

Publication 559

Survivors, Executors, and Administrators

For use in preparing
2023 Returns

Volume 1 of 4



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| Contents | Regular Page | Large Print Page |
|--|-------------------------|---------------------------------|
| Reminder | 2 | 7 |
| Introduction | 2 | 9 |
| Personal Representative | 3 | 15 |
| Duties | 3 | 16 |
| Fees Received | 5 | 26 |
| Final Income Tax Return for Decedent—Form 1040 or 1040-SR | 5 | 27 |
| Name, Address, and Signature | 5 | 29 |
| When and Where To File | 5 | 31 |
| Filing Requirements | 5 | 31 |
| Income To Include | 6 | 38 |
| Deductions | 8 | 49 |

| | | |
|---|----|-----|
| Credits, Other Taxes, Payments | 9 | 58 |
| Tax Forgiveness for Armed Forces Members, Victims of Terrorism, and Astronauts | 10 | 69 |
| Filing Reminders | 12 | 76 |
| Other Tax Information | 13 | 79 |
| Tax Benefits for Survivors | 13 | 79 |
| Income in Respect of Decedent | 13 | 85 |
| Deductions in Respect of Decedent | 17 | 110 |
| Estate Tax Deduction | 17 | 112 |
| Gifts, Insurance, Inheritances | 18 | 118 |
| Other Items of Income | 21 | 139 |

| | | |
|---|----|-----|
| Income Tax Return of an Estate—Form 1041 | 22 | 145 |
| Filing Requirements | 22 | 147 |
| Income To Include | 24 | 155 |
| Exemption and Deductions | 25 | 168 |
| Credits, Tax, and Payments | 29 | 192 |
| Name, Address, and Signature | 30 | 197 |
| When and Where To File | 30 | 198 |
| Distributions to Beneficiaries | 31 | 202 |
| Currently Distributed Income | 31 | 203 |
| Other Amounts Distributed | 31 | 207 |
| Discharge of a Legal Obligation | 32 | 211 |

| | | |
|---|----|-----|
| Character of Distributions | 32 | 212 |
| How and When To Report | 33 | 216 |
| Bequest | 34 | 223 |
| Termination of Estate | 35 | 229 |
| Estate and Gift Taxes | 36 | 239 |
| Gift Tax | 37 | 249 |
| Estate Tax | 39 | 259 |
| Example | 40 | 270 |
| Final Return for Decedent | 41 | 275 |
| Income Tax Return of an Estate | 42 | 284 |
| Table A. Checklist of Forms and Due Dates | 44 | 293 |
| Table B. Worksheet To Reconcile Amounts Reported in Name of Decedent | 45 | 294 |

| | | |
|----------------------------|----|-----|
| How To Get Tax Help | 46 | 295 |
| Index | 50 | 318 |

Future Developments

For the latest information about developments related to Pub. 559, such as legislation enacted after it was published, go to [IRS.gov/Pub 559](https://www.irs.gov/pub/559).

Reminders

Net operating loss (NOL) carryback.

Generally, an NOL arising in a tax year beginning in 2021 or later may not be carried back and instead must be carried forward indefinitely. However, farming losses arising in tax years beginning in 2021 or later may be carried back 2 years and carried forward indefinitely.

For special rules for NOLs arising in 2018, 2019, or 2020, see Pub. 536, Net Operating Losses (NOLs) for Individuals, Estates, and Trusts, for more information.

Excess deductions on termination. Under [*Final Regulations - TD9918*](#), each excess deduction on termination of an estate or trust retains its separate character as an amount allowed in arriving at adjusted gross income (AGI), a non-miscellaneous itemized deduction, or a miscellaneous itemized deduction. For more information, see the Instructions for Form 1041.

Consistent treatment of estate and trust items. Beneficiaries must generally treat estate items the same way on their individual returns as they are treated on the estate's return.

Consistent basis reporting between estate and person acquiring property from a decedent. Certain executors are required to report the estate tax value of

property passing from a decedent to the IRS and to the recipient of the property (beneficiary). See Consistent Basis Reporting Requirement, later, for more information.

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

Extension of time to elect portability. Effective July 8, 2022, Rev. Proc. 2022-32 provides a simplified method for certain estates to obtain an extension of time to file a return on or before the fifth anniversary of the decedent's death to elect portability of the deceased spousal unused exclusion (DSUE) amount. See Filing requirements, later, for more information.

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

Introduction

This publication is designed to help those in charge (personal representatives) of the property (estate) of an individual who has died (decedent). It shows how to complete and file federal income tax returns and explains their responsibility to pay any taxes due on behalf of the decedent. An example of the decedent's final tax return, Form 1040, U.S. Individual Income Tax Return, and the estate's income tax return, Form 1041, U.S.

Income Tax Return for Estates and Trusts, are discussed in this publication.

The publication also explains how much money or property a taxpayer can give away during their lifetime or leave to their heirs at their death, before any tax will be owed. A discussion of Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is included.

Also included in this publication are the following items.

- A checklist of the forms you may need and their due dates.
- A worksheet to reconcile amounts reported in the decedent's name on information returns including Forms W-2, Wage and Tax Statement; 1099-INT, Interest Income; 1099-DIV, Dividends and Distributions; etc. The worksheet will help

you correctly determine the income to report on the decedent's final return and on the return for either the estate or a beneficiary.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or, you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments and suggestions as we revise our tax forms, instructions, and publications.

Don't send tax questions, tax returns, or payments to the above address.

Getting answers to your tax questions. If you have a tax question not answered by this publication, or the *How To Get Tax Help* section at the end of this publication, go to the IRS Interactive Tax Assistant page at [IRS.gov/ Help/ITA](https://www.irs.gov/help/ita) where you can find topics by using the search feature or by viewing the categories listed.

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Don't resubmit requests you've already sent us. You can get forms and publications faster online.

Useful Items

You may want to see:

Publication

- ☐ **3** Armed Forces' Tax Guide

Form (and Instructions)

- ☐ **SS-4** Application for Employer Identification Number
- ☐ **56** Notice Concerning Fiduciary Relationship1040 U.S. Individual Income Tax Return
- ☐ **1040-SR** U.S. Tax Return for Seniors
- ☐ **1041** U.S. Income Tax Return for Estates and Trusts
- ☐ **706** United States Estate (and Generation-Skipping Transfer) Tax Return
- ☐ **709** United States Gift (and Generation-Skipping Transfer) Tax Return

❑ **1310** Statement of Person Claiming Refund Due a Deceased Taxpayer

See *How To Get Tax Help* near the end of this publication for information about getting publications and forms. Also near the end of this publication is Table A, a checklist of forms and their due dates for the executor, administrator, or personal representative.

Personal Representative

A *personal representative* of an estate is an executor, administrator, or anyone who is in charge of the decedent's property. Generally, an *executor* (or *executrix*) is named in a decedent's will to administer the estate and distribute properties as the decedent has directed. An *administrator* (or *administratrix*) is usually appointed by the court if no will exists, if no executor was named in the will, or if the named executor can't or won't serve.

In general, an executor and an administrator perform the same duties and have the same responsibilities.

For estate tax purposes, if there is no executor or administrator appointed, qualified, and acting within the United States, the term "executor" includes anyone in actual or constructive possession of any property of the decedent. It includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding securities of the decedent as collateral; and the debtors of the decedent who are in this country.

Duties

The primary duties of a personal representative are to collect all the decedent's assets, pay the decedent's creditors, and distribute the remaining assets to the heirs or other beneficiaries.

The personal representative must also perform the following duties. • Apply for an employer identification number (EIN) for the estate.

- File all tax returns, including income, estate, and gift tax returns, when due.
- Pay the tax determined up to the date of discharge from duties.

Other duties of the personal representative in federal tax matters are discussed in other sections of this publication. If any beneficiary is a nonresident alien, see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, for information on the personal representative's duties as a withholding agent.

Penalty. There is a penalty for failure to file a tax return when due unless the failure is due to reasonable cause. Reliance on an agent (attorney, accountant, etc.) isn't reasonable cause for late filing. It is the personal

representative's duty to file the returns for the decedent and the estate when due.

Identification number. The first action you should take if you're the personal representative for the decedent is to apply for an EIN for the estate. You should apply for this number as soon as possible because you need to enter it on returns, statements, and other documents you file concerning the estate. You must also give the identification number to payers of interest and dividends and other payers who must file a return concerning the estate.

You can get an EIN by applying online at [IRS.gov/EIN](https://www.irs.gov/ein). Generally, if you apply online, you will receive your EIN immediately upon completing the application. You can also apply using Form SS-4. Generally, if you apply by mail, it takes about 4 weeks to get your EIN. See [IRS.gov/ Businesses/Small-Businesses-&-Self-Employed/ Employer-ID-Numbers-EINs](https://www.irs.gov/businesses/small-businesses-&-self-employed/employer-id-numbers-eins) for other ways to apply.

Payers of interest and dividends report amounts on Forms 1099 using the identification number of the person to whom the account is payable. After a decedent's death, Forms 1099 must reflect the identification number (EIN, individual identification number (ITIN), or social security number (SSN)) of the estate or beneficiary to whom the amounts are payable. As the personal representative handling the estate, you must furnish this identification number to the payer. For example, if interest is payable to the estate, the estate's EIN must be provided to the payer and used to report the interest on Form 1099-INT. If the interest is payable to a surviving joint owner, the survivor's identification number, such as an SSN or ITIN, must be provided to the payer and used to report the interest.

If the estate or a survivor may receive interest or dividends after you inform the payer of the decedent's death, the payer

should give you (or the survivor) a Form W-9, Request for Taxpayer Identification Number and Certification, or a similar substitute form. Complete this form to inform the payer of the estate's (or if completed by the survivor, the survivor's) identification number and return it to the payer.



Don't use the deceased individual's identifying number to file an individual income tax return after the decedent's final tax return. Also don't use the decedent's identifying number to make estimated tax payments for a tax year after the year of death.

Penalty. If you don't include the EIN or the taxpayer identification number (TIN) of another person where it is required on a return, statement, or other document, you are liable for a penalty for each failure, unless you can show reasonable cause. You are also liable for a penalty if you don't give the TIN of

another person when required on a return, statement, or other document.

Notice of fiduciary relationship. The term “fiduciary” means any person acting for another person. It applies to persons who have positions of trust on behalf of others. It generally includes a guardian, trustee, executor, administrator, receiver, or conservator. A personal representative for a decedent's estate is also a fiduciary.

Form 56. If you are appointed to act in a fiduciary capacity for another, you must file a written notice with the IRS stating this. Form 56 is used for this purpose. See the Instructions for Form 56 for filing requirements and other information.

File Form 56 as soon as all the necessary information (including the EIN) is available. It notifies the IRS that you, as the fiduciary, are assuming the powers, rights, duties, and privileges of the decedent. The notice remains in effect until you notify the IRS (by filing

another Form 56) that your fiduciary relationship with the estate has terminated.

Termination of fiduciary relationship.

Form 56 should also be filed to notify the IRS if your fiduciary relationship is terminated or when a successor fiduciary is appointed if the estate hasn't been terminated. See Form 56 and its instructions for more information.

At the time of termination of the fiduciary relationship, you may want to file Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d), and Form 5495, Request for Discharge From Personal Liability Under Internal Revenue Code Section 2204 or 6905, to wind up your duties as fiduciary. See below for a discussion of these forms.

Request for prompt assessment (charge) of tax. The IRS ordinarily has 3 years from the date an income tax return is filed, or its due date, whichever is later, to charge any additional tax due. However, as a personal

representative, you may request a prompt assessment of tax after the return has been filed. This reduces the time for making the assessment to 18 months from the date the written request for prompt assessment was received. This request can be made for any tax return (except the estate tax return) of the decedent or the decedent's estate. This may permit a quicker settlement of the tax liability of the estate and an earlier final distribution of the assets to the beneficiaries.

Form 4810. Form 4810 can be used for making this request. It must be filed separately from any other document.

As the personal representative for the decedent's estate, you are responsible for any additional taxes that may be due. You can request prompt assessment of any of the decedent's taxes (other than federal estate taxes) for any years for which the statutory period for assessment is open. This applies

even though the returns were filed before the decedent's death.

Failure to report income. If you or the decedent failed to report substantial amounts of gross income (more than 25% of the gross income reported on the return) or filed a false or fraudulent return, your request for prompt assessment won't shorten the period during which the IRS may assess the additional tax. However, such a request may relieve you of personal liability for the tax if you didn't have knowledge of the unpaid tax.

Request for discharge from personal liability for tax. An executor can make a request for discharge from personal liability for a decedent's income, gift, and estate taxes. The request must be made after the returns for those taxes are filed. To make the request, file Form 5495. For this purpose, an executor is an executor or administrator that is appointed, qualified, and acting within the United States.

Within 9 months after receipt of the request, the IRS will notify the executor of the amount of taxes due. If this amount is paid, the executor will be discharged from personal liability for any future deficiencies. If the IRS hasn't notified the executor at the end of the 9-month period, the executor will be discharged from personal liabilities.



Even if the executor is discharged from personal liability, the IRS will still be able to assess tax deficiencies against the executor to the extent the executor still has any of the decedent's property.

Insolvent estate. Generally, if a decedent's estate is insufficient to pay all the decedent's debts, the debts due to the United States must be paid first. Both the decedent's federal income tax liabilities at the time of death and the estate's income tax liability are debts due to the United States. The personal representative of an insolvent estate is personally responsible for any tax liability of

the decedent or of the estate if the personal representative had notice of such tax obligations or failed to exercise due care in determining if such obligations existed before distribution of the estate's assets and before being discharged from duties. The extent of such personal responsibility is the amount of any other payments made before paying the debts due to the United States, except where such other debt paid has priority over the debts due to the United States. Income tax liabilities need not be formally assessed for the personal representative to be liable if the personal representative was aware or should have been aware of their existence.

Fees Received by Personal Representatives

All personal representatives must include fees paid to them from an estate in their gross income. If you aren't in the trade or business of being an executor (for instance, you are the executor of a friend's or relative's estate),

report these fees on your Schedule 1 (Form 1040), line 8z. If you are in the trade or business of being an executor, report fees received from the estate as self-employment income on Schedule C (Form 1040), Profit or Loss From Business.

If the estate operates a trade or business and you, as executor, actively participate in the trade or business while fulfilling your duties, any fees you receive related to the operation of the trade or business must be reported as self-employment income on Schedule C (Form 1040).

Final Income Tax Return for Decedent—Form 1040 or 1040-SR

The personal representative (defined earlier) must file the final income tax return (Form 1040 or 1040-SR) of the decedent for the year of death and any returns not filed for

preceding years. A surviving spouse, under certain circumstances, may have to file the returns for the decedent. See *Joint Return*, later.

Return for preceding year. If an individual died after the close of the tax year, but before the return for that year was filed, the return for the year just closed won't be the final return. The return for that year will be a regular return and the personal representative must file it.

Example. S. Smith died on March 21, 2023, before filing the 2022 tax return. The personal representative must file the 2022 return by April 15, 2023. The final tax return covering the period from January 1, 2023, to March 20, 2023, is due April 15, 2024.

Note. See *When and Where To File*, later, if the due date falls on a weekend or legal holiday. See Pub. 509, Tax Calendars, for a list of all legal holidays.

Name, Address, and Signature

Write the word "DECEASED," the decedent's name, and the date of death across the top of the tax return. If filing a joint return, write the name and address of the decedent and the surviving spouse in the name and address fields. If a joint return isn't being filed, write the decedent's name in the name field and the personal representative's name and address in the address field.

Third party designee. You can check the "Yes" box in the Third Party Designee area on Form 1040 or 1040-SR to authorize the IRS to discuss the return with a friend, a family member, or any other person you choose. This allows the IRS to call the person you identified as the designee to answer any questions that may arise during the processing of the return. It also allows the designee to perform certain actions. See the Instructions for Form 1040 (and 1040-SR) for details.

Signature. If a personal representative has been appointed, that person must sign the return. If it is a joint return, the surviving spouse must also sign it. If no personal representative has been appointed, the surviving spouse (on a joint return) signs the return and writes in the signature area "Filing as surviving spouse." If no personal representative has been appointed and if there is no surviving spouse, the person in charge of the decedent's property must file and sign the return as "personal representative."

Paid preparer. If you pay someone to prepare, assist in preparing, or review the tax return, that person must sign the return and fill in the other blanks in the *Paid Preparer Use Only* area of the return. See the Instructions for Form 1040 (and 1040-SR) for details.

When and Where To File

The final income tax return is due at the same time the decedent's return would have been due had death not occurred. A final return for a decedent who was a calendar year taxpayer is generally due on April 15 following the year of death, regardless of when during that year death occurred. However, when the due date falls on a Saturday, Sunday, or legal holiday, the return is filed timely if filed by the next business day.

Generally, you must file the final income tax return of the decedent with the Internal Revenue Service Center for the place where you live. A tax return for a decedent can be electronically filed. A personal representative may also obtain an income tax filing extension on behalf of a decedent.

Filing Requirements

The gross income, age, and filing status of a decedent generally determine whether a

return must be filed. Gross income is all income received by an individual from any source in the form of money, goods, property, and services that isn't tax-exempt. It includes gross receipts from self-employment, but if the business involves manufacturing, merchandising, or mining, subtract any cost of goods sold. In general, filing status depends on whether the decedent was considered single or married at the time of death. See the income tax return instructions or Pub. 501, Dependents, Standard Deduction, and Filing Information.

Refund

A return must be filed to obtain a refund if tax was withheld from salaries, wages, pensions, or annuities, or if estimated tax was paid, even if a return isn't otherwise required to be filed. Also, the decedent may be entitled to other credits that result in a refund. These advance payments of tax and credits are

discussed later under Credits, Other Taxes, and Payments.

Form 1310, Statement of Person Claiming Refund Due a Deceased

Taxpayer. Form 1310 doesn't have to be filed if you are claiming a refund and either of the following applies to you.

- You are a surviving spouse filing an original or amended joint return with the decedent.
- You are a court-appointed or certified personal representative filing the decedent's original return and a copy of the court certificate showing your appointment is attached to the return.

If the personal representative is filing a claim for refund on Form 1040-X, Amended U.S. Individual Income Tax Return, or Form 843, Claim for Refund and Request for Abatement, and the court certificate has already been filed with the IRS, attach Form 1310 and

write "Certificate Previously Filed" at the bottom of the form.

Example. E. Green died before filing the tax return. You were appointed the personal representative for E. Green's estate, and you file the Form 1040 or 1040-SR showing a refund due. You don't need Form 1310 to claim the refund if you attach a copy of the court certificate to the tax return showing you were appointed the personal representative.



If you are a surviving spouse and you receive a tax refund check in both your name and your deceased spouse's name, you can have the check reissued in your name alone. Return the joint-name check marked "VOID" along with Form 1310 to your local IRS office or the service center where you mailed your return, along with a written request for reissuance of the refund check. A new check will be issued in your name and mailed to you.

Death certificate. When filing the decedent's final income tax return, don't attach the death certificate or other proof of death to the final return. Instead, keep it for your records and provide it if requested.

Nonresident Alien

If the decedent was a nonresident alien who would have had to file Form 1040-NR, U.S. Nonresident Alien Income Tax Return, you must file that form for the decedent's final tax year. See the Instructions for Form 1040-NR for the filing requirements, due date, and where to file.

Joint Return

Generally, the personal representative and the surviving spouse can file a joint return for the decedent and the surviving spouse.

However, the surviving spouse alone can file the joint return if no personal representative has been appointed before the due date for filing the final joint return for the year of

death. This also applies to the return for the preceding year if the decedent died after the close of the preceding tax year and before filing the return for that year.

The income of the decedent that was includible on the decedent's return for the year up to the date of death (see *Income To Include*, later) and the income of the surviving spouse for the entire year must be included on the final joint return.

A final joint return with the decedent can't be filed if the surviving spouse remarried before the end of the year of the decedent's death. The filing status of the decedent in this instance is married filing a separate return.

For information about tax benefits to which a surviving spouse may be entitled, see *Tax Benefits for Survivors*, later, under *Other Tax Information*.

Personal representative may revoke joint return election. A court-appointed personal representative may revoke an election to file a joint return previously made by the surviving spouse alone. This is done by filing a separate return for the decedent within 1 year from the due date of the return (including any extensions). The joint return filed by the surviving spouse will then be regarded as the separate return of that spouse by excluding the decedent's items and refiguring the tax liability.

Relief from joint liability. In some cases, one spouse may be relieved of joint liability for tax, interest, and penalties on a joint return for items of the other spouse that were incorrectly reported on the joint return. If the decedent qualified for this relief while alive, the personal representative can pursue an existing request, or file a request, for relief from joint liability. For information on

requesting this relief, see Pub. 971, Innocent Spouse Relief.

Income To Include

The decedent's income includible on the final return is generally determined as if the person were still alive except that the tax period is usually shorter because it ends on the date of death. The method of accounting regularly used by the decedent before death also determines the income includible on the final return. This section explains how some types of income are reported on the final return.

For more information about accounting methods, see Pub. 538, Accounting Periods and Methods.

Cash Method

If the decedent accounted for income under the cash method, only those items actually or

constructively received before death are included on the final return.

Constructive receipt of income. Interest from coupons on the decedent's bonds is constructively received by the decedent if the coupons matured in the decedent's final tax year but had not been cashed. Include the interest income on the final return.

Generally, a dividend is considered constructively received if it was available for use by the decedent without restriction. If the corporation customarily mailed its dividend checks, the dividend was includible when received. If the individual died between the time the dividend was declared and the time it was received in the mail, the decedent didn't constructively receive it before death. Don't include the dividend in the final return.

Accrual Method

Generally, under an accrual method of accounting, income is reported when earned.

If the decedent used an accrual method, only the income items normally accrued before death are included on the final return.

Interest and Dividend Income (Forms 1099)

Form(s) 1099 reporting interest and dividends earned by the decedent before death should be received and the amounts included on the decedent's final return. A separate Form 1099 should show the interest and dividends earned after the date of the decedent's death and paid to the estate or other recipient that must include those amounts on its return. You can request corrected Forms 1099 if these forms don't properly reflect the right recipient or amounts.

For example, a Form 1099-INT, reporting interest payable to the decedent, may include income that should be reported on the final income tax return of the decedent, as well as income that the estate or other recipient should report, either as income earned after

death or as income in respect of the decedent (discussed later). For income earned after death, you should ask the payer for a Form 1099 that properly identifies the recipient (by name and identification number) and the proper amount. If that isn't possible, or if the form includes an amount that represents income in respect of the decedent, report the interest as shown under *How to report* next.

See *U.S. savings bonds acquired from decedent* under *Specific Types of Income in Respect of a Decedent*, later, for information on savings bond interest that may have to be reported on the final return.

How to report. If you are preparing the decedent's final return and you have received a Form 1099-INT for the decedent that includes amounts belonging to the decedent and to another recipient (the decedent's estate or another beneficiary), report the total interest shown on Form 1099-INT on Schedule B (Form 1040), Interest and

Ordinary Dividends. Next, enter a subtotal of the interest shown on Forms 1099, and the interest reportable from other sources for which you didn't receive Forms 1099. Then, show any interest (including any interest you receive as a nominee) belonging to another recipient separately and subtract it from the subtotal. Identify the amount of this adjustment as "Nominee Distribution" or other appropriate designation.

Report dividend income for which you received a Form 1099-DIV on the appropriate schedule using the same procedure.

Note. If the decedent received amounts as a nominee, you must give the actual owner a Form 1099, unless the owner is the decedent's spouse. See the [General Instructions for Certain Information Returns](#) for more information on filing Forms 1099.

Partnership Income

The death of a partner closes the partnership's tax year for that partner. Generally, it doesn't close the partnership's tax year for the remaining partners. The decedent's distributive share of partnership items must be figured as if the partnership's tax year ended on the date the partner died. To avoid an interim closing of the partnership books, the partners can agree to estimate the decedent's distributive share by prorating the amounts the partner would have included for the entire partnership tax year.

On the decedent's final return, include the decedent's distributive share of partnership items for the following periods.

1. The partnership's tax year that ended within or with the decedent's final tax year (the year ending on the date of death).

2. The period, if any, from the end of the partnership's tax year in (1) to the decedent's date of death.

Example. M. Smith was a partner in XYZ partnership and reported the income on a tax year ending December 31. The partnership uses a tax year ending June 30. M. Smith died August 31, 2023, and the estate established its tax year through August 31.

The distributive share of partnership items based on the decedent's partnership interest is reported as follows.

- Final Return for the Decedent—January 1 through August 31, 2023, includes XYZ partnership items from (a) the partnership tax year ending June 30, 2023; and (b) the partnership tax year beginning July 1, 2023, and ending August 31, 2023 (the date of death).
- Income Tax Return of the Estate—September 1, 2023, through August 31,

2024, includes XYZ partnership items for the period September 1, 2023, through June 30, 2024.

S Corporation Income

If the decedent was a shareholder in an S corporation, include on the final return the decedent's share of the S corporation's items of income, loss, deduction, and credit for the following periods.

1. The corporation's tax year that ended within or with the decedent's final tax year (the year ending on the date of death).
2. The period, if any, from the end of the corporation's tax year in (1) to the decedent's date of death.

Self-Employment Income

Include self-employment income actually or constructively received or accrued, depending on the decedent's accounting method. For

self-employment tax purposes only, the decedent's self-employment income will include the decedent's distributive share of a partnership's income or loss through the end of the month in which death occurred. For this purpose, the partnership's income or loss is considered to be earned ratably over the partnership's tax year.

Community Income

If the decedent was married and domiciled in a community property state, half of the income received and half of the expenses paid during the decedent's tax year by either the decedent or spouse may be considered to be the income and expenses of the other. For more information, see Pub. 555, Community Property.

HSA, Archer MSA, or Medicare Advantage MSA

The treatment of an HSA (health savings account), an Archer MSA (medical savings

account), or a Medicare Advantage MSA at the death of the account holder depends on who acquires the interest in the account. If the decedent's estate acquires the interest, the fair market value (FMV) of the assets in the account on the date of death is included in income on the decedent's final return. The estate tax deduction, discussed later, doesn't apply to this amount.

If a beneficiary acquires the interest, see the discussion under *Income in Respect of a Decedent*, later. For other information on HSAs, Archer MSAs, or Medicare Advantage MSAs, see Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans.

Coverdell Education Savings Account (ESA)

Generally, the balance in a Coverdell ESA must be distributed within 30 days after the individual for whom the account was established reaches age 30, or dies, whichever is earlier. The treatment of the

Coverdell ESA at the death of an individual under age 30 depends on who acquires the interest in the account. If the decedent's estate acquires the interest, the earnings on the account must be included on the final income tax return of the decedent. The estate tax deduction, discussed later, doesn't apply to this amount. If a beneficiary acquires the interest, see the discussion under *Income in Respect of a Decedent*, later.

The age 30 limitation doesn't apply if the individual for whom the account was established or the beneficiary that acquires the account is an individual with special needs. This includes an individual who, because of a physical, mental, or emotional condition (including a learning disability), requires additional time to complete the individual's education.

For more information on Coverdell ESAs, see Pub. 970, Tax Benefits for Education.

Accelerated Death Benefits

Accelerated death benefits are amounts received under a life insurance contract before the death of the insured individual. These benefits also include amounts received on the sale or assignment of the contract to a viatical settlement provider.

Generally, if the decedent received accelerated death benefits on the life of a terminally or chronically ill individual, whether on the decedent's own life or on the life of another person, those benefits aren't included in the decedent's income. For more information, see the discussion under *Gifts, Insurance, and Inheritances*, under *Other Tax Information*, later.

Deductions

Generally, the rules for deductions allowed to an individual also apply to the decedent's final income tax return. Show on the final return deductible items the decedent paid (or

accrued, if the decedent reported deductions on an accrual method) before death. This section contains a detailed discussion of medical expenses because the tax treatment of the decedent's medical expenses can be different. See Medical Expenses, later.

Standard Deduction

If you don't itemize deductions on the final return, the full amount of the appropriate standard deduction is allowed regardless of the date of death. For information on the appropriate standard deduction, see the Form 1040 and 1040-SR instructions or Pub. 501.

Medical Expenses

Medical expenses paid before death by the decedent are deductible, subject to limits, on the final income tax return if deductions are itemized. This includes expenses for the decedent, as well as for the decedent's spouse and dependents.



Qualified medical expenses aren't deductible if paid with a tax-free distribution from an HSA or an Archer MSA.

Election for decedent's expenses. Medical expenses not paid before death are liabilities of the estate and are shown on the federal estate tax return (Form 706). However, if medical expenses for the decedent are paid out of the estate during the 1-year period beginning with the day after death, you can elect to treat all or part of the expenses as paid by the decedent at the time they were incurred.

If you make the election, you can claim all or part of the expenses on the decedent's income tax return (if deductions are itemized) rather than on the federal estate tax return (Form 706). You can deduct expenses incurred in the year of death on the final income tax return. You should file an amended return (Form 1040-X) for medical

expenses incurred in an earlier year, unless the statutory period for filing a claim for that year has expired.

The amount you can deduct on the income tax return is the amount above 7.5% of AGI. Amounts not deductible because of this percentage can't be claimed on the federal estate tax return.

Making the election. You make the election by attaching a statement, in duplicate, to the decedent's income tax return or amended return. The statement must state that you haven't claimed the amount as an estate tax deduction, and that the estate waives the right to claim the amount as a deduction. This election applies only to expenses incurred for the decedent, not to expenses incurred to provide medical care for dependents.

Example. R. Brown used the cash method of accounting and filed the income tax return on a calendar year basis. R. Brown died on June 1, 2023, at the age of 78, after incurring

\$800 in medical expenses. Of that amount, \$500 was incurred in 2022 and \$300 was incurred in 2023. R. Brown itemized the deductions when the 2022 income tax return was filed. The personal representative of the estate paid the entire \$800 liability in August 2023.

The personal representative may file an amended return (Form 1040-X) for 2022 claiming the \$500 medical expense as a deduction, subject to the 7.5% limit. The \$300 of expenses incurred in 2023 can be deducted on the final income tax return if deductions are itemized, subject to the 7.5% limit. The personal representative must file a statement in duplicate with each return stating that these amounts have **not** been claimed on the federal estate tax return (Form 706), and waiving the right to claim such a deduction on Form 706 in the future.

Medical expenses not paid by estate. If you paid medical expenses for your deceased spouse or dependent, claim the expenses on your tax return for the year in which you paid them, whether they are paid before or after the decedent's death. If the decedent was a child of divorced or separated parents, the medical expenses can usually be claimed by both the custodial parent and the noncustodial parent to the extent paid by that parent during the year.

Insurance reimbursements. Insurance reimbursements of previously deducted medical expenses due a decedent at the time of death and later received by the decedent's estate are includible in the income tax return of the estate (Form 1041) for the year the reimbursements are received. The reimbursements are also includible in the decedent's gross estate.



No deduction for funeral expenses can be taken on the final Form 1040 or 1040-SR of a decedent. These expenses may be deductible for estate tax purposes on Form 706.

Deduction for Losses

A decedent's NOL deduction from a prior year and any capital losses (including capital loss carryovers) can be deducted only on the decedent's final income tax return. See Pub. 536. You can't deduct any unused NOL or capital loss on the estate's income tax return.

Note. Generally, an NOL arising in a tax year beginning in 2021 or later may not be carried back and instead must be carried forward indefinitely. However, farming losses arising in tax years beginning in 2021 or later may be carried back 2 years and carried forward indefinitely.

At-risk loss limits. Special at-risk rules apply to most activities that are engaged in as a trade or business or for the production of income.

These rules limit the deductible loss to the amount for which the individual was considered at-risk in the activity. An individual will generally be considered at-risk to the extent of the money and the adjusted basis of property that are contributed to the activity and certain borrowed amounts for use in the activity. An individual will be considered at-risk for amounts borrowed only if the individual was personally liable for the repayment or if the amounts borrowed were secured by property other than that used in the activity. The individual isn't considered at-risk for borrowed amounts if the lender has an interest (other than as a creditor) in the activity or if the lender is related to a person (other than the taxpayer) who has an interest

in the activity. For more information, see Pub. 925, Passive Activity and At-Risk Rules.

Passive activity rules. A *passive activity* is any trade or business activity in which the taxpayer doesn't materially participate. To determine material participation, see Pub. 925. Rental activities are passive activities regardless of the taxpayer's participation, unless the taxpayer meets certain eligibility requirements.

Individuals, estates, and trusts can offset passive activity losses only against passive activity income. Passive activity losses or credits not allowed in 1 tax year can be carried forward to the next year.

If a passive activity interest is transferred because a taxpayer dies, the accumulated unused passive activity losses are allowed as a deduction against the decedent's income in the year of death. Losses are allowed only to the extent they are greater than the excess of the transferee's (recipient of the interest

transferred) basis in the property over the decedent's adjusted basis in the property immediately before death. The part of the accumulated losses equal to the excess isn't allowed as a deduction for any tax year.

Use Form 8582, Passive Activity Loss Limitations, to summarize losses and income from passive activities and to figure the amounts allowed. For more information, see Pub. 925.

Credits, Other Taxes, and Payments

Discussed below are some of the tax credits, types of taxes that may be owed, income tax withheld, and estimated tax payments reported on the final return of a decedent.

Credits

On the final income tax return, you can claim any tax credits that applied to the decedent

before death. Some of these credits are discussed next.

Earned income credit. If the decedent was an eligible individual, you can claim the earned income credit on the decedent's final return even though the return covers less than 12 months. If the allowable credit is more than the tax liability for the year, the excess is refunded. For more information, see Pub. 596, Earned Income Credit (EIC).

Credit for the elderly or the disabled. This credit is allowable on a decedent's final income tax return if the decedent met both of the following requirements in the year of death.

- The decedent was a “qualified individual.”
- The decedent had income (AGI and nontaxable social security and pensions) less than certain limits.

For details on qualifying for or figuring the credit, see Pub. 524, Credit for the Elderly or the Disabled.

Child tax credit. If the decedent had a qualifying child, you may be able to claim the child tax credit on the decedent's final return even though the return covers less than 12 months. You may be able to claim the additional child tax credit and get a refund if the credit is more than the decedent's liability. For more information, see the Instructions for Form 1040.

Adoption credit. Depending upon when the adoption was finalized, this credit may be taken on a decedent's final income tax return if either of the following applies.

- The decedent adopted an eligible child and paid qualified adoption expenses.
- The decedent has a carryforward of an adoption credit from a prior year.

Also, if the decedent is survived by a spouse who meets the filing status of qualifying surviving spouse, unused adoption credit may be carried forward and used following the death of the decedent. See Form 8839, Qualified Adoption Expenses, and its instructions for more details.

General business tax credit. The general business credit available to a taxpayer is limited. Any unused credit arising in a tax year beginning after 1997 has a 1-year carryback and a 20-year carryforward period.

After the carryforward period, a deduction may be allowed for any unused business credit. If the taxpayer dies before the end of the carryforward period, the deduction is generally allowed in the year of death.

For more information on the general business credit, see Pub. 334, Tax Guide for Small Business.

Other Taxes

Taxes other than income tax that may be owed on the final return of a decedent include self-employment tax and alternative minimum tax, which are reported on Form 1040 or 1040-SR.

Self-employment tax. Self-employment tax may be owed on the final return if either of the following applied to the decedent in the year of death.

1. Net earnings from self-employment (excluding income described in (2)) were \$400 or more.
2. Wages from services performed as a church employee were \$108.28 or more.

Alternative minimum tax (AMT). The tax laws give special treatment to certain types of income and allow special deductions and credits for certain types of expenses. The AMT was enacted so taxpayers who benefit from

these laws still pay at least a minimum amount of tax. In general, the AMT is the excess of the tentative minimum tax over the regular tax shown on the return.

Form 6251. Use Form 6251, *Alternative Minimum Tax—Individuals*, to determine if this tax applies to the decedent. See the form instructions for information on when you must attach Form 6251 to Form 1040 or 1040-SR.

Form 8801. If the decedent paid AMT in a previous year or had a credit carryforward, the decedent may be eligible for a minimum tax credit. See Form 8801, *Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts*.

Payments of Tax

The income tax withheld from the decedent's salary, wages, pensions, or annuities, and the amount paid as estimated tax are credits (advance payments of tax) that must be claimed on the final return.

Tax Forgiveness for Armed Forces Members, Victims of Terrorism, and Astronauts

Income tax liability may be forgiven for a decedent who dies due to service in a combat zone, due to military or terrorist actions, as a result of a terrorist attack, or while serving in the line of duty as an astronaut.

Combat Zone

If a member of the Armed Forces of the United States dies while in active service in a combat zone or from wounds, disease, or injury incurred in a combat zone, the decedent's income tax liability is abated (forgiven) for the entire year in which death occurred and for any prior tax year ending on or after the first day the person served in a combat zone in active service. For this purpose, a qualified hazardous duty area is treated as a combat zone.

If the tax (including interest, additions to the tax, and additional amounts) for these years has been assessed, the assessment will be forgiven. If the tax has been collected (regardless of the date of collection), that tax will be credited or refunded.

Any of the decedent's income tax for tax years before those mentioned above that remains unpaid as of the actual (or presumptive) date of death won't be assessed. If any unpaid tax (including interest, additions to the tax, and additional amounts) has been assessed, this assessment will be forgiven. Also, if any tax was collected after the date of death, that amount will be credited or refunded.

The date of death of a member of the Armed Forces reported as missing in action or as a prisoner of war is the date the member's name is removed from missing status for military pay purposes. This is true even if death actually occurred earlier.

For other tax information for members of the Armed Forces, see Pub. 3, Armed Forces' Tax Guide.

Military or Terrorist Actions

The decedent's income tax liability is forgiven if, at death, the decedent was a military or civilian employee of the United States who died because of wounds or injury incurred:

- While a U.S. employee, and
- In a military or terrorist action.

The forgiveness applies to the tax year in which death occurred and for any earlier tax year, beginning with the year before the year in which the wounds or injury occurred.

Example. The income tax liability of a civilian employee of the United States who died in 2023 because of wounds incurred while a U.S. employee in a terrorist attack that occurred in 2017 will be forgiven for 2023 and for all prior tax years in the period 2016 through 2022.

Refunds are allowed for the tax years for which the period for filing a claim for refund hasn't ended, as discussed later.

Military or terrorist action defined. A *military or terrorist action* means the following.

- Any terrorist activity that most of the evidence indicates was directed against the United States or any of its allies.
- Any military action involving the U.S. Armed Forces and resulting from violence or aggression against the United States or any of its allies, or the threat of such violence or aggression.

Terrorist activity includes criminal offenses intended to coerce, intimidate, or retaliate against the government or civilian population. Military action doesn't include training exercises. Any multinational force in which the United States is participating is treated as an ally of the United States.

Determining if a terrorist activity or military action has occurred. You may rely on published guidance from the IRS to determine if a particular event is considered a terrorist activity or military action.

Specified Terrorist Victim

The Victims of Terrorism Tax Relief Act of 2001 (the Act) provides tax relief for those injured or killed as a result of terrorist attacks, certain survivors of those killed as a result of terrorist attacks, and others who were affected by terrorist attacks. Under the Act, the federal income tax liability of those killed in the following attacks (specified terrorist victim) is forgiven for certain tax years.

The April 19, 1995, terrorist attack on the Alfred P. Murrah Federal Building (Oklahoma City).

- The September 11, 2001, terrorist attacks.

- The terrorist attacks involving anthrax occurring after September 10, 2001, and before January 1, 2002.

The Act also exempts from federal income tax the following types of income.

- Qualified disaster relief payments made after September 10, 2001, to cover personal, family, living, or funeral expenses incurred because of a terrorist attack.
- Certain disability payments (including Social Security Disability Insurance (SSDI) payments) received in tax years ending after September 10, 2001, for injuries sustained in a terrorist attack.
- Certain death benefits paid by an employer to the survivor of an employee because the employee died as a result of a terrorist attack.
- Payments from the September 11th Victim Compensation Fund 2001.

The Act also reduces the estate tax of individuals who die as a result of a terrorist attack. See [Pub. 3920, Tax Relief for Victims of Terrorist Attacks](#) for more information.

Astronauts

Legislation extended the tax relief available under the Victims of Terrorism Tax Relief Act of 2001 (the Act) to astronauts who died in the line of duty after December 31, 2002. The decedent's income tax liability is forgiven for the tax year in which death occurs, and for the tax year prior to death. For information on death benefit payments and the reduction of federal estate taxes, see Pub. 3920.

However, the discussions in that publication under *Death Benefits* and *Estate Tax Reduction* should be modified for astronauts (for example, by using the date of death of the astronaut instead of September 11, 2001).

For more information on the Act, see Pub. 3920.

Claim for Credit or Refund

If any of these tax-forgiveness situations applies to a prior year tax, any tax paid for which the period for filing a claim hasn't ended will be credited or refunded. If any tax is still due, it will be canceled. The normal period for filing a claim for credit or refund is 3 years after the return was filed or 2 years after the tax was paid, whichever is later.

If death occurred in a combat zone or from wounds, disease, or injury incurred in a combat zone, the period for filing the claim is extended by:

1. The amount of time served in the combat zone (including any period in which the individual was in missing status), plus
2. The period of continuous qualified hospitalization for injury from service in the combat zone, if any, plus
3. The next 180 days.

Qualified hospitalization means any hospitalization outside the United States and any hospitalization in the United States of not more than 5 years.

This extended period for filing the claim also applies to a member of the Armed Forces who was deployed outside the United States in a designated contingency operation.

Filing a claim. Use the following procedures to file a claim.

- If a U.S. individual income tax return (Form 1040 or 1040-SR) hasn't been filed, you should make a claim for refund of any withheld income tax or estimated tax payments by filing Form 1040 or 1040-SR. Form W-2 must accompany all returns.
- If a U.S. individual income tax return has been filed, you should make a claim for refund by filing Form 1040-X. You must file a separate Form 1040-X for each year in question.

You must file these returns and claims at the following address for regular mail (U.S. Postal Service).



Internal Revenue Service

333 W. Pershing, Stop 6503, P5

Kansas City, MO 64108

Identify all returns and claims for refund by writing "Iraqi Freedom—KIA," "Enduring Freedom—KIA," "Kosovo Operation—KIA," "Desert Storm—KIA," or "Former Yugoslavia—KIA" in bold letters on the top of page 1 of the return or claim. On the applicable return, write the same phrase on the line for total tax. If the individual was killed in a terrorist or military action, put "KITA" on the front of the return and on the line for total tax.

Include an attachment showing the computation of the decedent's tax liability and a computation of the amount to be forgiven. On joint returns, make an allocation of the tax as described later under *Joint returns*. If you can't make a proper allocation, attach a

statement of all income and deductions allocable to each spouse and the IRS will make the proper allocation.

You must attach Form 1310 to all returns and claims for refund. However, for exceptions to filing Form 1310, see Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer, under *Refund*, earlier.

You must also attach proof of death that includes a statement that the individual was a U.S. employee on the date of injury and on the date of death and died as the result of a military or terrorist action. For military and civilian employees of the Department of Defense, attach DD Form 1300, Report of Casualty. For other U.S. civilian employees killed in the United States, attach a death certificate and a certification (letter) from the federal employer. For other U.S. civilian employees killed overseas, attach a certification from the Department of State.

If you don't have enough tax information to file a timely claim for refund, you can suspend the period for filing a claim by filing Form 1040-X. Attach Form 1310, any required documentation currently available, and a statement that you will file an amended claim as soon as you have the required tax information.

Joint returns. If a joint return was filed, only the decedent's part of the income tax liability is eligible for forgiveness. Determine the decedent's tax liability as follows.

1. Figure the income tax for which the decedent would have been liable if a separate return had been filed.
2. Figure the income tax for which the spouse would have been liable if a separate return had been filed.
3. Multiply the joint tax liability by a fraction. The numerator of the fraction is the amount in (1) above. The

denominator of the fraction is the total of (1) and (2).

The resulting amount from (3) above is the decedent's tax liability eligible for forgiveness. See also Worksheet B in Pub. 3920.

Filing Reminders

To minimize the time needed to process the decedent's final return and issue any refund, be sure to follow these procedures.

1. Write "DECEASED," the decedent's name, and the date of death across the top of the tax return.
2. If a personal representative has been appointed, the personal representative must sign the return. If it is a joint return, the surviving spouse must also sign it.
3. If you are the decedent's spouse filing a joint return with the decedent and no personal representative has been

appointed, write "Filing as surviving spouse" in the area where you sign the return.

4. If no personal representative has been appointed and if there is no surviving spouse, the person in charge of the decedent's property must file and sign the return as "personal representative."
5. To claim a refund for the decedent, do the following.
 - a. If you are the decedent's spouse filing a joint return with the decedent, file only the tax return to claim the refund.
 - b. If you are the personal representative and the return isn't a joint return filed with the decedent's surviving spouse, file the return and attach a copy of the certificate that shows your

appointment by the court. (A power of attorney or a copy of the decedent's will isn't acceptable evidence of your appointment as the personal representative.) If you are filing an amended return, attach Form 1310 and a copy of the certificate of appointment (or, if you have already sent the certificate of appointment to the IRS, write "Certificate Previously Filed" at the bottom of Form 1310).

- c. If you aren't filing a joint return as the surviving spouse and a personal representative hasn't been appointed, file the return and attach Form 1310.

Other Tax Information

Discussed below is information about the effect of an individual's death on the income tax liability of the survivors (including the surviving spouse), the beneficiaries, and the estate.

Tax Benefits for Survivors

Survivors can qualify for certain benefits when filing their own income tax returns.

Joint return by surviving spouse. A surviving spouse can file a joint return for the year of death and may qualify for special tax rates for the following 2 years, as explained under Qualifying surviving spouse, later.

Decedent as your dependent. If the decedent qualified as your dependent for a part of the year before death, you can claim the dependent on your tax return, regardless of when death occurred during the year.

If the decedent was your qualifying child, you may be able to claim the child tax credit or the earned income credit. To determine if you qualify for the child tax credit, see the Instructions for Form 1040 (and 1040-SR), line 19; or Form 1040-NR, line 19. To determine if you qualify for the earned income credit, see the instructions for Form 1040 and 1040-SR, line 27.

Qualifying surviving spouse. If your spouse died within the 2 tax years preceding the year for which your return is being filed, you may be eligible to claim the filing status of qualifying surviving spouse with dependent child and qualify to use the married-filing-jointly tax rates.