus. 50% of the fiduciary fees are allocated to income and 50% to corpus. The trust claimed a \$2,000 deduction on line 12 of Form 1041. The trust incurred \$1,500 of miscellaneous itemized deductions (chargeable to income), which are subject to the 2% floor. There are no other deductions. The trustee made a discretionary distribution of the accounting income of \$17,500 to the trust's sole beneficiary.

Because the actual distribution can reasonably be expected to exceed the DNI, the trust must figure the DNI, taking into account the allowable miscellaneous itemized deductions, to determine the amount to enter on line 15b.

The trust also claims an exemption of \$100 on line 20.

To compute line 15b, use the equation below:

$AMID = \text{total miscellaneous itemized deductions} - (.02(AGI))$

In the above example:

$AMID = 1,500 - (.02(AGI))$

In all situations, use the following equation to compute the AGI:

$AGI = (\text{line 9}) - (\text{the total of lines 12, 14, and 15a to the extent they are costs incurred in the administration of the estate or trust that would not have been incurred if the property were NOT held by the estate or trust}) - (\text{line 18}) - (\text{line 20}).$

**Note:** *There are no other deductions claimed by the trust on line 15a that are deductible in arriving at AGI.*

In the above example:

$AGI = 35,000 - 2,000 - DNI - 100$

Since the value of line 18 is not known because it is limited to the DNI, you are left with the following:

$AGI = 32,900 - DNI$

Substitute the value of AGI in the equation:

$$\text{AMID} = 1,500 - (.02(32,900 - \text{DNI}))$$

The equation cannot be solved until the value of DNI is known. The DNI can be expressed in terms of the AMID. To do this, compute the DNI using the known values. In this example, the DNI is equal to the total income of the trust (less any capital gains allocated to corpus; or plus any capital loss from line 4); less total deductions from line 16 (excluding any miscellaneous itemized deductions); less the AMID.

Thus,  $\text{DNI} = (\text{line } 9) - (\text{line } 17, \text{ column (b) of Schedule D (Form 1041)}) - (\text{line } 16) - (\text{AMID})$

Substitute the known values:

$$\text{DNI} = 35,000 - 20,000 - 2,000 - \text{AMID}$$

$$\text{DNI} = 13,000 - \text{AMID}$$

Substitute the value of DNI in the equation to solve for AMID:

$$\text{AMID} = 1,500 - (.02(32,900 - (13,000 - \text{AMID})))$$

$$\text{AMID} = 1,500 - (.02(32,900 - 13,000 + \text{AMID}))$$

$$\text{AMID} = 1,500 - (658 - 260 + .02 \text{AMID})$$

$$\text{AMID} = 1,102 - .02\text{AMID}$$

$$1.02\text{AMID} = 1,102$$

$$\text{AMID} = 1,080$$

$$\text{DNI} = 11,920 \text{ (i.e., } 13,000 - 1,080)$$

$$\text{AGI} = 20,980 \text{ (i.e., } 32,900 - 11,920)$$

**Note:** *The income distribution deduction is equal to the smaller of the distribution (\$17,500) or the DNI (\$11,920).*

Enter the value of AMID on line 15b (the DNI should equal line 9 of Schedule B) and complete the rest of Form 1041 according to the instructions.

If the 2% floor is more than the deductions subject to the 2% floor, no deductions are allowed.

### Line 18—Income Distribution Deduction

If the estate or trust was required to distribute income currently or if it paid, credited, or was required to distribute any other amounts to beneficiaries during the tax year, complete Schedule B to determine the estate's or trust's income distribution deduction. However, if you are filing for a pooled income fund, do not complete Schedule B. Instead, attach a statement to support the computation of the income distribution deduction. If the estate or trust claims an income distribution deduction, complete and attach:

- Parts I and II of Schedule I to refigure the deduction on a minimum tax basis; AND

- Schedule K-1 (Form 1041) for each beneficiary to which a distribution was made or required to be made.

**Cemetery perpetual care fund.**—On line 18, deduct the amount, not more

than \$5 per gravesite, paid for maintenance of cemetery property. To the right of the entry space for line 18, enter the number of gravesites. Also write "Section 642(i) trust" in parentheses after the trust's name at the top of Form 1041. You do not have to complete Schedules B of Form 1041 and K-1 (Form 1041).

### Line 19—Estate Tax Deduction (Including Certain Generation-Skipping Transfer Taxes)

If the estate or trust includes income in respect of a decedent (IRD) in its gross income, and such amount was included in the decedent's gross estate for estate tax purposes, the estate or trust is allowed to deduct in the same tax year that portion of the estate tax imposed on the decedent's estate that is attributable to the inclusion of the IRD in the decedent's estate. For an example of the computation, see Regulations section 1.691(c)-1 and Pub. 559.

If any amount properly paid, credited, or required to be distributed by an estate or trust to a beneficiary consists of IRD received by the estate or trust, do not include such amounts in determining the estate tax deduction for the estate or trust. Figure the deduction on a separate sheet. Attach the sheet to your return. Also, a deduction is allowed for the GST tax imposed as a result of a taxable termination, or a direct skip occurring as a result of the death of the transferor. See section 691(c)(3). Enter the estate's or trust's share of these deductions on line 19.

### Line 20—Exemption

**Decedent's estates.**—A decedent's estate is allowed a \$600 exemption.

**Trusts.**—A trust whose governing instrument requires that all income be distributed currently is allowed a \$300 exemption, even if it distributed amounts other than income during the tax year. All other trusts are allowed a \$100 exemption. See Regulations section 1.642(b)-1.

## Tax and Payments

### Line 22—Taxable Income

**Net operating loss.**—If line 22 is a loss, the estate or trust may have a net operating loss (NOL). Do not include the deductions claimed on lines 13, 18, and 20 when figuring the amount of the NOL. An NOL generally may be carried back to the 3 prior tax years and forward to the following 15 tax years. Complete Schedule A of **Form 1045**, Application for Tentative Refund, to figure the amount of the NOL that is available for carryback or carryover. Use Form 1045 or file an amended return to apply for a refund based on an NOL carryback. For more information, get **Pub. 536**, Net Operating Losses.

On the termination of the estate or trust, any unused NOL carryover that would be allowable to the estate or trust in a later tax year, but for the termination, is allowed to the beneficiaries succeeding to the property of the estate or trust. See the instructions for Schedule K-1, lines 12d and 12e.

**Excess deductions on termination.**—If the estate or trust has for its final year deductions (excluding the charitable deduction and exemption) in excess of its gross income, the excess is allowed as an itemized deduction to the beneficiaries succeeding to the property of the estate or trust. However, an unused NOL carryover that is allowed to beneficiaries (as explained in the above paragraph) cannot also be treated as an excess deduction. If the final year of the estate or trust is also the last year of the NOL carryover period, the NOL carryover not absorbed in that tax year by the estate or trust is included as an excess deduction. See the instructions for Schedule K-1, line 12a.

### Line 24a—1995 Estimated Tax Payments and Amount Applied From 1994 Return

Enter the amount of any estimated tax payment you made with Form 1041-ES for 1995 plus the amount of any overpayment from the 1994 return that was applied to the 1995 estimated tax.

If the estate or trust is the beneficiary of another trust, and received a payment of estimated tax that was credited to the trust (as reflected on the Schedule K-1 issued to the trust), then report this amount separately with the notation "section 643(g)" in the space next to line 24a.

**Note:** *Do not include on Form 1041 estimated tax paid by an individual before death. Instead, include the payments on the decedent's final Form 1040.*

### Line 24b—Estimated Tax Payments Allocated to Beneficiaries

The trustee (or executor, for the final year of the estate) may elect under section 643(g) to have any portion of its estimated tax treated as a payment of estimated tax made by a beneficiary or beneficiaries. The election is made on **Form 1041-T**, Allocation of Estimated Tax Payments to Beneficiaries, which must be filed by the 65th day after the close of the trust's tax year. Form 1041-T shows the amounts to be allocated to each beneficiary. This amount is reported on the beneficiary's Schedule K-1, line 13a.

Failure to file Form 1041-T by the due date (March 5, 1996, for calendar year estates and trusts) will result in an invalid election. An invalid election will

require the filing of amended Schedules K-1 for each beneficiary who was allocated a payment of estimated tax. Attach Form 1041-T to your return ONLY if you have not yet filed it. If you have already filed Form 1041-T, do not attach a copy to your return.

### Line 24d—Tax Paid With Extension of Time To File

If you filed either Form 2758 (for estates only), Form 8736, or Form 8800 to request an extension of time to file Form 1041, enter the amount that you paid with the extension request and check the appropriate box(es).

### Line 24e—Federal Income Tax Withheld

Use line 24e to claim a credit for any Federal income tax withheld (and not repaid) by: (a) an employer on wages and salaries of a decedent received by the decedent's estate; (b) a payer of certain gambling winnings (e.g., state lottery winnings); or (c) a payer of distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc., received by a decedent's estate or trust. Attach a copy of **Form W-2**, **Form W-2G**, or **Form 1099-R**.

**Backup withholding.**—If the estate or trust received a 1995 Form 1099 showing Federal income tax withheld (i.e., backup withholding) on interest income, dividends, or other income, check the box and include the amount withheld on income retained by the estate or trust in the total for line 24e.

Report on Schedule K-1 (Form 1041), line 13, any credit for backup withholding on income distributed to the beneficiary.

### Line 24f—Credit From Regulated Investment Companies

Attach copy B of **Form 2439**, Notice to Shareholder of Undistributed Long-Term Capital Gains.

### Line 24g—Credit for Federal Tax on Fuels

Include any credit for Federal excise taxes paid on fuels that are ultimately used for nontaxable purposes (e.g., an off-highway business use) and any credit for the purchase of a diesel-powered car, van, or light truck. Attach **Form 4136**, Credit for Federal Tax Paid on Fuels. Get **Pub. 378**, Fuel Tax Credits and Refunds, for more information.

### Line 26—Underpayment of Estimated Tax

If line 27 is at least \$500 and more than 10% of the tax shown on Form 1041, or the estate or trust underpaid its 1995 estimated tax liability for any payment period, it may owe a penalty. See Form 2210 to determine whether the estate or

trust owes a penalty and to figure the amount of the penalty.

**Note:** *The penalty may be waived under certain conditions. Get **Pub. 505**, Tax Withholding and Estimated Tax, for details.*

### Line 27—Tax Due

You must pay the tax in full when the return is filed. Make the check or money order payable to "Internal Revenue Service." Write the EIN and "1995 Form 1041" on the payment. Enclose, but do not attach, the payment with Form 1041.

### Line 29a—Credit to 1996 Estimated Tax

Enter the amount from line 28 that you want applied to the estate's or trust's 1996 estimated tax.

## Schedule A—Charitable Deduction

### General Instructions

Generally, any part of the gross income of an estate or trust (other than a simple trust) that, under the terms of the will or governing instrument, is paid (or treated as paid) during the tax year for a charitable purpose specified in section 170(c) is allowed as a deduction to the estate or trust. It is not necessary that the charitable organization be created or organized in the United States.

Trusts that claim a charitable deduction must also file Form 1041-A. See Form 1041-A for exceptions.

A pooled income fund, nonexempt private foundation, or trust with unrelated business income should attach a separate sheet to Form 1041 instead of using Schedule A of Form 1041 to figure the charitable deduction.

**Election to treat contributions as paid in the prior tax year.**—The fiduciary of an estate or trust may elect to treat as paid during the tax year any amount of gross income received during that tax year or any prior tax year that was paid in the next tax year for a charitable purpose.

To make the election, the fiduciary must file a statement with Form 1041 for the tax year in which the contribution is treated as paid. This statement must include:

1. The name and address of the fiduciary;
2. The name of the estate or trust;
3. An indication that the fiduciary is making an election under section 642(c)(1) for contributions treated as paid during such tax year;
4. The name and address of each organization to which any such contribution is paid; and

5. The amount of each contribution and date of actual payment or, if applicable, the total amount of contributions paid to each organization during the next tax year, to be treated as paid in the prior tax year.

The election must be filed by the due date (including extensions) for Form 1041 for the next tax year.

For more information about the charitable deduction, see section 642(c) and related regulations.

### Specific Instructions

#### Line 1—Amounts Paid for Charitable Purposes From Gross Income

Enter amounts that were paid for a charitable purpose out of the estate's or trust's gross income, including any capital gains that are attributable to income under the governing instrument or local law. Include amounts paid during the tax year from gross income received in a prior tax year, but only if no deduction was allowed for any prior tax year for these amounts. Do not include any capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes. Instead, enter these amounts on line 6.

#### Line 2—Amounts Permanently Set Aside for Charitable Purposes From Gross Income

Estates, and certain trusts, may claim a deduction for amounts permanently set aside for a charitable purpose from gross income. Such amounts must be permanently set aside during the tax year or be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit.

For a trust to qualify, the trust may not be a simple trust, and the set aside amounts must be required by the terms of a trust instrument that was created on or before October 9, 1969.

Further, the trust instrument must provide for an irrevocable remainder interest to be transferred to or for the use of an organization described in section 170(c); OR the trust must have been created by a grantor who was at all times after October 9, 1969, under a mental disability to change the terms of the trust.

Also, certain testamentary trusts that were established by a will that was executed on or before October 9, 1969, may qualify. See Regulations section 1.642(c)-2(b).

Do not include any capital gains for the tax year allocated to corpus and paid or permanently set aside for

charitable purposes. Instead, enter these amounts on line 6.

#### Line 4—Tax-Exempt Income Allocable to Charitable Contributions

Any estate or trust that pays or sets aside any part of its income for a charitable purpose must reduce the deduction by the portion allocable to any tax-exempt income. If the governing instrument specifically provides as to the source from which amounts are paid, permanently set aside, or to be used for charitable purposes, the specific provisions control. In all other cases, determine the amount of tax-exempt income allocable to charitable contributions by multiplying line 3 by a fraction, the numerator of which is the total tax-exempt income of the estate or trust; and the denominator of which is the gross income of the estate or trust. Do not include in the denominator any losses allocated to corpus.

#### Line 6—Capital Gains for the Tax Year Allocated to Corpus and Paid or Permanently Set Aside for Charitable Purposes

Enter the total of all capital gains for the tax year that are:

- Allocated to corpus; and
- Paid or permanently set aside for charitable purposes.

## Schedule B—Income Distribution Deduction

### General Instructions

If the estate or trust was required to distribute income currently or if it paid, credited, or was required to distribute any other amounts to beneficiaries during the tax year, complete Schedule B to determine the estate's or trust's income distribution deduction. However, if you are filing for a pooled income fund, do not complete Schedule B. Instead, attach a statement to support the computation of the income distribution deduction.

**Note:** Use Schedule I to compute the DNI and income distribution deduction on a minimum tax basis.

**Separate share rule.**—If a single trust has more than one beneficiary, and if different beneficiaries have substantially separate and independent shares, their shares are treated as separate trusts for the sole purpose of determining the DNI allocable to the respective beneficiaries. If the separate share rule applies, figure the DNI allocable to each beneficiary on a separate sheet and attach the sheet to this return. Any deduction or loss that is applicable solely to one separate share of the trust is not available to any other share of the same trust. For more

information, see section 663(c) and related regulations.

### Specific Instructions

#### Line 1—Adjusted Total Income

If the amount on line 17 of page 1 is a loss that is attributable wholly or in part to the capital loss limitation rules under section 1211(b) (line 4), then enter as a negative amount on line 1, Schedule B, the smaller of the loss from line 17 on page 1, or the loss from line 4 on page 1. If the line 17 loss is not attributable to the capital loss on line 4, enter zero.

If you are filing for a simple trust, subtract from adjusted total income any extraordinary dividends or taxable stock dividends included on page 1, line 2, and determined under the governing instrument and applicable local law to be allocable to corpus.

#### Line 2—Adjusted Tax-Exempt Interest

To figure the adjusted tax-exempt interest:

**Step 1.** Add tax-exempt interest income on line 4 of Schedule A, any expenses allowable under section 212 allocable to tax-exempt interest, and any interest expense allocable to tax-exempt interest.

**Step 2.** Subtract the Step 1 total from the amount of tax-exempt interest (including exempt-interest dividends) received.

Section 212 expenses that are directly allocable to tax-exempt interest are allocated only to tax-exempt interest. A reasonable proportion of section 212 expenses that are indirectly allocable to both tax-exempt interest and other income must be allocated to each class of income.

Figure the interest expense allocable to tax-exempt interest according to the guidelines in Rev. Proc. 72-18, 1972-1 C.B. 740.

See Regulations sections 1.643(a)-5 and 1.265-1 for more information.

#### Line 3

Include all capital gains, whether or not they are distributed, that are attributable to income under the governing instrument or local law. For example, if the trustee distributed 50% of the current year's capital gains to the income beneficiaries (and reflects this amount in column (a), line 17 of Schedule D (Form 1041)), but under the governing instrument all capital gains are attributable to income, then include 100% of the capital gains on line 3. If the amount on Schedule D (Form 1041), line 17, column (a) is a net loss, enter zero.

#### Line 5

In figuring the amount of long-term capital gain for the tax year included on

Schedule A, line 3, the specific provisions of the governing instrument control if the instrument specifically provides as to the source from which amounts are paid, permanently set aside, or to be used for charitable purposes. In all other cases, determine the amount to enter by multiplying line 3 of Schedule A by a fraction, the numerator of which is the amount of long-term capital gains that are included in the accounting income of the estate or trust (i.e., not allocated to corpus) AND are distributed to charities, and the denominator of which is all items of income (including the amount of such long-term capital gains) included in the DNI.

#### Line 6

Figure line 6 in a similar manner as line 5.

#### Line 10—Accounting Income

If you are filing for a decedent's estate or a simple trust, skip this line. If you are filing for a complex trust, enter the income for the tax year determined under the terms of the governing instrument and applicable local law. Do not include extraordinary dividends or taxable stock dividends determined under the governing instrument and applicable local law to be allocable to corpus.

#### Lines 11 and 12

Do not include any:

- Amounts deducted on prior year's return that were required to be distributed in the prior year.
- Amount that is properly paid or credited as a gift or bequest of a specific amount of money or specific property. (To qualify as a gift or bequest, the amount must be paid in three or fewer installments.) An amount that can be paid or credited only from income is not considered a gift or bequest.
- Amount paid or permanently set aside for charitable purposes or otherwise qualifying for the charitable deduction.

#### Line 11—Income Required To Be Distributed Currently

Line 11 is to be completed by all simple trusts as well as complex trusts, and decedent's estates, that are required to distribute income currently, whether it is distributed or not. The determination of whether trust income is required to be distributed currently depends on the terms of the governing instrument and the applicable local law.

The line 11 distributions are referred to as first tier distributions and are deductible by the estate or trust to the extent of the DNI. The beneficiary includes such amounts in his or her income to the extent of his or her proportionate share of the DNI.

**Line 12—Other Amounts Paid, Credited, or Otherwise Required To Be Distributed**

Line 12 is to be completed ONLY by a decedent's estate or complex trust. These distributions consist of any other amounts paid, credited, or required to be distributed and are referred to as second tier distributions. Such amounts include annuities to the extent not paid out of income, discretionary distributions of corpus, and distributions of property in kind.

If Form 1041-T was filed to elect to treat estimated tax payments as made by a beneficiary, the payments are treated as paid or credited to the beneficiary on the last day of the tax year and must be included on line 12.

Unless a section 643(e)(3) election is made, the value of all noncash property actually paid, credited, or required to be distributed to any beneficiaries is the smaller of:

1. The estate's or trust's adjusted basis in the property immediately before distribution, plus any gain or minus any loss recognized by the estate or trust on the distribution (basis of beneficiary), or
2. The fair market value (FMV) of such property.

If a section 643(e)(3) election is made by the fiduciary, then the amount entered on line 12 will be the FMV of the property.

A fiduciary of a complex trust may elect to treat any amount paid or credited to a beneficiary within 65 days following the close of the tax year as being paid or credited on the last day of that tax year. To make this election, see the instructions for Question 6 on page 18.

The beneficiary includes the amounts on line 12 in his or her income only to the extent of his or her proportionate share of the DNI.

**Complex trusts.**—If the second tier distributions exceed the DNI allocable to the second tier, the trust may have an accumulation distribution. See the line 13 instructions below.

**Line 13—Total Distributions**

If line 13 is more than line 10 and you are filing for a complex trust, complete **Schedule J (Form 1041)** and file it with Form 1041 unless the trust has no previously accumulated income.

**Line 14—Adjustment for Tax-Exempt Income**

In figuring the income distribution deduction, the estate or trust is not allowed a deduction for any item of the DNI that is not included in the gross income of the estate or trust. Thus, for purposes of figuring the allowable income distribution deduction, the DNI (line 9) is figured without regard to any tax-exempt interest.

If tax-exempt interest is the only tax-exempt income included in the total distributions (line 13), and the DNI (line 9) is less than or equal to line 13, then enter on line 14 the amount from line 2.

If tax-exempt interest is the only tax-exempt income included in the total distributions (line 13), and the DNI is more than line 13 (i.e., the estate or trust made a distribution that is less than the DNI), then figure the adjustment by multiplying line 2 by a fraction, the numerator of which is the total distributions (line 13), and the denominator of which is the DNI (line 9). Enter the result on line 14.

If line 13 includes tax-exempt income other than tax-exempt interest, figure line 14 by subtracting the total of the following from tax-exempt income included on line 13:

1. The charitable contribution deduction allocable to such tax-exempt income, and
2. Expenses allocable to tax-exempt income.

Expenses that are directly allocable to tax-exempt income are allocated only to tax-exempt income. A reasonable proportion of expenses indirectly allocable to both tax-exempt income and other income must be allocated to each class of income.

**Line 17—Income Distribution Deduction**

The income distribution deduction determines the amount of income that will be taxed to the beneficiaries. The total amount of income for regular tax purposes that is reflected on line 7 of the individual beneficiaries' Schedules K-1 should equal the amount claimed on line 17.

Schedule D (Form 1041), enter the tax from line 45 of Schedule D, and check the "Schedule D" box.

**Line 1b**

**Other taxes.**—Include any additional tax from the following:

- **Form 4970**, Tax on Accumulation Distribution of Trusts.
- **Form 4972**, Tax on Lump-Sum Distributions.
- Section 644 tax on trusts.

**Section 644 tax.**—If the trust sells or exchanges property at a gain within 2 years after receiving it from a transferor, a section 644 tax may be due. The tax may be due if both 1 and 2 below apply:

1. There is an includible gain (defined below) recognized by the trust; and
2. At the time the trust received the property, the property had an FMV higher than its adjusted basis.

The trustee is authorized by section 6103(e)(1)(A)(ii) to inspect the transferor's income tax return to the extent necessary to figure the section 644 tax if the transferor refuses to make a disclosure to the trustee.

Includible gain is the smaller of 1 or 2 below:

1. The gain recognized by the trust on the sale or exchange of the property; or
2. The amount by which the FMV of the property at the time of the initial transfer to the trust exceeds the adjusted basis of the property immediately after the transfer.

Figure the tax on the includible gain by subtracting the transferor's actual tax for the tax year of the sale or exchange from the transferor's tax for the year of the sale or exchange refigured to include the includible gain minus any deductions allocable to the gain.

See section 644 for additional information, including character rules, special rules, exceptions, installment sale rules, and the interest due on the tax if the transferor and the trust have different tax years.

If the section 644 tax is the only tax due on line 1b, enter the amount of the tax on line 1b and write "Section 644 tax" to the left of the amount column on line 1b. If there is more than one tax, include the amount of the section 644 tax in the total tax entered on line 1b.

Attach the section 644 tax computation to the return. When figuring the trust's taxable income, exclude the amount of any includible gain minus any deductions allocable to the gain.

**Line 2a—Foreign Tax Credit**

Attach **Form 1116**, Foreign Tax Credit (Individual, Estate, Trust, or Nonresident Alien Individual), if you elect to claim credit for income or profits taxes paid or accrued to a foreign country or a U.S. possession. The estate or trust may

**Schedule G—Tax Computation**

**Line 1a**

**Tax rate schedule.**—For tax years beginning in 1995, figure the tax using the Tax Rate Schedule below. Enter the tax on line 1a and check the "Tax rate schedule" box.

**1995 Tax Rate Schedule**

If the amount on line 22, page 1, is:

Over—	But not over—	Enter on line 1a:	Of the amount over—
\$0	\$1,550	15%	\$0
1,550	3,700	\$232.50 + 28%	1,550
3,700	5,600	834.50 + 31%	3,700
5,600	7,650	1,423.50 + 36%	5,600
7,650	- - - -	2,161.50 + 39.6%	7,650

**Schedule D.**—If the estate or trust had a net capital gain and taxable income of more than \$3,700, complete Part VI of



claim credit for that part of the foreign taxes not allocable to the beneficiaries (including charitable beneficiaries). Enter the estate's or trust's share of the credit on line 2a. See **Pub. 514**, Foreign Tax Credit for Individuals, for details.

### Line 2b—Nonconventional Source Fuel Credit

If the estate or trust can claim any section 29 credit for producing fuel from a nonconventional source, figure the credit on a separate sheet and attach it to the return. Include the credit on line 2b.

### Qualified Electric Vehicle Credit

Use **Form 8834**, Qualified Electric Vehicle Credit, if the estate or trust can claim a credit for the purchase of a new qualified electric vehicle. Include the credit on line 2b.

### Line 2c—General Business Credit

Complete this line if the estate or trust is claiming any of the credits listed below. Use the appropriate credit form to figure the credit. If the estate or trust is claiming only one credit, enter the form number and the amount of the credit in the space provided.

If the estate or trust is claiming more than one credit (not including the empowerment zone employment credit), a credit from a passive activity (other than the low-income housing credit or the empowerment zone employment credit), or a credit carryforward, also complete **Form 3800**, General Business Credit, to figure the total credit and enter the amount from Form 3800 on line 2c. Also, be sure to check the box for Form 3800.

Do not include any amounts that are allocated to a beneficiary. Credits that are allocated between the estate or trust and the beneficiaries are listed in the instructions for Schedule K-1, line 13, on page 28. Generally, these credits are apportioned on the basis of the income allocable to the estate or trust and the beneficiaries.

- Investment credit (Form 3468).
- Jobs credit (Form 5884).
- Credit for alcohol used as fuel (Form 6478).
- Credit for increasing research activities (Form 6765).
- Low-income housing credit (Form 8586).
- Disabled access credit (Form 8826).
- Enhanced oil recovery credit (Form 8830).
- Renewable electricity production credit (Form 8835).
- Empowerment zone employment credit (Form 8844).
- Indian employment credit (Form 8845).

- Credit for employer social security and Medicare taxes paid on certain employee tips (Form 8846).

- Credit for contributions to selected community development corporations (Form 8847).

### Line 2d—Credit for Prior Year Minimum Tax

An estate or trust that paid alternative minimum tax in a previous year may be eligible for a minimum tax credit in 1995. See **Form 8801**, Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.

### Line 5—Recapture Taxes

**Recapture of investment credit.**—If the estate or trust disposed of investment credit property or changed its use before the end of its useful life or recovery period, get **Form 4255**, Recapture of Investment Credit, to figure the recapture tax allocable to the estate or trust.

**Recapture of low-income housing credit.**—If the estate or trust disposed of property (or there was a reduction in the qualified basis of the property) on which the low-income housing credit was claimed, get **Form 8611**, Recapture of Low-Income Housing Credit, to figure any recapture tax allocable to the estate or trust.

**Recapture of qualified electric vehicle credit.**—If the estate or trust claimed the qualified electric vehicle credit in a prior tax year for a vehicle that ceased to qualify for the credit, part or all of the credit may have to be recaptured. See Pub. 535 for details. If the estate or trust owes any recapture tax, include it on line 5 and write "QEV" on the dotted line to the left of the entry space.

**Recapture of the Indian employment credit.**—Generally, if the estate or trust terminates a qualified employee less than 1 year after the date of initial employment, any Indian employment credit allowed for a prior tax year by reason of wages paid or incurred to that employee must be recaptured. See Form 8845 for details. If the estate or trust owes any recapture tax, include it on line 5 and write "45A" on the dotted line to the left of the entry space.

### Line 7—Household Employment Taxes

If **any** of the following apply, get **Schedule H (Form 1040)**, Household Employment Taxes, and its instructions, to see if the estate or trust owes these taxes.

1. The estate or trust paid **any one** household employee cash wages of \$1,000 or more in 1995. When figuring the amount of cash wages paid, combine cash wages paid by the estate or trust with cash wages paid to the household employee in the same calendar year by the household of the decedent or beneficiary for whom the

administrator, executor, or trustee of the estate or trust is acting.

2. The estate or trust withheld Federal income tax during 1995 at the request of any household employee.

3. The estate or trust paid **total** cash wages of \$1,000 or more in **any** calendar **quarter** of 1994 or 1995 to household employees.

### Line 8—Total Tax

**Interest on tax deferred under the installment method for certain nondealer real property installment obligations.**—If an obligation arising from the disposition of real property to which section 453A applies is outstanding at the close of the year, the estate or trust must include the interest due under section 453A(c) in the amount to be entered on line 8 of Schedule G, Form 1041, with the notation "Section 453A(c) interest." Attach a schedule showing the computation.

**Form 8697, Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.**—Include the interest due under the look-back method of section 460(b)(2). To the left of the entry space, write "From Form 8697" and the amount of interest due.

**Form 5329, Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities, and Modified Endowment Contracts.**—If the estate or trust fails to receive the minimum distribution under section 4974, use Form 5329 to pay the excise tax. To the left of the entry space, write "From Form 5329" and the amount of the tax.

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## Other Information

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### Question 1

If the estate or trust received tax-exempt income, figure the allocation of expenses between tax-exempt and taxable income on a separate sheet and attach it to the return. Enter only the deductible amounts on the return. Do not figure the allocation on the return itself. For more information, see the instructions for **Allocation of Deductions for Tax-Exempt Income** on page 10.

Report the amount of tax-exempt interest income received or accrued in the space provided below Question 1.

Also, include any exempt-interest dividends the estate or trust received as a shareholder in a mutual fund or other regulated investment company.

### Question 2

All salaries, wages, and other compensation for personal services must be included on the return of the person who earned the income, even if

the income was irrevocably assigned to a trust by a contract assignment or similar arrangement.

The grantor or person creating the trust is considered the owner if he or she keeps "beneficial enjoyment" of or substantial control over the trust property. The trust's income, deductions, and credits are allocable to the owner.

If you checked "Yes" for Question 2, see the **Grantor Type Trust** instructions on page 7.

### Question 3

Check the "Yes" box and enter the name of the foreign country if either **1** or **2** below applies.

**1.** At any time during the year the estate or trust had an interest in or signature or other authority over a bank, securities, or other financial account in a foreign country.

**Exception.** Check "No" if either of the following applies to the estate or trust:

- The combined value of the accounts was \$10,000 or less during the whole year; OR
- The accounts were with a U.S. military banking facility operated by a U.S. financial institution.

**2.** The estate or trust owns more than 50% of the stock in any corporation that owns one or more foreign bank accounts.

Get **Form TD F 90-22.1**, Report of Foreign Bank and Financial Accounts, to see if the estate or trust is considered to have an interest in or signature or other authority over a bank, securities, or other financial account in a foreign country.

If you checked "Yes" for Question 3, file Form TD F 90-22.1 by June 30, 1996, with the Department of the Treasury at the address shown on the form. Form TD F 90-22.1 is not a tax return, so do not file it with Form 1041.

You may order Form TD F 90-22.1 by calling 1-800-829-3676 (1-800-TAX-FORM).

### Question 4

An estate or trust that transferred property to a foreign corporation, foreign estate or trust, or foreign partnership must file **Form 926**, Return by a U.S. Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership, even if the transfer is nontaxable. Form 926 is also used to pay any excise tax due under section 1491.

**Form 3520**, Creation of or Transfers to Certain Foreign Trusts, is used by the grantor of an inter vivos trust or the fiduciary of a testamentary trust, or the transferor, to meet the reporting requirements under section 6048 with respect to transfers of money or

property to a foreign trust, or the creation of a foreign trust.

**Form 3520-A**, Annual Return of Foreign Trust With U.S. Beneficiaries, must be filed under section 6048(c) by any U.S. person who directly or indirectly transfers property to a foreign trust (with certain exceptions) that has one or more U.S. beneficiaries.

### Question 5

An estate or trust claiming an interest deduction for qualified residence interest (as defined in section 163(h)(3)) on seller-provided financing, must include on an attachment to the 1995 Form 1041 the name, address, and taxpayer identifying number of the person to whom the interest was paid or accrued (i.e., the seller).

If the estate or trust received or accrued such interest, it must provide identical information on the person liable for such interest (i.e., the buyer). This information does not need to be reported if it duplicates information already reported on Form 1098.

### Question 6

To make the section 663(b) election for a complex trust to treat any amount paid or credited to a beneficiary within 65 days following the close of the tax year as being paid or credited on the last day of that tax year, check the box. For the election to be valid, you must file Form 1041 by the due date (including extensions). Once made, the election is irrevocable.

### Question 7

To make the section 643(e)(3) election to recognize gain on property distributed in kind, check the box and see the Instructions for Schedule D (Form 1041).

### Question 8

If the decedent's estate has been open for more than 2 years, check the box and attach an explanation for the delay in closing the estate.

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## Schedule I—Alternative Minimum Tax

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### General Instructions

Use Schedule I 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 alternative minimum tax (AMT).

### Who Must Complete

- Complete Schedule I, Parts I and II, if the decedent's estate or trust is required to complete Schedule B.

- Complete Schedule I, Parts I and III, if the decedent's estate's or trust's share of alternative minimum taxable income (Part I, line 12) exceeds \$22,500.

### Recordkeeping

Schedule I contains adjustments and tax preference items that are treated differently for regular tax and AMT purposes. If you, as fiduciary for the estate or trust, completed a form to figure an item for regular tax purposes, you may have to complete it a second time for AMT purposes. Generally, the difference between the amounts on the two forms is the AMT adjustment or tax preference item to enter on Schedule I. Except for Form 1116, any additional form completed for AMT purposes does not have to be filed with Form 1041.

For regular tax purposes, some deductions and credits may result in carrybacks or carryforwards to other tax years. Examples are: investment interest expense; a net operating loss deduction; a capital loss; and the foreign tax credit. Because these items may be refigured for the AMT, the carryback or carryforward amount may be different for regular and AMT purposes. Therefore, you should keep records of these different carryforward and carryback amounts for the AMT and regular tax. The AMT carryforward will be important in completing Schedule I for 1996.

### Credit for Prior Year Minimum Tax

Estates and trusts that paid alternative minimum tax in 1994, or had a minimum tax credit carryforward, may be eligible for a minimum tax credit in 1995. See Form 8801.

### Partners, Shareholders, etc.

An estate or trust that is a partner in a partnership or a shareholder in an S corporation must take into account its share of items of income and deductions that enter into the computation of its adjustments and tax preference items.

### Allocation of Deductions to Beneficiaries

The distributable net alternative minimum taxable income (DNAMTI) of the estate or trust does not include amounts of depreciation, depletion, and amortization that are allocated to the beneficiaries, just as the distributable net income (DNI) of the estate or trust does not include these items for regular tax purposes.

Report separately on line 11 of Schedule K-1 (Form 1041) any adjustments or tax preference items attributable to depreciation, depletion, and amortization that were allocated to the beneficiaries.

## Optional Write-Off Period Under Section 59(e)

The estate or trust may elect under section 59(e) to use an optional 10-year (60-month for intangible drilling and development expenditures and 3-year for circulation expenditures) write-off period for certain expenditures. If this election is made, the optional write-off period is used for regular tax purposes and there is no AMT adjustment. This election can be made for the following items:

- Circulation expenditures (section 173).
- Research and experimental expenditures (section 174).
- Intangible drilling and development expenditures (section 263(c)).
- Development expenditures for mines and natural deposits (section 616).
- Mining exploration expenditures (section 617(a)).

The election must be made in the year the expenditure was made and may be revoked only with IRS consent. See section 59(e) for more details.

## Specific Instructions

### Part I—Estate's or Trust's Share of Alternative Minimum Taxable Income

#### Line 1—Adjusted Total Income or (Loss)

Enter the amount from line 17 of page 1. If the adjusted total income includes the amount of the alcohol fuel credit as required under section 87, reduce the adjusted total income by the credit included in income.

#### Line 2—Net Operating Loss Deduction

Enter any net operating loss deduction (NOLD) from line 15a of page 1 as a positive amount.

#### Line 4a—Interest

In determining the alternative minimum taxable income, qualified residence interest (other than qualified housing interest defined in section 56(e)) is not allowed.

If you completed Form 4952 for regular tax purposes, you may have an adjustment on this line. Refigure your investment interest expense on another Form 4952 as follows:

**Step 1.** On line 1 of Form 4952, add any interest expense allocable to specified private activity bonds issued after August 7, 1986, to the other interest expense. For a definition of "specified private activity bonds," see the instructions for line 4p.

**Step 2.** On line 2, enter the AMT disallowed investment interest expense from 1994.

**Step 3.** When completing Part II of Form 4952, refigure gross income from

property held for investment, any net gain from the disposition of property held for investment, and any investment expenses, taking into account all AMT adjustments and tax preference items that apply. Include any interest income and investment expenses from private activity bonds issued after August 7, 1986.

To figure the adjustment for line 4a, subtract the total interest allowable for AMT purposes from the interest deduction claimed on line 10 of page 1. If the total interest expense allowed for AMT purposes is more than that allowed for regular tax purposes, enter the difference as a negative amount on line 4a.

#### Line 4b—Taxes

Enter any state, local, or foreign real property taxes; state or local personal property taxes; and state, local, or foreign income taxes that were included on line 11 of page 1.

#### Line 4d—Refund of Taxes

Enter any refunds received in 1995 of taxes described for line 4b above that were deducted in a tax year after 1986.

#### Line 4e—Depreciation of Property Placed in Service After 1986

**Caution:** Do not include on this line any depreciation adjustment from:

(a) an activity for which you are not at risk; (b) a partnership or an S corporation if the basis limitations under section 704(d) or 1366(d) apply; (c) a tax shelter farm activity; or (d) a passive activity. Instead, take these depreciation adjustments into account when figuring the adjustments on line 4l, 4m, or 4n, whichever applies.

For AMT purposes, the depreciation deduction for tangible property placed in service after 1986 (or after July 31, 1986, if an election was made) must be refigured under the alternative depreciation system (ADS) described in section 168(g).

For property, other than residential rental and nonresidential real property, use the 150% declining balance method (switching to the straight line method in the first tax year when that method gives a better result). However, use the straight line method if that method was used for regular tax purposes. Generally, ADS depreciation is figured over the class life of the property. For tangible personal property not assigned a class life, use 12 years. See **Pub. 946**, How To Depreciate Property, for a discussion of class lives.

For residential rental and nonresidential real property, use the straight line method over 40 years.

Use the same convention that was used for regular tax purposes.

See Rev. Proc. 87-57, 1987-2 C.B. 687, or Pub. 946 for the optional tables for the alternative minimum tax, using the 150% declining balance method.

Do not make an adjustment for motion picture films, videotapes, sound recordings, or property depreciated under the unit-of-production method or any other method not expressed in a term of years. (See section 168(f)(1), (2), (3), or (4).)

When refiguring the depreciation deduction, be sure to report any adjustment from depreciation that was allocated to the beneficiary for regular tax purposes separately on line 11 of Schedule K-1 (Form 1041).

To figure the adjustment, subtract the depreciation for AMT purposes from the depreciation for regular tax purposes.

If the depreciation figured for AMT purposes exceeds the depreciation allowed for regular tax purposes, enter the adjustment as a negative amount.

#### Line 4f—Circulation and Research and Experimental Expenditures Paid or Incurred After 1986

**Caution:** Do not make this adjustment for expenditures for which you elected the optional 3-year write-off period (10-year for research and experimental expenditures) under section 59(e) for regular tax purposes.

**Circulation expenditures.**—Circulation expenditures deducted under section 173(a) for regular tax purposes must be amortized for AMT purposes over 3 years beginning with the year the expenditures were paid or incurred.

**Research and experimental expenditures.**—Research and experimental expenditures deducted under section 174(a) for regular tax purposes generally must be amortized for AMT purposes over 10 years beginning with the year the expenditures were paid or incurred. However, do not make an adjustment for expenditures paid or incurred in connection with an activity in which the estate or trust materially participated under the passive activity rules.

Enter the difference between the amount allowed for AMT purposes and the amount allowed for regular tax purposes. If the amount for AMT purposes exceeds the amount allowed for regular tax purposes, enter the difference as a negative amount.

See section 56(b)(2)(B) for a discussion of the rules for losses on properties for which a deduction was allowed under section 173(a) or 174(a).

#### Line 4g—Mining Exploration and Development Costs Paid or Incurred After 1986

**Caution:** Do not make this adjustment for costs for which you elected the

optional 10-year write-off period under section 59(e) for regular tax purposes.

Expenditures for the development or exploration of a mine or certain other mineral deposits (other than an oil, gas, or geothermal well) deducted under sections 616(a) and 617(a) for regular tax purposes must be amortized for AMT purposes over 10 years beginning with the year the expenditures were paid or incurred.

Enter the difference between the amount allowed for AMT purposes and the amount allowed for regular tax purposes. If the amount allowed for AMT purposes exceeds the amount deducted for regular tax purposes, enter the difference as a negative amount.

See section 56(a)(2)(B) for a discussion of the rules for losses sustained on properties for which a deduction was allowed under section 616(a) or 617(a).

#### **Line 4h—Long-Term Contracts Entered Into After February 28, 1986**

For AMT purposes, the percentage of completion method of accounting described in section 460(b) generally must be used. This rule generally does not apply to home construction contracts (as defined in section 460(e)(6)).

**Note:** *Contracts described in section 460(e)(1) are subject to the simplified method of cost allocation of section 460(b)(4).*

Enter the difference between the amount reported for regular tax purposes and the AMT amount. If the AMT amount is less than the amount figured for regular tax purposes, enter the difference as a negative amount.

#### **Line 4i—Pollution Control Facilities Placed in Service After 1986**

For any certified pollution control facility placed in service after 1986, the deduction under section 169 is not allowed for AMT purposes. Instead, the deduction is determined under the ADS described in section 168(g) using the Asset Depreciation Range class life for the facility under the straight line method.

To figure the adjustment, subtract the amortization deduction taken for regular tax purposes from the depreciation deduction determined under the ADS.

If the deduction allowed for AMT purposes is more than the amount allowed for regular tax purposes, enter the difference as a negative amount.

#### **Line 4j—Installment Sales of Certain Property**

For either of the following kinds of dispositions in which the estate or trust used the installment method for regular tax purposes, refigure the income for AMT purposes without regard to the installment method:

1. Any disposition after March 1, 1986, of property used or produced in a farming business that was held primarily for sale to customers.

2. Any nondealer disposition of property that occurred after August 16, 1986, but before the first day of your tax year that began in 1987, if an obligation that arose from the disposition was an installment obligation to which the proportionate disallowance rule applied.

Enter the difference between the income that was reported for regular tax purposes and the income for AMT purposes. If the AMT amount is less than that reported for the regular tax, enter the difference as a negative amount.

#### **Line 4k—Adjusted Gain or Loss (Including Incentive Stock Options)**

**Adjusted gain or loss.**—If the estate or trust sold or exchanged property during the year, or had a casualty gain or loss to business or income-producing property, it may have an adjustment. The gain or loss on the disposition of certain assets is refigured for AMT purposes. Use this line if the estate or trust reported a gain or loss on Form 4797, Schedule D (Form 1041), or Form 4684 (Section B). When figuring the adjusted basis for those forms, take into account any AMT adjustments made this year, or in previous years, for items related to lines 4e, 4f, 4g, and 4i of Schedule I. For example, to figure the adjusted basis for AMT purposes, reduce the cost of an asset only by the depreciation allowed for AMT purposes.

Enter the difference between the gain or loss reported for regular tax purposes, and that figured for AMT purposes. If the AMT gain is less than the gain reported for regular tax purposes, enter the adjustment as a negative amount. If the AMT loss is more than the loss allowed for regular tax purposes, enter the adjustment as a negative amount.

**Incentive stock options (ISOs).**—For regular tax purposes, no income is recognized when an incentive stock option (as defined in section 422(b)) is granted or exercised. However, this rule does not apply for AMT purposes. Instead, the estate or trust must generally include the excess, if any, of:

1. The fair market value of the option (determined without regard to any lapse restriction) at the first time its rights in the option become transferable or when these rights are no longer subject to a substantial risk of forfeiture, over

2. The amount paid for the option.

Increase the AMT basis of any stock acquired through the exercise of an incentive stock option by the amount of the adjustment.

If the estate or trust acquired stock by exercising an incentive stock option and disposed of that stock in the same year,

the tax treatment for regular and AMT purposes is the same.

See section 83 for more details.

#### **Line 4l—Certain Loss Limitations**

**Caution:** *If the loss is from a passive activity, use line 4n instead. If the loss is from a tax shelter farm activity (that is not passive), use line 4m.*

Refigure your allowable losses for AMT purposes from activities for which you are not at risk and basis limitations applicable to interests in partnerships and stock in S corporations, by taking into account your AMT adjustments and tax preference items. See sections 59(h), 465, 704(d), and 1366(d).

Enter the difference between the loss reported for regular tax purposes and the AMT loss. If the AMT loss is more than the loss reported for regular tax purposes, enter the adjustment as a negative amount.

#### **Line 4m—Tax Shelter Farm Activities**

**Note:** *Use this line only if the tax shelter farm activity is not a passive activity. Otherwise, use line 4n.*

For AMT purposes, no loss is allowed from any tax shelter farm activity as defined in section 58(a)(2).

An excess farm loss from one farm activity cannot be netted against income from another farm activity. Any disallowed loss (for AMT purposes) is carried forward until offset by income from the same activity or when the entire activity is sold.

Include any other adjustment or tax preference item and your prior year AMT unallowed loss when refiguring the farm loss. For example, if depreciation must be refigured for AMT purposes, include the adjustment on this line. DO NOT include it again on line 4e, 4r, or 4s.

Determine your tax shelter farm activity gain or loss for AMT purposes using the same rules you used for regular tax purposes except that any AMT loss is allowed only to the extent that a taxpayer is insolvent (see section 58(c)(1)). An AMT loss may not be used in the current tax year to offset gains from other tax shelter farm activities. Instead, it must be suspended and carried forward indefinitely until either you have a gain in a subsequent tax year from that same tax shelter farm activity or the activity is disposed of.

#### **Line 4n—Passive Activities**

For AMT purposes, the rules described in section 469 apply, except that in applying the limitations, minimum tax rules apply.

Refigure passive activity gains and losses on an AMT basis. Refigure a passive activity gain or loss by taking into account all AMT adjustments or tax preference items that pertain to that activity.

You may complete a second Form 8582 to determine the passive activity losses allowed for AMT purposes, but do not send this AMT Form 8582 to the IRS.

**Note:** *The amount of any passive activity loss that is not deductible (and is therefore carried forward) for AMT purposes is likely to differ from the amount (if any) that is carried forward for regular tax purposes. Therefore, it is essential that you retain adequate records for both AMT and regular tax purposes.*

Enter the difference between the loss reported on page 1, and the AMT loss, if any.

**Caution:** *Do not enter again elsewhere on this schedule any AMT adjustment or tax preference item included on this line.*

**Publicly traded partnerships (PTPs).—** If the estate or trust had a loss from a PTP, refigure the loss using any AMT adjustments and tax preference items.

#### **Line 4o—Beneficiaries of Other Trusts or Decedent's Estates**

If the estate or trust is the beneficiary of another estate or trust, enter the adjustment for minimum tax purposes from line 8, Schedule K-1 (Form 1041).

#### **Line 4p—Tax-Exempt Interest From Specified Private Activity Bonds**

Enter the interest earned from specified private activity bonds reduced (but not below zero) by any deduction that would have been allowable if the interest were includible in gross income for regular tax purposes. Specified private activity bonds are any qualified bonds (as defined in section 141) issued after August 7, 1986. See section 57(a)(5) for more information.

Exempt-interest dividends paid by a regulated investment company are treated as interest from specified private activity bonds to the extent the dividends are attributable to interest received by the company on the bonds, minus an allocable share of the expenses paid or incurred by the company in earning the interest.

#### **Line 4q—Depletion**

Refigure the depletion deduction for AMT purposes by using only the income and deductions allowed for the AMT when refiguring the limit based on taxable income from the property under section 613(a) and the limit based on taxable income, with certain adjustments, under section 613A(d)(1). Also, the depletion deduction for mines, wells, and other natural deposits under section 611 is limited to the property's adjusted basis at the end of the year, as refigured for the AMT, unless the estate or trust is an independent producer or royalty owner claiming percentage depletion for oil and gas wells. Figure this limit separately for each property.

When refiguring the property's adjusted basis, take into account any AMT adjustments made this year or in previous years that affect basis (other than the current year's depletion).

Enter on line 4q the difference between the regular tax and AMT deduction. If the AMT deduction is more than the regular tax deduction, enter the difference as a negative amount.

#### **Line 4r—Accelerated Depreciation of Real Property Placed in Service Before 1987**

For AMT purposes, use the straight line method to figure depreciation. Use a recovery period of 19 years for 19-year real property and 15 years for low-income housing. Enter the excess of depreciation claimed for regular tax purposes over depreciation refigured using the straight line method. Figure this amount separately for each property and include on line 4r only positive amounts.

#### **Line 4s—Accelerated Depreciation of Leased Personal Property Placed in Service Before 1987**

For leased personal property other than recovery property, enter the amount by which the regular tax depreciation using the pre-1987 rules exceeds the depreciation allowable using the straight line method.

For leased 10-year recovery property and leased 15-year public utility property, enter the amount by which the depreciation deduction determined for regular tax purposes is more than the deduction allowable using the straight line method with a half-year convention, no salvage value, and the following recovery period:

10-year property . . . . .	15 years
15-year public utility property . . . . .	22 years

Figure this amount separately for each property and include on line 4s only positive amounts.

#### **Line 4t—Intangible Drilling Costs**

**Caution:** *Do not make this adjustment for costs for which you elected the optional 60-month write-off under section 59(e) for regular tax purposes.*

Except as provided below, intangible drilling costs (IDCs) from oil, gas, and geothermal wells are a tax preference item to the extent that the excess IDCs exceed 65% of the net income from the wells. Figure the tax preference item for all geothermal properties separately from the preference for all oil and gas properties.

Excess IDCs are figured by taking the amount of your IDCs allowed for regular tax purposes under section 263(c) (not including any section 263(c) deduction for nonproductive wells) minus the amount that would have been allowed if

that amount had been amortized over a 120-month period starting with the month the well was placed in production.

**Note:** *Cost depletion can be substituted for the amount allowed using amortization over 120 months.*

Net income is determined by taking the gross income from all oil, gas, and geothermal wells reduced by the deductions allocable to those properties (determined without regard to excess IDCs). When figuring net income, use only income and deductions allowed for the AMT.

**Exception.** The preference for IDCs from oil and gas wells does not apply to taxpayers who are independent producers (i.e., not integrated oil companies as defined in section 291(b)(4)). However, this benefit may be limited. First, figure the IDC preference as if this exception did not apply. Then, for purposes of this exception, complete Schedule I through line 6, including the IDC preference. If the amount of the IDC preference exceeds 40% of the amount figured for line 6, enter the excess on line 4t (the benefit of this exception is limited). If the amount of the IDC preference is equal to or less than 40% of the amount figured for line 6, do not enter an amount on line 4t (the benefit of this exception is not limited).

#### **Line 4u—Other Adjustments**

Include on this line:

- **Patron's adjustment.**—Distributions the estate or trust received from a cooperative may be includible in income. Unless the distributions are nontaxable, include on line 4u the total AMT patronage dividend adjustment reported to the estate or trust from the cooperative.

- **Related adjustments.**—AMT adjustments and tax preference items may affect deductions that are based on an income limit other than AGI or modified AGI (e.g., farm conservation expenses). Refigure these deductions using the income limit as modified for the AMT. Include the difference between the regular tax and AMT deduction on line 4u. If the AMT deduction is more than the regular tax deduction, include the difference as a negative amount.

**Note:** *Do not make an adjustment on line 4u for an item you refigured on another line of Schedule I (e.g., line 4q).*

#### **Line 7—Alternative Tax Net Operating Loss Deduction (ATNOLD)**

For tax years beginning after 1986, the net operating loss (NOL) under section 172(c) is modified for alternative tax purposes by (a) adding the adjustments made under sections 56 and 58 (subtracting if the adjustments are negative); and (b) reducing the NOL by any item of tax preference under section

57 (except the appreciated charitable contribution preference item).

When figuring an NOL from a loss year prior to 1987, the rules in effect before enactment of the Tax Reform Act (TRA) of 1986 apply. The NOL under section 172(c) is reduced by the amount of the tax preference items that were taken into account in figuring the NOL. In addition, the NOL is figured by taking into account only itemized deductions that were alternative tax itemized deductions for the tax year and that were a modification to the NOL under section 172(d). See sections 55(d) and 172 as in effect before the TRA of 1986.

If this estate or trust is the beneficiary of another estate or trust that terminated in 1995, include any AMT NOL carryover that was reported on line 12e of Schedule K-1 (Form 1041).

The ATNOLD may be limited. To figure the ATNOLD limitation, first figure AMTI without regard to the ATNOLD. For this purpose, figure a tentative amount for line 4q of Schedule I by treating line 7 as if it were zero. Then, figure a tentative amount for line 6 of Schedule I. The ATNOLD limitation is 90% of the tentative line 6 amount. Enter on line 7 the smaller of the ATNOLD or the ATNOLD limitation. Any alternative tax NOL not used because of the ATNOLD limitation can be carried back or forward. See section 172(b) for details. The treatment of alternative tax NOLs does not affect your regular tax NOL.

**Note:** If you elected under section 172(b)(3) to forego the carryback period for regular tax purposes, the election will also apply for the AMT.

## Part II—Income Distribution Deduction on a Minimum Tax Basis

### Line 13—Adjusted Alternative Minimum Taxable Income

If the amount on line 8 of Schedule I is less than zero, and the negative number is attributable wholly or in part to the capital loss limitation rules under section 1211(b), then enter as a negative number the smaller of (a) the loss from line 8; or (b) the loss from line 4 on page 1.

### Line 14—Adjusted Tax-Exempt Interest

To figure the adjusted tax-exempt interest (including exempt-interest dividends received as a shareholder in a mutual fund or other regulated investment company), subtract the total of (a) any tax-exempt interest from line 4 of Schedule A of Form 1041 figured for AMT purposes; and (b) any section 212 expenses allowable for AMT purposes allocable to tax-exempt interest from the amount of tax-exempt interest received. DO NOT subtract any deductions reported on lines 4a through 4c. Section

212 expenses that are directly allocable to tax-exempt interest are allocated only to tax-exempt interest. A reasonable proportion of section 212 expenses that are indirectly allocable to both tax-exempt interest and other income must be allocated to each class of income.

### Line 17

Enter any capital gains that were paid or permanently set aside for charitable purposes from the current year's income included on line 3 of Schedule A.

### Lines 18 and 19

Capital gains and losses must take into account any basis adjustments from line 4k, Part I.

### Line 24—Adjustment for Tax-Exempt Income

In figuring the income distribution deduction on a minimum tax basis, the estate or trust is not allowed a deduction for any item of DNAMTI (line 20) that is not included in the gross income of the estate or trust figured on an AMT basis. Thus, for purposes of figuring the allowable income distribution deduction on a minimum tax basis, the DNAMTI is figured without regard to any tax-exempt interest (except for amounts from line 4p).

If tax-exempt interest is the only tax-exempt income included in the total distributions (line 23), and the DNAMTI (line 20) is less than or equal to line 23, then enter on line 24 the amount from line 14.

If tax-exempt interest is the only tax-exempt income included in the total distributions (line 23), and the DNAMTI is more than line 23 (i.e., the estate or trust made a distribution that is less than the DNAMTI), then figure the adjustment by multiplying line 14 by a fraction, the numerator of which is the total distributions (line 23), and the denominator of which is the DNAMTI (line 20). Enter the result on line 24.

If line 23 includes tax-exempt income other than tax-exempt interest (except for amounts from line 4p), figure line 24 by subtracting the total expenses allocable to tax-exempt income that are allowable for AMT purposes from tax-exempt income included on line 23.

Expenses that are directly allocable to tax-exempt income are allocated only to tax-exempt income. A reasonable proportion of expenses indirectly allocable to both tax-exempt income and other income must be allocated to each class of income.

### Line 27—Income Distribution Deduction on a Minimum Tax Basis

Allocate the income distribution deduction figured on a minimum tax basis among the beneficiaries in the same manner as income was allocated

for regular tax purposes. Report each beneficiary's share on line 6 of Schedule K-1 (Form 1041).

## Part III—Alternative Minimum Tax Computation

### Line 36—Alternative Minimum Foreign Tax Credit

To figure the AMT foreign tax credit:

1. Complete and attach Form 1116, with the notation at the top, "Alt Min Tax" for each type of income specified at the top of Form 1116.

2. Complete Part I, entering income, deductions, etc., attributable to sources outside the United States computed on a minimum tax basis.

3. Complete Part III. On line 9, do not enter any taxes taken into account in a tax year beginning after 1986 that are treated under section 904(c) as paid or accrued in a tax year beginning before 1987. On line 10 of Form 1116, enter the alternative minimum tax foreign tax credit carryover, and on line 17 of Form 1116, enter the alternative minimum taxable income from line 12 of Schedule I. On line 19 of Form 1116, enter the amount from line 35 of Schedule I.

Complete Part IV. The foreign tax credit from line 32 of the AMT Form 1116 is limited to the tax on line 35 of Schedule I, less 10% of what would have been the tax on line 35 of Schedule I, if line 7 of Schedule I had been zero and the exception for intangible drilling costs does not apply (see the instructions for line 4t on page 21). If Schedule I, line 7, is zero or blank, and the estate or trust has no intangible drilling costs (or the exception does not apply), enter on Schedule I, line 36, the smaller of Form 1116, line 32; or 90% of Schedule I, line 35. If line 7 has an entry (other than zero), or the exception for intangible drilling costs applies, for purposes of this line refigure what the tax would have been on Schedule I, line 35, if line 7 were zero and the exception did not apply. Multiply that amount by 10% and subtract the result from line 35. Enter on Schedule I, line 36, the smaller of that amount or the amount from Form 1116, line 32.

If the AMT foreign tax credit is limited, any unused amount can be carried back or forward in accordance with section 904(c).

**Note:** The election to forego the carryback period for regular tax purposes also applies for the AMT.

### Line 38—Regular Tax Before Credits

Enter the tax from line 1a of Schedule G plus any section 667(b) tax from Form 4970 entered on line 1b of Schedule G. From that amount subtract any foreign tax credit entered on line 2a of Schedule G. DO NOT deduct any foreign tax credit that was allocated to the beneficiaries.

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## Schedule D (Form 1041)— Capital Gains and Losses

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### General Instructions

Use Schedule D (Form 1041) to report gains and losses from the sale or exchange of capital assets by an estate or trust.

To report sales or exchanges of property other than capital assets, including the sale or exchange of property used in a trade or business and involuntary conversions (other than casualties and thefts), see Form 4797 and related instructions.

If property is involuntarily converted because of a casualty or theft, use Form 4684.

### Capital Asset

Each item of property held by the estate or trust (whether or not connected with its trade or business) is a capital asset except:

- Inventoriable assets or property held primarily for sale to customers;
- Depreciable or real property used in a trade or business;
- Certain copyrights, literary, musical, or artistic compositions, letters or memoranda, or similar property;
- Accounts or notes receivable acquired in the ordinary course of a trade or business for services rendered or from the sale of inventoriable assets or property held primarily for sale to customers; and
- Certain U.S. Government publications not purchased at the public sale price.

You may find additional helpful information in the following publications:

- **Pub. 544**, Sales and Other Dispositions of Assets; and
- **Pub. 551**, Basis of Assets.

### Short-Term or Long-Term

Separate the capital gains and losses according to how long the estate or trust held or owned the property. The holding period for short-term capital gains and losses is 1 year or less. The holding period for long-term capital gains and losses is more than 1 year. Property acquired by a decedent's estate from the decedent is considered as held for more than 1 year.

When you figure the length of the period the estate or trust held property, begin counting on the day after the estate or trust acquired the property and include the day the estate or trust disposed of it. Use the trade dates for the date of acquisition and sale of stocks and bonds traded on an exchange or over-the-counter market.

### Section 643(e)(3) Election

For noncash property distributions, a fiduciary may elect to have the estate or trust recognize gain or loss in the same manner as if the distributed property had been sold to the beneficiary at its fair market value (FMV). The distribution deduction is the property's FMV. This election applies to all distributions made by the estate or trust during the tax year and, once made, may be revoked only with the consent of the IRS.

Note that section 267 does not allow a deduction for any loss from the sale of property on which a trust makes a section 643(e)(3) election. In addition, when a trust distributes depreciable property, section 1239 applies to deny capital gains treatment on the gain to the trust if the trust makes a section 643(e)(3) election.

### Section 644 Tax on Trusts

If a trust sells or exchanges property at a gain within 2 years after receiving it from a transferor, a special tax may be due. **Do not report includible gains under section 644 on Schedule D.** The tax on these gains is reported separately on Form 1041. For more information, see the instructions for Schedule G, line 1b.

### Related Persons

A trust cannot deduct a loss from the sale or exchange of property directly or indirectly between any of the following:

- A grantor and a fiduciary of a trust;
- A fiduciary and a fiduciary or beneficiary of another trust created by the same grantor;
- A fiduciary and a beneficiary of the same trust; or
- A trust fiduciary and a corporation of which more than 50% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust.

### Items for Special Treatment

The following items may require special treatment:

- Exchange of "like-kind" property.
- Wash sales of stock or securities (including contracts or options to acquire or sell stock or securities) (section 1091).
- Gain or loss on options to buy or sell (section 1234).
- Certain real estate subdivided for sale that may be considered a capital asset (section 1237).
- Gain on disposition of stock in an Interest Charge Domestic International Sales Corporation (section 995(c)).
- Gain on the sale or exchange of stock in certain foreign corporations (section 1248).
- Sales of stock received under a qualified public utility dividend

reinvestment plan. See Pub. 550 for details.

- Transfer of appreciated property to a political organization (section 84).
- Distributions received from an employee pension, profit sharing, or stock bonus plan. See Form 4972.
- Disposition of market discount bonds (section 1276).
- Section 1256 contracts and straddles are reported on **Form 6781**, Gains and Losses From Section 1256 Contracts and Straddles.

### Specific Instructions

#### Lines 1 and 7

**Short-term and long-term capital gains and losses.**—Enter all sales of stocks, bonds, etc.

**Redemption of stock to pay death taxes.**—If stock is redeemed under the provisions of section 303, list and identify it on line 7 and give the name of the decedent and the IRS office where the estate tax or generation-skipping transfer tax return was filed.

If you are reporting capital gain from a lump-sum distribution, see the instructions for Form 4972 for information about the death benefit exclusion and the Federal estate tax.

#### Column (d)—Sales Price

Enter either the gross sales price or the net sales price from the sale. On sales of stocks and bonds, report the gross amount as reported to the estate or trust on Form 1099-B or similar statement. However, if the estate or trust was advised that gross proceeds less commissions and option premiums were reported to the IRS, enter that net amount in column (d).

#### Column (e)—Cost or Other Basis

**Basis of trust property.**—Generally, the basis of property acquired by gift is the same as the basis in the hands of the donor. If the FMV of the property at the time it was transferred to the trust is less than the transferor's basis, then the FMV is used for determining any loss on disposition.

If the property was transferred to the trust after 1976, and a gift tax was paid under Chapter 12, then increase the donor's basis as follows:

Multiply the amount of the gift tax paid by a fraction, the numerator of which is the net appreciation in value of the gift (discussed below), and the denominator of which is the amount of the gift. For this purpose, the **net appreciation in value of the gift** is the amount by which the FMV of the gift exceeds the donor's adjusted basis.

**Basis of decedent's estate property.**—Generally, the basis of property acquired by a decedent's estate is the FMV of the property at the date of the decedent's

death, or the alternate valuation date if the executor elected to use an alternate valuation under section 2032.

See Pub. 551 for a discussion of the valuation of qualified real property under section 2032A.

**Basis of property for bankruptcy estates.**—Generally, the basis of property held by the bankruptcy estate is the same as the basis in the hands of the individual debtor.

**Adjustments to basis.**—Before figuring any gain or loss on the sale, exchange, or other disposition of property owned by the estate or trust, adjustments to the property's basis may be required.

Some items that may increase the basis include:

1. Broker's fees and commissions.
2. Reinvested dividends that were previously reported as income.
3. Reinvested capital gains that were previously reported as income.
4. Costs that were capitalized.
5. Original issue discount that has been previously included in income.

Some items that may decrease the basis include:

1. Nontaxable distributions that consist of return of capital.
2. Deductions previously allowed or allowable for depreciation.
3. Casualty or theft loss deductions.

See Pub. 551 for additional information.

See section 852(f) for treatment of load charges incurred in acquiring stock in a regulated investment company.

**Carryover basis.**—Carryover basis determined under repealed section 1023 applies to property acquired from a decedent who died after December 31, 1976, and before November 7, 1978, only if the executor elected it on a **Form 5970-A**, Election of Carryover Basis, that was filed on time.

## Lines 2 and 8

**Installment sales.**—If the estate or trust sold property at a gain during the tax year, and will receive a payment in a later tax year, report the sale on the installment method and file **Form 6252**, Installment Sale Income, unless you elect not to do so.

Also, use Form 6252 to report any payment received in 1995 from a sale made in an earlier tax year that was reported on the installment method.

To elect out of the installment method, report the full amount of the gain on a timely filed return (including extensions).

**Exchange of "like-kind" property.**—Generally, no gain or loss is recognized when property held for productive use in a trade or business or for investment is exchanged solely for property of a like-kind to be held either for productive

use in a trade or business or for investment. However, if a trust exchanges like-kind property with a related person (see **Related Persons** on page 23), and before 2 years after the date of the last transfer that was part of the exchange the related person disposes of the property, or the trust disposes of the property received in exchange from the related person, then the original exchange will not qualify for nonrecognition. See section 1031(f) for exceptions.

Complete and attach **Form 8824**, Like-Kind Exchanges, to Form 1041 for each exchange.

## Line 10—Capital Gain Distributions

Enter on line 10 capital gain distributions paid during the year as a long-term capital gain, regardless of how long the estate or trust held its investment. Also enter any amounts shown on Form 2439 that represent the estate's or trust's share of the undistributed capital gains of a regulated investment company. Include on Form 1041, line 24f, the tax paid by the company as shown on Form 2439. Add to the basis of the stock the excess of the amount included in income over the credit if the amount is not distributed.

## Line 15, column (a)—Beneficiaries' Net Short-Term Capital Gain or Loss

Enter the amount of net short-term capital gain or loss allocable to the beneficiary or beneficiaries. Except in the final year, include only those short-term capital losses that are taken into account in determining the amount of gain from the sale or exchange of capital assets that is paid, credited, or required to be distributed to any beneficiary during the tax year. See Regulations section 1.643(a)-3 for more information about allocation of capital gains and losses.

Except in the final year, if the losses from the sale or exchange of capital assets are more than the gains, all of the losses are allocated to the estate or trust and none are allocated to the beneficiaries.

## Line 15, column (b)—Estate's or Trust's Net Short-Term Capital Gain or Loss

Enter the amount of the net short-term capital gain or loss allocable to the estate or trust. Include any capital gain paid or permanently set aside for a charitable purpose specified in section 642(c).

## Line 15, column (c)—Total

Enter the total of the amounts entered in columns (a) and (b). The amount in column (c) should be the same as the amount on line 6.

## Line 16—Net Long-Term Capital Gain or Loss

Allocate the net long-term capital gain or loss on line 16 in the same manner as the net short-term capital gain or loss on line 15.

## Part IV—Capital Loss Limitation

If the sum of all the capital losses is more than the sum of all the capital gains, then these capital losses are allowed as a deduction only to the extent of the smaller of the net loss or \$3,000.

## Part V—Capital Loss Carryovers From 1995 to 1996

For any year (including the final year) in which capital losses exceed capital gains, complete Part V to figure the capital loss carryover. A capital loss carryover may be carried forward indefinitely. Capital losses keep their character as either short-term or long-term when carried over to the following year.

## Part VI—Tax Computation Using Maximum Capital Gains Rate

### Line 37c

If the estate or trust received capital gains that were derived from income in respect of a decedent, and a section 691(c)(4) deduction was claimed, then line 37c must be reduced by the portion of the section 691(c)(4) deduction claimed on Form 1041, page 1, line 19.

### Line 44

To figure the regular tax, use the 1995 Tax Rate Schedule on page 16.

### Line 45

If the tax using the maximum capital gains rate (line 43) is less than the regular tax (line 44), enter the amount from line 45 on line 1a of Schedule G, Form 1041, and check the "Schedule D" box.

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## Schedule J (Form 1041)—Accumulation Distribution for a Complex Trust

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## General Instructions

Use Schedule J (Form 1041) to report an accumulation distribution for a complex trust. An accumulation distribution is the excess of amounts properly paid, credited, or required to be distributed (other than income required to be distributed currently) over the DNI of the trust reduced by income required to be distributed currently. To have an accumulation distribution, the distribution must exceed the accounting income of the trust.



## Specific Instructions

### Part I—Accumulation Distribution in 1995

#### Line 1—Distribution Under Section 661(a)(2)

Enter the amount from Schedule B of Form 1041, line 12, for 1995. This is the amount properly paid, credited, or required to be distributed other than the amount of income for the current tax year required to be distributed currently.

#### Line 2—Distributable Net Income

Enter the amount from Schedule B of Form 1041, line 9, for 1995. This is the amount of distributable net income (DNI) for the current tax year determined under section 643(a).

#### Line 3—Distribution Under Section 661(a)(1)

Enter the amount from Schedule B of Form 1041, line 11, for 1995. This is the amount of income for the current tax year required to be distributed currently.

#### Line 5—Accumulation Distribution

If line 13, Schedule B of Form 1041 is more than line 10, Schedule B of Form 1041, complete the rest of Schedule J and file it with Form 1041, unless the trust has no previously accumulated income.

Generally, amounts accumulated before a beneficiary reaches age 21 may be excluded by the beneficiary. See sections 665 and 667(c) for exceptions relating to multiple trusts. The trustee reports to the IRS the total amount of the accumulation distribution before any reduction for income accumulated before the beneficiary reaches age 21. If the multiple trust rules do not apply, the beneficiary claims the exclusion when filing **Form 4970**, Tax on Accumulation Distribution of Trusts, as you may not be aware that the beneficiary may be a beneficiary of other trusts with other trustees.

For examples of accumulation distributions that include payments from one trust to another trust, and amounts distributed for a dependent's support, see Regulations section 1.665(b)-1A(b).

### Part II—Ordinary Income Accumulation Distribution

#### Line 6—Distributable Net Income for Earlier Years

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969–1977 . . . . .	Schedule C, Form 1041, line 5
1978–1979 . . . . .	Form 1041, line 61
1980 . . . . .	Form 1041, line 60
1981–1982 . . . . .	Form 1041, line 58
1983–1994 . . . . .	Schedule B, Form 1041, line 9

For information about throwback years, see the instructions for line 13. For purposes of line 6, in figuring the DNI of the trust for a throwback year, subtract any estate tax deduction for income in respect of a decedent if the income is includible in figuring the DNI of the trust for that year.

#### Line 7—Distributions Made During Earlier Years

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969–1977 . . . . .	Schedule C, Form 1041, line 8
1978 . . . . .	Form 1041, line 64
1979 . . . . .	Form 1041, line 65
1980 . . . . .	Form 1041, line 64
1981–1982 . . . . .	Form 1041, line 62
1983–1994 . . . . .	Schedule B, Form 1041, line 13

#### Line 11—Prior Accumulation Distribution Thrown Back to any Throwback Year

Enter the amount of prior accumulation distributions thrown back to the throwback years. Do not enter distributions excluded under section 663(a)(1) for gifts, bequests, etc.

#### Line 13—Throwback Years

Allocate the amount on line 5 that is an accumulation distribution to the earliest applicable year first, but do not allocate more than the amount on line 12 for any throwback year. An accumulation distribution is thrown back first to the earliest preceding tax year in which there is undistributed net income (UNI). Then, it is thrown back beginning with the next earliest year to any remaining preceding tax years of the trust. The portion of the accumulation distribution allocated to the earliest preceding tax year is the amount of the UNI for that year. The portion of the accumulation distribution allocated to any remaining preceding tax year is the amount by which the accumulation distribution is larger than the total of the UNI for all earlier preceding tax years.

A tax year of a trust during which the trust was a simple trust for the entire year is not a preceding tax year unless **(a)** during that year the trust received outside income or **(b)** the trustee did not distribute all of the trust's income that was required to be distributed currently for that year. In this case, UNI for that year must not be more than the greater of the outside income or income not distributed during that year.

The term "outside income" means amounts that are included in the DNI of the trust for that year but that are not "income" of the trust as defined in Regulations section 1.643(b)-1. Some examples of outside income are: **(a)** income taxable to the trust under section 691; **(b)** unrealized accounts receivable that were assigned to the trust; and **(c)** distributions from another

trust that include the DNI or UNI of the other trust. Enter the applicable year at the top of each column for each throwback year.

#### Line 16—Tax-Exempt Interest Included on Line 13

For each throwback year, divide line 15 by line 6 and multiply the result by the following:

Throwback year(s)	Amount from line
1969–1977 . . . . .	Schedule C, Form 1041, line 2(a)
1978–1979 . . . . .	Form 1041, line 58(a)
1980 . . . . .	Form 1041, line 57(a)
1981–1982 . . . . .	Form 1041, line 55(a)
1983–1994 . . . . .	Schedule B, Form 1041, line 2

### Part III—Taxes Imposed on Undistributed Net Income

For the regular tax computation, if there is a capital gain, complete lines 18 through 25 for each throwback year. If the trustee elected the alternative tax on capital gains, complete lines 26 through 31 instead of lines 18 through 25 for each applicable year. If there is no capital gain for any year, or there is a capital loss for every year, enter on line 9 the amount of the tax for each year identified in the instruction for line 18 and do not complete Part III. If the trust received an accumulation distribution from another trust, see Regulations section 1.665(b)-1A.

**Note:** *The alternative tax on capital gains was repealed for tax years beginning after December 31, 1978. The maximum rate on net capital gain for 1981, 1987, and 1991 through 1994 is not an alternative tax for this purpose.*

#### Line 18—Regular Tax

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969–1976 . . . . .	Form 1041, page 1, line 24
1977 . . . . .	Form 1041, page 1, line 26
1978–1979 . . . . .	Form 1041, line 27
1980–1984 . . . . .	Form 1041, line 26c
1985–1986 . . . . .	Form 1041, line 25c
1987 . . . . .	Form 1041, line 22c
1988–1994 . . . . .	Schedule G, Form 1041, line 1a

#### Line 19—Trust's Share of Net Short-Term Gain

For each throwback year, enter the smaller of the capital gain from the two lines indicated. If there is a capital loss or a zero on either or both of the two lines indicated, enter zero on line 19.

Throwback year(s)	Amount from line
1969–1970 . . . . .	{ Schedule D, line 10, column 2, or Schedule D, line 12, column 2.
1971–1978 . . . . .	{ Schedule D, line 14, column 2, or Schedule D, line 16, column 2.
1979 . . . . .	{ Schedule D, line 18, column (b), or Schedule D, line 20, column (b).
1980–1981 . . . . .	{ Schedule D, line 14, column (b), or Schedule D, line 16, column (b).
1982 . . . . .	{ Schedule D, line 16, column (b), or Schedule D, line 18, column (b).
1983–1994 . . . . .	{ Schedule D, line 15, column (b), or Schedule D, line 17, column (b).

**Line 20—Trust’s Share of Net Long-Term Gain**

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969–1970 . . . . .	50% of Schedule D, line 13(e)
1971–1977 . . . . .	50% of Schedule D, line 17(e)
1978 . . . . .	{ Schedule D, line 17(e) or line 31, whichever is applicable, less Form 1041, line 23.
1979 . . . . .	{ Schedule D, line 25 or line 27, whichever is applicable, less Form 1041, line 23.
1980–1981 . . . . .	{ Schedule D, line 21, less Schedule D, line 22.
1982 . . . . .	{ Schedule D, line 23, less Schedule D, line 24.
1983–1986 . . . . .	{ Schedule D, line 22, less Schedule D, line 23.
1987–1994 . . . . .	{ Schedule D, the smaller of any gain on line 16 or 17, column (b).

**Line 22—Taxable Income**

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969–1976 . . . . .	Form 1041, page 1, line 23
1977 . . . . .	Form 1041, page 1, line 25
1978–1979 . . . . .	Form 1041, line 26
1980–1984 . . . . .	Form 1041, line 25
1985–1986 . . . . .	Form 1041, line 24
1987 . . . . .	Form 1041, line 21
1988–1994 . . . . .	Form 1041, line 22

**Line 26—Tax on Income Other Than Long-Term Capital Gain**

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969 . . . . .	Schedule D, line 20
1970 . . . . .	Schedule D, line 19
1971 . . . . .	Schedule D, line 50
1972–1975 . . . . .	Schedule D, line 48
1976–1978 . . . . .	Schedule D, line 27

**Line 27—Trust’s Share of Net Short-Term Gain**

If there is a loss on any of the following lines, enter zero on line 27 for the applicable throwback year. Otherwise, enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969–1970 . . . . .	Schedule D, line 10, column 2
1971–1978 . . . . .	Schedule D, line 14, column 2

**Line 28—Trust’s Share of Taxable Income Less Section 1202 Deduction**

Enter the applicable amounts as follows:

Throwback year(s)	Amount from line
1969 . . . . .	Schedule D, line 19
1970 . . . . .	Schedule D, line 18
1971 . . . . .	Schedule D, line 38
1972–1975 . . . . .	Schedule D, line 39
1976–1978 . . . . .	Schedule D, line 21

**Part IV—Allocation to Beneficiary**

Complete Part IV for each beneficiary. If the accumulation distribution is allocated to more than one beneficiary, attach an additional copy of Schedule J with Part IV completed for each additional beneficiary. Give each beneficiary a copy of his or her respective Part IV information. If more than 5 throwback years are involved, use another Schedule J, completing Parts II and III for each additional throwback year.

If the beneficiary is a nonresident alien individual or a foreign corporation, see section 667(e) about retaining the character of the amounts distributed to determine the amount of the U.S. withholding tax.

The beneficiary uses Form 4970 to figure the tax on the distribution. The beneficiary also uses Form 4970 for the section 667(b)(6) tax adjustment if an accumulation distribution is subject to estate or generation-skipping transfer tax. This is because the trustee may not be the estate or generation-skipping transfer tax return filer.

**Schedule K-1 (Form 1041)—Beneficiary’s Share of Income, Deductions, Credits, etc.**

**General Instructions**

Use Schedule K-1 (Form 1041) to report the beneficiary’s share of income, deductions, and credits from a trust or a decedent’s estate.

**Who Must File**

The fiduciary (or one of the joint fiduciaries) must file Schedule K-1. A copy of each beneficiary’s Schedule K-1 is attached to the Form 1041 filed with the IRS and each beneficiary is given a copy of his or her respective Schedule K-1. One copy of each Schedule K-1 must be retained for the fiduciary’s records.

**Beneficiary’s Identifying Number**

As a payer of income, you are required under section 6109 to request and provide a proper identifying number for each recipient of income. Enter the beneficiary’s number on the respective

Schedules K-1 when you file Form 1041. Individuals and business recipients are responsible for giving you their taxpayer identification numbers upon request. You may use **Form W-9, Request for Taxpayer Identification Number and Certification**, to request the beneficiary’s identifying number.

**Penalty.**—Under section 6723, the payer is charged a \$50 penalty for each failure to provide a required taxpayer identification number, unless reasonable cause is established for not providing it. Explain any reasonable cause in a signed affidavit and attach it to this return.

**Tax Shelter’s Identification Number**

If the estate or trust is a tax shelter, is involved in a tax shelter, or is considered to be the organizer of a tax shelter, there are reporting requirements under section 6111 for both the fiduciaries and the beneficiaries.

See **Form 8264, Application for Registration of a Tax Shelter**, and **Form 8271, Investor Reporting of Tax Shelter Registration Number**, and their related instructions for information regarding the fiduciary’s reporting requirements.

**Substitute Forms**

You do not need prior IRS approval for a substitute Schedule K-1 (Form 1041) that follows the specifications for filing substitute Schedules K-1 in **Pub. 1167, Substitute Printed, Computer-Prepared, and Computer-Generated Tax Forms and Schedules**, or is an exact copy of an IRS Schedule K-1. You must request IRS approval to use other substitute Schedules K-1. To request approval, write to: Internal Revenue Service, Attention: Substitute Forms Program Coordinator, T:FP:S, 1111 Constitution Avenue, N.W., Washington, DC 20224.

**Inclusion of Amounts in Beneficiaries’ Income**

**Simple trust.**—The beneficiary of a simple trust must include in his or her gross income the amount of the income required to be distributed currently, whether or not distributed, or if the income required to be distributed currently to all beneficiaries exceeds the distributable net income (DNI), his or her proportionate share of the DNI. The determination of whether trust income is required to be distributed currently depends on the terms of the trust instrument and applicable local law. See Regulations section 1.652(c)-4 for a comprehensive example.

**Estates and complex trusts.**—The beneficiary of a decedent’s estate or complex trust must include in his or her gross income the sum of:

1. The amount of the income required to be distributed currently, or if the income required to be distributed

currently to all beneficiaries exceeds the DNI (figured without taking into account the charitable deduction), his or her proportionate share of the DNI (as so figured); and

2. All other amounts properly paid, credited, or required to be distributed, or if the sum of the income required to be distributed currently and other amounts properly paid, credited, or required to be distributed to all beneficiaries exceeds the DNI, his or her proportionate share of the excess of DNI over the income required to be distributed currently.

See Regulations section 1.662(c)-4 for a comprehensive example.

For complex trusts that have more than one beneficiary, and if different beneficiaries have substantially separate and independent shares, their shares are treated as separate trusts for the sole purpose of determining the amount of DNI allocable to the respective beneficiaries. For examples of the application of the separate share rule, see the regulations under section 663(c).

**Character of income.**—The beneficiary's income is considered to have the same proportion of each class of items entering into the computation of DNI that the total of each class has to the DNI (e.g., half dividends and half interest if the income of the estate or trust is half dividends and half interest).

**Allocation of deductions.**—Generally, items of deduction that enter into the computation of DNI are allocated among the items of income to the extent such allocation is not inconsistent with the rules set out in section 469 and its regulations, relating to passive activity loss limitations, in the following order.

First, all deductions directly attributable to a specific class of income are deducted from that income. For example, rental expenses, to the extent allowable, are deducted from rental income.

Second, deductions that are not directly attributable to a specific class of income generally may be allocated to any class of income, as long as a reasonable portion is allocated to any tax-exempt income. Deductions considered not directly attributable to a specific class of income under this rule include fiduciary fees, safe deposit box rental charges, and state income and personal property taxes. The charitable deduction, however, must be ratably apportioned among each class of income included in DNI.

Finally, any excess deductions that are directly attributable to a class of income may be allocated to another class of income. In no case can excess deductions from a passive activity be allocated to income from a nonpassive activity, or to portfolio income earned by the estate or trust. Excess deductions

attributable to tax-exempt income cannot offset any other class of income.

In no case can deductions be allocated to an item of income that is not included in the computation of DNI, or attributable to corpus.

Except for the final year, and for depreciation or depletion allocations in excess of income (see Rev. Rul. 74-530, 1974-2 C.B. 188), you may not show any negative amounts for any class of income because the beneficiary generally may not claim losses or deductions from the estate or trust.

**Gifts and bequests.**—Do not include in the beneficiary's income any gifts or bequests of a specific sum of money or of specific property under the terms of the governing instrument that are paid or credited in three installments or less.

Amounts that can be paid or credited only from income of the estate or trust do not qualify as a gift or bequest of a specific sum of money.

**Past years.**—Do not include in the beneficiary's income any amounts deducted on Form 1041 for an earlier year that were credited or required to be distributed in that earlier year.

### Beneficiary's Tax Year

The beneficiary's income from the estate or trust must be included in the beneficiary's tax year during which the tax year of the estate or trust ends. See Pub. 559 for more information, including the effect of the death of a beneficiary during the tax year of the estate or trust.

## Specific Instructions

### Line 1—Interest

Enter the beneficiary's share of the taxable interest income minus allocable deductions.

### Line 2—Dividends

Enter the beneficiary's share of dividend income minus allocable deductions.

### Line 3a—Net Short-Term Capital Gain

Enter the beneficiary's share of the net short-term capital gain from line 15, column (a), Schedule D (Form 1041), minus allocable deductions. Do not enter a loss on line 3a. If, for the final year of the estate or trust, there is a capital loss carryover, enter on line 12b the beneficiary's share of short-term capital loss carryover as a loss in parentheses. However, if the beneficiary is a corporation, enter on line 12b the beneficiary's share of all short- and long-term capital loss carryovers as a single item in parentheses. See section 642(h) and related regulations for more information.

### Line 3b—Net Long-Term Capital Gain

Enter the beneficiary's share of the net long-term capital gain from line 16,

column (a), Schedule D (Form 1041), minus allocable deductions. Do not enter a loss on line 3b. If, for the final year of the estate or trust, there is a capital loss carryover, enter on line 12c the beneficiary's share of the long-term capital loss carryover as a loss in parentheses. (If the beneficiary is a corporation, see the instructions for line 3a.) See section 642(h) and related regulations for more information.

Gains, or losses, from the complete, or partial, disposition of a rental, rental real estate, or trade or business activity that is a passive activity, must be shown on an attachment to Schedule K-1.

### Line 4a—Annuities, Royalties, and Other Nonpassive Income

Enter the beneficiary's share of annuities, royalties, or any other income, minus allocable deductions (other than directly apportionable deductions), that is NOT subject to any passive activity loss limitation rules at the beneficiary level. Use line 5a to report income items subject to the passive activity rules at the beneficiary's level.

### Lines 4b and 5b—Depreciation

Enter the beneficiary's share of the depreciation deductions attributable to each activity reported on lines 4a and 5a. See the instructions on page 10 for a discussion of how the depreciation deduction is apportioned between the beneficiaries and the estate or trust. Report any AMT adjustment or tax preference item attributable to depreciation separately on line 11a.

**Note:** *An estate or trust cannot make an election under section 179 to expense certain tangible property.*

### Lines 4c and 5c—Depletion

Enter the beneficiary's share of the depletion deduction under section 611 attributable to each activity reported on lines 4a and 5a. See the instructions on page 10 for a discussion of how the depletion deduction is apportioned between the beneficiaries and the estate or trust. Report any tax preference item attributable to depletion separately on line 11b.

### Lines 4d and 5d—Amortization

Itemize the beneficiary's share of the amortization deductions attributable to each activity reported on lines 4a and 5a. Apportion the amortization deductions between the estate or trust and the beneficiaries in the same way that the depreciation and depletion deductions are divided. Report any AMT adjustment attributable to amortization separately on line 11c.

### Line 5a—Trade or Business, Rental Real Estate, and Other Rental Income

Enter the beneficiary's share of trade or business, rental real estate, and other

rental income, minus allocable deductions (other than directly apportionable deductions). To assist the beneficiary in figuring any applicable passive activity loss limitations, also attach a separate schedule showing the beneficiary's share of income derived from each trade or business, rental real estate, and other rental activity.

#### Lines 5b through 5d

**Caution:** *The limitations on passive activity losses and credits under section 469 apply to estates and trusts. Estates and trusts that distribute income to beneficiaries are allowed to apportion depreciation, depletion, and amortization deductions to the beneficiaries. These deductions are referred to as "directly apportionable deductions."*

*Rules for treating a beneficiary's income and directly apportionable deductions from an estate or trust and other rules for applying the passive loss and credit limitations to beneficiaries of estates and trusts have not yet been issued.*

Any directly apportionable deduction, such as depreciation, is treated by the beneficiary as having been incurred in the same activity as incurred by the estate or trust. However, the character of such deduction may be determined as if the beneficiary incurred the deduction directly.

To assist the beneficiary in figuring any applicable passive activity loss limitations, also attach a separate schedule showing the beneficiary's share of directly apportionable deductions derived from each trade or business, rental real estate, and other rental activity.

#### Line 6—Income for Minimum Tax Purposes

Enter the beneficiary's share of the income distribution deduction figured on a minimum tax basis from line 27 of Schedule I.

#### Line 7—Income for Regular Tax Purposes

Enter the beneficiary's share of the income distribution deduction figured on line 17 of Schedule B. This amount should equal the sum of lines 1 through 3b, 4a, and 5a.

#### Line 9—Estate Tax Deduction (Including Generation-Skipping Transfer Taxes)

If the distribution deduction consists of any income in respect of a decedent, and the estate or trust was allowed a deduction under section 691(c) for the estate tax paid attributable to such income (see the line 19 instructions on page 13), then the beneficiary is allowed an estate tax deduction in proportion to his or her share of the distribution that consists of such income. For an

example of the computation, see Regulations section 1.691(c)-2. Figure the computation on a separate sheet and attach it to the return.

#### Line 10—Foreign Taxes

List on a separate sheet the beneficiary's share of the applicable foreign taxes paid or accrued and the various foreign source figures needed to figure the beneficiary's foreign tax credit. See Pub. 514 and section 901(b)(5) for special rules about foreign taxes.

#### Lines 11a through 11c

Enter any adjustments or tax preference items attributable to depreciation, depletion, or amortization that were allocated to the beneficiary. For property placed in service before 1987, report separately the accelerated depreciation of real and leased personal property.

#### Line 11d—Exclusion Items

Enter the beneficiary's share of the adjustment for minimum tax purposes from Schedule K-1, line 8, that is attributable to exclusion items (Schedule I, lines 4a through 4d, 4p, and 4q).

#### Line 12a—Excess Deductions on Termination

If this is the final return and there are excess deductions on termination (see the instructions for line 22 on page 13), enter the beneficiary's share of the excess deductions on line 12a. Figure the deductions on a separate sheet and attach it to the return.

Excess deductions on termination occur only during the last tax year of the trust or decedent's estate when the total deductions (excluding the charitable deduction and exemption) are greater than the gross income during that tax year. Generally, a deduction based on an NOL carryover is not available to a beneficiary as an excess deduction. However, if the last tax year of the estate or trust is also the last year in which an NOL carryover may be taken (see section 172(b)), the NOL carryover is considered an excess deduction on the termination of the estate or trust to the extent it is not absorbed by the estate or trust during its final tax year. For more information, see Regulations section 1.642(h)-4 for a discussion of the allocation of the carryover among the beneficiaries.

Only the beneficiary of an estate or trust that succeeds to its property is allowed to deduct that entity's excess deductions on termination. A beneficiary who does not have enough income in that year to absorb the entire deduction may not carry the balance over to any succeeding year. An individual beneficiary must be able to itemize deductions in order to claim the excess deductions in determining taxable income.

#### Lines 12b and 12c—Unused Capital Loss Carryover

Upon termination of the trust or decedent's estate, the beneficiary succeeding to the property is allowed as a deduction any unused capital loss carryover under section 1212. If the estate or trust incurs capital losses in the final year, use Part V of Schedule D (Form 1041) to figure the amount of capital loss carryover to be allocated to the beneficiary.

#### Lines 12d and 12e—Net Operating Loss (NOL) Carryover

Upon termination of a trust or decedent's estate, a beneficiary succeeding to its property is allowed to deduct any unused NOL (and any AMT NOL) carryover for regular and AMT purposes if the carryover would be allowable to the estate or trust in a later tax year but for the termination. Enter on lines 12d and 12e the unused carryover amounts.

#### Line 13—Other

Itemize on line 13, or on a separate sheet if more space is needed, the beneficiary's tax information not entered elsewhere on Schedule K-1. This includes the allocable share, if any, of:

- Payment of estimated tax to be credited to the beneficiary (section 643(g));
- Tax-exempt interest income received or accrued by the trust (including exempt-interest dividends from a mutual fund or other regulated investment company);
- Investment income (section 163(d));
- Gross farming and fishing income;
- Credit for backup withholding (section 3406);
- Low-income housing credit;
- The jobs credit;
- The alcohol fuel credit;
- The credit for increasing research activities;
- The renewable electricity production credit;
- The Indian employment credit;
- The empowerment zone employment credit;
- The information a beneficiary will need to figure any investment credit; and
- The information a beneficiary will need to figure any recapture taxes.

**Note:** *Upon termination of an estate or trust, any suspended passive activity losses (PALs) relating to an interest in a passive activity cannot be allocated to the beneficiary. Instead, the basis in such activity is increased by the amount of any PALs allocable to the interest, and no losses are allowed as a deduction on the estate's or trust's final Form 1041.*



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