

IRM PROCEDURAL UPDATE

DATE: 11/20/2013

NUMBER: WI-21-1113-1669

SUBJECT: New Subsection - Provision 1402 of the Affordable Care Act - Form 8960, Net Investment Income Tax - Individuals, Estates, and Trusts

AFFECTED IRM(s)/SUBSECTION(s): 21.7.4.4.1.7.1

CHANGE(s):

IRM 21.7.4.4.1.7.1 Added new subsection titled: Form 8960, Net Investment Income Tax - Individuals, Estates, and Trusts

1. The Health Care and Education Reconciliation Act of 2010 added a Net Investment Income Tax (NIIT) under section 1411 of the Internal Revenue Code for tax years 2013 and subsequent. The NIIT applies at a rate of 3.8% to certain net investment income of individuals, estates and trusts. Although section 1411 falls within Chapter 2A of the Code, entitled "Unearned Income Medicare Contribution", the tax is not a payroll tax. Generally, the NIIT cannot be offset by most tax credits (such as foreign tax credit or general business credit).
2. The 3.8 percent net investment income tax is generally levied on non-business income from interest, dividends, non-qualified annuities, royalties, rents, and capital gains.
3. Information concerning individual taxpayers can be found in IRM 21.6.4.4.20, Net Investment Income Tax.
4. In the case of an estate or trust, section 1411(a)(2) imposes a tax (in addition to any other tax imposed by subtitle A) for each taxable year equal to 3.8 percent of the lesser of the taxpayers:
 - a. Undistributed net investment income for such taxable year, or
 - b. excess (if any) of-(i) the adjusted gross income (as defined in Code section 67(e)) for such taxable year, over (ii) the dollar amount at which the highest tax bracket in Code section 1(e) begins for such taxable year.
5. The tax does not apply to the following estate and trusts listed below:
 - o Trusts that are exempt from income taxes imposed by Subtitle A of the Internal Revenue Code (e.g., charitable trusts and qualified retirement plan trusts exempt from tax under IRC section 501, and Charitable Remainder Trusts exempt from tax under IRC section 664).
 - o A trust in which all of the unexpired interests are devoted to one or more of the purposes described in IRC 170(c)(2)(B).
 - o Trusts that are classified as "grantor trusts" under IRC 671 through IRC 679.

- Trusts that are not classified as “trusts” for federal income tax purposes (e.g., Real Estate Investment Trusts and Common Trust Funds).
 - Alaskan Native Settlement Trusts (Form 1041-N) or Perpetual Care (Cemetery) Trusts.
 - A trust or decedent’s estate in which all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).
 - Foreign estates or foreign trusts (but the U.S. beneficiaries may be subject to the tax on the NII distributed by these entities)
- 6. The 3.8 percent net investment income tax is reported on Form 8960, Net Investment Income Tax – Individuals, Estates and Trusts. The new Form will be attached to either Form 1041 or Form 1041-QFT. For Form 1041, the net investment income tax will be included in the amount on line 23, and for Form 1041-QFT, the net investment income tax will be included in the amount on line 17.
- 7. For Form 8960, the amount of income which is subject to the net investment income tax is captured on line 20 and the net investment income tax is captured on line 21.
- 8. Beginning in January 2014, the net investment income (NI Income) and the net investment income tax (NI Income Tax) will be transcribed and will post to command codes TXMOD and BMFOLR.
 - Input Item reference number 861 to update the net investment income
 - Input Item Reference Number 862 to update the net investment income tax
 - Input TC 29X to decrease/increase the Net Investment Income Tax
- 9. More information can be found on irs.gov under Net Investment Income Taxes FAQs, See frequently asked questions for more information.