

1991



Department of the Treasury Internal Revenue Service

General Instructions

Purpose of Form

Form 1041 is used by the fiduciary of a domestic estate, trust, or bankruptcy estate, to report: (1) the income received by the estate or trust; (2) the income that is either accumulated or held for future distribution or distributed currently to the beneficiaries; and (3) any applicable tax liability of the fiduciary.

Introduction to the Income

Taxation of Estates and Trusts

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

An estate or trust computes its gross income in much the same manner as an individual. Generally, the deductions and credits allowed to individuals are also allowed to estates and trusts. However, there is one major distinction. An estate or trust is allowed an income distribution deduction for distributions to beneficiaries. To compute this deduction, the estate or trust must complete Schedule B. The income distribution deduction determines the amount of the distribution that is to be taxed to the beneficiary.

For this reason, sometimes an estate or trust is referred to as a "pass-through" entity since it may distribute its income, and certain allocable deductions, to the beneficiary. It is the beneficiary, and not the estate or trust, that pays the income tax on such amounts. Schedule K-1 is used to notify the beneficiaries of the amounts to be included on their respective tax returns.

Before beginning preparation of Form 1041, the fiduciary must compute the accounting income of the estate or trust under the will or trust instrument to determine the amount, if any, of income that is required to be distributed since the income distribution deduction is based, in part, on that amount.

Additional Information

In addition to the publications listed throughout these instructions, you may wish to get:

Publication 448, Federal Estate and Gift Taxes;

Publication 550, Investment Income and Expenses; and

Publication 559, Tax Information for Survivors, Executors, and Administrators.

These publications, along with other publications, may be obtained at most IRS offices. To order publications and forms, call our toll-free number 1-800-TAX-FORM (829-3676).

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

U.S. Fiduciary Income Tax Return

(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 more simple, we would be happy to hear from you. You can write to both the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the Office of Management and Budget, Paperwork Reduction Project (1545-0092), Washington, DC 20503. DO NOT send the tax form to either of these offices. Instead, see the "Where To File" instructions on page 3.

Changes You Should Note

- Lines 3 through 6 of Form 1041 have been substantially revised. All rental income, royalties, income or (loss) from partnerships, S corporations, other estates or trusts, and REMICs is now reported only on Schedule E (Form 1040). Use only line 5 to report the total income or (loss) from Schedule E (Form 1040).
• If the estate or trust has a net capital gain, it may qualify for the maximum capital gains rate of 28%. See Part VI of Schedule D (Form 1041).
• For tax years beginning in 1991, the filing requirement for bankruptcy estates is increased to \$5,000.
• For tax years beginning in 1991, the tax rates are revised and indexed to reflect the cost-of-living adjustment.
• For tax years beginning in 1991, personal interest is no longer deductible.

Extension of Time To File 3
Where To File. 3
Electronic Filing of Form 1041 3
Estimated Income Tax Payments . . . 3
Income and Deductions In Respect of a Decedent 4
Interest and Penalties 4
Grantor Type Trust 5
Bankruptcy Estate 5
Nonexempt Charitable and Split-Interest Trusts 6
Amended Return. 6
Income. 6
Deductions 7
Limitations on Deductions. 7
Schedule A—Charitable Deductions. . 10
Schedule B—Income Distribution Deduction 11
Schedule G—Tax Computation 12
Other Information 13
Signature 13
Schedule D—Capital Gains and Losses 14
Schedule J—Trust Allocation of an Accumulation Distribution 15
Schedule K-1—Beneficiary's Share of Income, Deductions, Credits, Etc. . . 17

Contents

Purpose of Form. 1
Who Must File 2
Definitions. 2
Additional Returns and Documents You May Have To File 2
Period Covered by the Return 2
Participants in Common Trust Funds . 3
When To File 3

Who Must File

1. **Decedent's Estate.**—The fiduciary (or one of the joint fiduciaries) must file Form 1041 for the estate of a domestic decedent that has:

- (a) Gross income for the tax year of \$600 or more, or
- (b) A beneficiary who is a nonresident alien.

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

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

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

3. **Bankruptcy Estate.**—The fiduciary 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 \$5,000 or more. Form 1041 is used ONLY as a transmittal for **Form 1040**, U.S. Individual Income Tax Return. Figure the tax for the bankruptcy estate on Form 1040 by using the tax rate schedule for a married person filing separately and enter the tax on page 2 of Form 1040. Attach Form 1040 to your return.

Definitions

Fiduciary.—The term "fiduciary" includes a trustee of a trust or the executor, executrix, administrator, administratrix, personal representative, or a person in possession of property of a decedent's estate.

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

Trust.—The term "trust" refers to 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.

Beneficiary.—The term "beneficiary" includes heir, legatee, or devisee.

Income Required To Be Distributed Currently.—The term "income required to be distributed currently" means 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.

See "Participants in Common Trust Funds" on page 3 for a special rule regarding treatment of income required to be distributed currently.

Distributable Net Income.—The term "distributable net income" (DNI) limits the income distribution deduction allowable to estates and trusts for amounts paid, credited, or required to be distributed to beneficiaries and is 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.

Additional Returns and Documents You May Have To File

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.

Form 1041-ES, Estimated Income Tax for Fiduciaries.

Form 1041-T, Allocation of Estimated Tax Payments to Beneficiaries.

Form 56, Notice Concerning Fiduciary Relationship.

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return; or **Form 706NA**, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of Nonresident Not a Citizen of the United States.

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

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

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

Forms 1042 and 1042S, 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 U.S. that is not effectively connected with a U.S. trade or business. For more information, see sections 1441 and 1442, and **Publication 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 that were received as a nominee on behalf of another person.

Some of the above 1099 forms do not have to be filed if it would result in the duplication of income information required to be reported on Schedule K-1 of Form 1041.

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).

Form 8656, Alternative Minimum Tax—Fiduciaries.

Note: *Most filers of Form 1041 need to complete part, if not all, of Form 8656. See Form 8656 for details.*

Form 8822, Change of Address.

Decedent's Will and Trust Instrument.—

You do not have to file a copy of the decedent's will or the trust instrument unless the IRS requests it. If the IRS requests it, file a copy (including any amendments) with the following:

1. A signed statement that, under the penalties of perjury, the copy of the will or the trust instrument is true and complete.
2. A statement naming the provisions of the will or the trust instrument that you believe determine how the income is to be split up among the estate or trust, the grantor (if applicable), and the beneficiaries.

Period Covered by the Return

For an 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, then you are adopting a fiscal 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.

File Form 1041 for the calendar year 1991 (if this is the initial year of the estate or trust, the tax period that ends on December 31, 1991), or for a fiscal year beginning in 1991. If an estate wants to change its accounting period, get **Form 1128**, Application To Adopt, Change or Retain a Tax Year.

Note: *When reporting interest or dividend income on Form 1041 for the first year of the decedent's estate and on the decedent's final income tax return, Forms 1099-DIV and 1099-INT issued in the name of the decedent may reflect earnings for the entire year. The fiduciary, when preparing the final income tax return of the decedent, should indicate on Schedule B (Form 1040) or Schedule 1 (Form 1040A),*

that the balance of any interest or dividend income is reported on Form 1041. The name and address of the fiduciary return, Form 1041, should also be shown.

Participants in Common Trust Funds (CTFs)

Trusts that are participants in a Common Trust Fund (CTF) must include in income one-fourth of income in excess of expenses attributable to the CTF's 1988 short tax year. When computing the income distribution deduction for a trust that is required to distribute its income currently under section 651 or 661, the income that is required to be distributed currently is deemed to be increased by the amount included in the distributable net income.

The amount of the increase is only hypothetical and does not increase the actual amount required to be distributed currently.

Grantor Trusts.—The grantor is treated as the participant in the common trust fund and is the party entitled to the four-year spread of items from the CTF's short tax year.

See Notice 89-22, 1989-1 C.B. 652, and Notice 90-1, 1990-1 C.B. 297 for more details.

When To File

File Form 1041 by the 15th day of the 4th month following the close of the tax year of the estate or trust. For calendar year trusts, file Form 1041 and Schedules K-1 on or before April 15, 1992. A fiscal year estate, for example, would file Form 1041 by October 15, 1992, for an estate that has a tax year that ends on June 30, 1992.

Note: The 1991 Form 1041 may also be used for a tax year beginning in 1992 if:

(1) the estate or trust has a tax year of less than 12 months that begins and ends in 1992; and

(2) the 1992 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 1992 tax year on the 1991 Form 1041 and incorporate any tax law changes that are effective for tax years beginning after December 31, 1991.

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 Return for a U.S. 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 a Return for a U.S. Partnership, REMIC, or for Certain Trusts. For more information, see Regulations section 1.6081-3T.

Where To File

Except for charitable and split-interest trusts and pooled income funds:

If you are located in	Please mail to the following Internal Revenue Service Center
New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	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	Please mail to the following Internal Revenue Service Center
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

Electronic Filing of Form 1041

Qualified tax return filers can file Form 1041 and related schedules via magnetic media (magnetic tapes, floppy diskettes) or electronically. If the fiduciary files the estate's or trust's return electronically or on magnetic tape, he or she must also file **Form 8453-F**, U.S. Fiduciary Income Tax Declaration and Signature for Electronic/Magnetic Media Filing. See **Pub. 1437**, Procedures for Electronic/Magnetic Media Filing of U.S. Fiduciary Income Tax Return, Form 1041, for Tax Year 1991, for more information.

An application form to participate in the electronic filing program and Pub. 1437 may be obtained by calling the Magnetic Media Unit at the Philadelphia Service Center at (215) 969-7533 (not a toll-free number) or by writing to:

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

See Rev. Proc. 90-46 C.B. 1990-2 521.

Estimated Income Tax Payments

Trusts.—A trust must pay estimated income tax if it expects to owe, after subtracting any withholding and credits, at least \$500 in tax for 1991, and it expects the withholding to be less than:

(1) 90% of the tax shown on the 1991 tax return, or

(2) 100% of the tax shown on the 1990 tax return (assuming the return covered all 12 months).

A grantor trust which receives the residue of the decedent's estate is exempt from estimated tax payments for any tax year ending before the date two years after the date of the decedent's death.

Estates.—An estate is required to make estimated income tax payments for any tax year ending two or more years after the date of decedent's death.

Exceptions.—Generally, the estate or trust will not have to pay estimated tax if its 1992 income tax return will show:

(1) a tax balance due of less than \$500; or

(2) the estate or trust had no tax liability in the preceding tax year and the preceding tax year was a full 12 months.

For more information see Form 1041-ES.

Section 643(g) Election.—Fiduciaries of both estates and trusts that pay estimated

tax may elect to have any portion of their estimated tax payments allocated to any of the beneficiaries. To make a section 643(g) election a fiduciary must file **Form 1041-T**, Allocation of Estimated Tax Payments to Beneficiaries, to show the allocation of any estimated tax payments among the beneficiaries.

Note: *The fiduciary of an estate may make a section 643(g) election only for the last tax year of the estate.*

Amounts applied to each beneficiary are treated as paid or credited to the beneficiary on the last day of the trust's tax year and should be reported on Schedule K-1 (Form 1041) and Form 1041-T. Be sure to copy the name, address, and EIN of the estate or trust exactly as reported on Form 1041. See section 643(g) and instructions for line 24b.

Magnetic Tape Filing Requirements.—Under the provisions of Revenue Procedure 89-49, 1989-2 C.B. 615, fiduciaries that have a Treasury Tax and Loan (TT&L) Account for deposited Federal taxes and administer at least 200 taxable trusts are required to submit the data on estimated tax payments on magnetic tape. See Rev. Proc. 89-49 for details on this filing requirement.

Income and Deductions in Respect of a Decedent

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

In general, the term "income in respect of a decedent" means income which a decedent was entitled to receive but which was not properly includable in the decedent's final Form 1040 under the decedent's method of accounting.

IRD includes: (1) all accrued income of a decedent who reported his income on a cash method of accounting; (2) income accrued solely by reason of the decedent's death in the case of a decedent who reported his income on an accrual method of accounting; and (3) income to which the decedent had a contingent claim at the time of his 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 character of the IRD is the same in the hands of the estate as if the decedent had lived and received such amount.

Section 691(b) also allows the following deductions and credits, when paid by the decedent's estate, on Form 1041 that 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.

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.

Multiple Trust Rules

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.

Interest and Penalties

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

Interest is also charged on penalties imposed for failure to file, negligence, substantial understatement of tax, substantial valuation overstatement, and fraud.

Late Filing of Return.—The law provides a penalty of 5% of the tax due for each month, or part of a month, that the return is late (maximum 25%) unless you can show reasonable cause for the delay. If you file a return late, attach a full explanation to your return. If your return is more than 60 days late, the minimum penalty is the lesser of \$100 or the tax due on your return.

Late Payment of Tax.—Generally, the penalty for not paying tax when due is 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 applies to any unpaid tax shown on a return. 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.*

Penalty for Failure To Supply Schedule K-1.—The fiduciary is required to 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, attach **Form 2210**, Underpayment of Estimated Tax by Individuals and Fiduciaries, to compute any penalties. Enter the amount of any penalties on line 26, Form 1041.

Other Penalties.—Other penalties can be imposed for negligence and substantial underpayment of tax. See **Publication 17**, Your Federal Income Tax, for details on these penalties.

Attachments

If you need more space on the forms or schedules, attach separate sheets showing the same information in the same order as on the printed forms. Show the totals on the printed forms.

Enter the estate's or trust's employer identification number on each sheet. Also, use sheets that are the same size as the forms and schedules and indicate clearly the line of the printed form to which the information relates.

Rounding Off to Whole-dollar Amounts

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

Unresolved Tax Problems

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.

The Problem Resolution Office will take responsibility for your problem and ensure that it receives proper attention. Although this office cannot change the tax law or technical decisions, it can frequently clear up misunderstandings that resulted from previous contacts.

Hearing-impaired taxpayers who have access to TDD equipment, may call 1-800-829-4059 to ask for help from Problem Resolution.

Specific Instructions

Identification Area

Please 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.

Fill in the information called for at the top of the form and check the appropriate entity box. See "Type of Entity" on page 5 for descriptions of the types of trusts and estates.

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

If the postal service does not deliver mail to the street address and the fiduciary has

a P. O. box, show the P. O. box number instead of the street address.

A. Type of Entity

Check the appropriate box which 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 by 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 "simple" if the trust instrument:

- (1) Requires that all income must be distributed currently;
- (2) Does not allow amounts to be paid, permanently set aside, or used in the tax year 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, transfers made in trust after March 1, 1986, are subject to section 673(a), which treats the grantor 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.

Further, section 672(e) treats the grantor 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 subsequent to 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.

On page 1 at the top of Form 1041, write the name, identification number, and address of the grantor(s) or other person(s) in parentheses after the name of the trust.

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.

Simplified Filing Requirement.—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 to payers of income and report all items of income, deduction, and credit from the trust on his or her Form 1040.

Method of Reporting.—This special rule applies to certain revocable trusts located in the United States and that 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 social security number 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.

Bankruptcy Estate.—A "bankruptcy estate" is a separate and distinct taxable entity from the individual debtor for Federal income tax purposes. It is created when an individual debtor files for bankruptcy under Chapter 7 or 11 of the United States Code. If the case is subsequently dismissed by the bankruptcy court, the estate is not treated as a separate entity under the rules of section 1398. A bankruptcy estate is NOT created upon the commencement of a bankruptcy case involving a partnership or corporation.

The gross income of the bankruptcy estate consists of: (1) any gross income of the individual debtor which under bankruptcy law constitutes property of the bankruptcy estate; and (2) the gross

income of the estate beginning on and after the date the case commenced.

An amount paid or incurred by the bankruptcy estate is deductible or creditable by the estate to the same extent as that item would have been deductible or creditable by the individual debtor had the debtor remained in the same trades, businesses, or activities after the case commenced and had the debtor paid or incurred such amount.

Under section 1398(c) the taxable income of the bankruptcy estate is computed in the same manner as for an individual. The estate is allowed a personal exemption of \$2,150 (for tax year beginning in 1991). Estates that do not itemize deductions are allowed a standard deduction of \$2,850. Use Form 1040 to compute the estate's taxable income.

The fiduciary of the bankruptcy estate computes the tax using the tax rate schedule for a married person filing separately which is found in the instructions for Form 1040. Form 1041 is used ONLY as a transmittal for Form 1040. Complete only the identification area at the top of Form 1041, enter any tax due, and sign and date the Form 1041. Enter the tax on page 2 of Form 1040 and attach it to Form 1041.

For more information see section 1398 and **Publication 908**, Bankruptcy and Other Debt Cancellation.

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.

If the family estate trust is treated as a grantor trust, see the "Grantor Type Trust" instructions. For more information about classification as a grantor trust, see Rev. Rul. 75-257, 1975-2 C.B. 251.

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, you must attach a statement to support the following:

- The calculation of the yearly rate of return. (See Regulations section 1.642(c)-6(c) for the calculation rules.)
- The computation of the deduction for distributions to the beneficiaries.
- The computation of any charitable deduction.

You do not have to complete Schedule A (Form 1041) or Schedule B (Form 1041).

If the fund has accumulations of income, file **Form 1041-A**, U.S. Information Return—Trust Accumulation of Charitable Amounts, 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.

B. Number of Schedules K-1 Attached

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

C. Employer Identification Number (EIN)

Every estate or trust must have an employer identification number (EIN). To apply for one, use **Form SS-4**, Application for Employer Identification Number. You may get this form from the IRS or the Social Security Administration. See **Publication 583**, Taxpayers Starting a Business, 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 an 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 “non-exempt charitable trust” within the meaning of section 4947(a)(1). A “non-exempt charitable trust” is a trust which 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, 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 990EZ)**, Return of Organization Exempt From Income Tax,

and **Schedule A (Form 990)**, Organization Exempt Under 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 doesn’t have any taxable income under Subtitle A, it can file either Form 990 or Form 990EZ 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 which 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, estates or trusts (including a deduction for estate or gift tax purposes).

The fiduciary of a split-interest trust must also file Form 5227 and Form 1041-A if the trust’s governing instrument does not require that all of the trust’s income be distributed currently. Use Form 1041 to report any unrelated business taxable income and to pay any tax that may be due.

Nonexempt Charitable Trusts 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 doesn’t have any taxable income under Subtitle A, it may file Form 990-PF instead of Form 1041 to meet its section 6012 filing requirement.

Initial Return.—Check this box if this is the initial return for the estate or trust. Also, be sure to enter the date the entity was created in the space provided.

Amended Return.—If you are filing an amended Form 1041, check the amended return box. Complete the entire return, correct the appropriate line(s) with the new information, and recompute your tax liability. On an attached sheet explain the reason for the amendment(s) and identify the line(s) and amount(s) 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.

On the final return, neither an estate nor a trust is allowed an exemption. If there is an unused capital loss carryover or excess deductions on the final return, see the “Unused capital loss carryover” and “Excess deductions on termination” discussion in the Schedule K-1 instructions. Figure the deductions on an attached sheet. Although Schedule B is not required to be completed in the final year, you may want to complete it to determine the DNI of the estate or trust.

Income

Line 1

Interest income.—Report all taxable interest income that the estate or trust received during the 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 December 31, 1987, amortizable bond premium is treated as an offset to the interest income instead of as a separate interest deduction. See Publication 550.

Line 2

Dividends.—Enter the total of all taxable dividends.

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. Enter the net profit or (loss) from Schedule C on line 3.

Line 4

Capital gain or (loss).—Enter the net capital gain or (loss) from 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 fiduciary’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 you 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 Form 4797 the gain or loss from the sale or exchange of property other than capital assets and also from involuntary conversions (other than casualty or theft). For more information, see the instructions for Form 4797.

Line 8

Other income.—Enter the total taxable income not reportable elsewhere. State the type and amount of the income. Attach a separate sheet if necessary.

Examples of income to be reported on line 8 are:

- 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**, Statement for Recipients of Total Distributions From Profit-Sharing, Retirement Plans, Individual Retirement Arrangements, 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.—An estate or trust is allowed a deduction for amortization, depletion, and depletion only to the extent the deductions are not allocated to the beneficiaries.

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

For property held by an estate, the allowable deduction is allocated between the estate and the heirs, legatees, and devisees on the basis of the income allocable to each.

For property held by a trust, the allowable deduction is allocated between the income beneficiaries and the trustee 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 depreciation 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.

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

The fiduciary's share of amortization, depletion, and depreciation should be reported on the appropriate lines of Schedule C, E, or F (Form 1040) whose net amounts are 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.—All deductions entered on lines 10 through 15c must include only the fiduciary's share of deductions related to taxable income. If the estate or trust has tax-exempt income, the amount included on lines 10 through 15c must be reduced by the allocable portion attributed to tax-exempt income. The allocable amounts to be included on lines 10 through 15c are determined as follows:

1. Determine the percentage of tax-exempt income to gross income.—Divide the total tax-exempt income received by the total of all items of gross income (including tax-exempt income) included in distributable net income.

2. Determine the excludable amount of each specific deduction.—Multiply the percentage of tax-exempt income by each specific deduction.

3. Determine the amount deductible on lines 10 through 15c.—Subtract the excludable amount of each specific deduction from the specific deduction and enter the balance on the appropriate line.

Deductions That May Be Allowable for Estate Tax Purposes.—Administration expenses and losses deductible on Form 706 may be deducted 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 applicable to the tax year for which the deduction is claimed. *You cannot deduct on Form 1041 a decedent's medical and dental expenses that are paid by the fiduciary.* See Publication 559 for more information.

Accrued Expenses.—Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year that: (1) all events have occurred that determine the liability; and (2) 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, see Publication 559 and **Publication 925**, Passive Activity and At-Risk Rules.

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

Generally, an activity is deemed to be 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).

In the case of a grantor trust, material participation is determined at the grantor level.

Rental activities are passive activities, whether or not the taxpayer materially participates.

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

In the case of taxable years of an estate ending less than 2 years after the date of death of the decedent, up to \$25,000 of deductions and deduction equivalents of credits attributable to all rental real estate activities in which the decedent actively participated is allowed. Any unused losses and/or credits are deemed "suspended" passive activity losses for the year, and are carried forward.

If the estate or trust distributes any 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 are not allowable as a deduction. See section 469(j).

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 compute the amount of allowable passive activity loss. See **Form 8582-CR**, Passive Activity Credit Limitations, to compute 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 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.

For tax years beginning in 1991, personal interest is no longer deductible. Personal interest includes interest paid on:

- Revolving charge accounts.
- Personal notes for money borrowed from a bank, credit union, or other person.
- Installment loans on personal property.
- Taxes.

Interest that is paid or accrued on indebtedness incurred in connection with the conduct of a trade or business (including a rental activity) by the estate or trust should be deducted on the appropriate line of Schedule C, E, or F (Form 1040).

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.

Generally, “investment interest” is interest (including amortizable bond premium on taxable bonds acquired after 10/22/86, but before 1/1/88) that is paid or accrued 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 computing 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 compute the allowable investment interest deduction.

Any disallowed investment interest expense is allowed as a carryforward to the next tax year. See section 163(d) and Publication 550 for more information.

If the allowable part of the excess investment interest expense is deductible and Form 4952 is required to be completed, write “Form 4952 attached” on line 10. Then add the deductible interest to the other types of deductible interest and enter the total on line 10.

Interest paid or accrued 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 **Publication 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 limitations on indebtedness.

Line 11

Taxes.—Enter any deductible taxes paid or accrued during the tax year that are not deductible elsewhere on Form 1041. State and local sales taxes are not deductible. Instead, they are to be treated as part of the cost of the property upon acquisition, or as a reduction in the amount realized upon disposition.

Deductible taxes include:

- State and local income or real property tax.
- The Generation-Skipping Transfer (GST) tax imposed on income distributions.

Nondeductible taxes include:

- Federal income and excise taxes.
- Customs duties.
- State and local sales taxes.

Line 12

Fiduciary fees.—Enter the deductible fees paid 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 13

Charitable deduction.—Enter the total from Schedule A (Form 1041), line 6.

Line 14

Attorney, accountant, and return preparer fees.—Enter the deductible attorney, accountant, and return preparer fees paid by the estate or trust during the tax year.

Line 15a

Other deductions NOT subject to the 2% floor.—Attach a separate sheet listing all authorized deductions that are not deductible elsewhere on Form 1041.

Do not include on line 15a any losses on worthless bonds and similar obligations and nonbusiness bad debts. These items are reported on Schedule D (Form 1041).

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

Bond premium(s).—For taxable bonds acquired before 10/23/86, 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 Publication 550.

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

Casualty and theft losses.—Use **Form 4684**, Casualties and Thefts, to report casualty and theft losses.

Net operating loss deduction.—An estate or trust is allowed the net operating loss deduction (NOLD) under section 172. In computing the net operating loss, exclude that portion of the income and deductions attributable to the grantor under sections 671 through 678. Also, the charitable contribution deduction under section 642(c) and the income distribution deductions under sections 651 and 661 are not allowed.

The estate or trust is allowed the carryback and carryforward period for the NOLD.

For more information, see **Publication 536**, Net Operating Losses, and **Form 1045**, Application for Tentative Refund. If you claim a net operating loss deduction for the estate or trust, figure the deduction on a separate sheet and attach it to this return.

Fiduciary'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 Schedules C and F (Form 1040), itemize the fiduciary's share of the deductions on an attached sheet. Then include them on line 15a. Itemize each beneficiary's share of the deductions 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 two percent of adjusted gross income (AGI).

The term "miscellaneous itemized deductions" does not include deductions relating to:

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

For more exceptions, see section 67(b).

For estates and trusts, the AGI is computed by subtracting the following from total income (line 9):

- (1) The administration costs of the estate or trust (line 12);
- (2) The income distribution deduction under section 651 or 661 (line 18);
- (3) The amount of the exemption under section 642(b) (line 20); and
- (4) Other deductions claimed on lines 10 through 15a that were incurred in the conduct of a trade or business, or the production of income.

Allowable administration costs are those costs incurred with the administration of the estate or trust which would not have been incurred if the property were not held in such estate or trust. These administration costs are not subject to the two percent floor.

For those estates and trusts whose income distribution deduction is limited to the actual distribution, and NOT the distributable net income (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 computed taking into account the allowable miscellaneous itemized deductions (AMID) after application of the 2% floor. In this situation there are two unknown amounts: (1) the AMID; and (2) 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 1991. The trust instrument provides that capital gains be added to corpus. 50% of the fiduciary fees were 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 two

percent 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.

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

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

To compute line 15b, use the equation below:

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

In the above example:

$$\text{AMID} = 1,500 - (.02(\text{AGI}))$$

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

$$\text{AGI} = (\text{line 9}) - (\text{the total of lines 12, 14, and 15a to the extent they are costs incurred in the administration of the estate or trust}) - (\text{line 18}) - (\text{line 20})$$

In the above example:

$$\text{AGI} = 35,000 - 2,000 - \text{DNI} - 100$$

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

$$\text{AGI} = 32,900 - \text{DNI}$$

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 loss from line 4); less total deductions from line 16 (computed without regard to any miscellaneous itemized deductions); less the AMID.

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

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:

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

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

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

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

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

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

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

Note: *The income distribution deduction is equal to the lesser 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 17

Adjusted total income or (loss).—If you are filing for a year other than the final year, and line 16 is more than line 9, you may have a net operating loss (NOL). Use Form 1045 to determine whether you have an NOL that you can carryback or carryforward.

If you are filing for the final year, and the amount on line 16 is more than the amount on line 9, then you have excess deductions. Excess deductions can only be distributed to a beneficiary on the final return of the estate or trust. For more information, see the instructions for Schedule K-1, line 12a.

Line 18

Income distribution deduction.—

Complete Schedule B (Form 1041) to determine the amount of the income distribution deduction. If you claim an income distribution deduction, complete and attach:

- Parts I and II of Form 8656 to recompute the deduction on a minimum tax basis; AND
- Schedule K-1 (Form 1041) for each beneficiary to which a distribution was made.

If this trust was identified as a trust other than a "Pooled Income Fund" on page 1, Form 1041, complete Schedule B on page 2. However, if line 17 is equal to or less than zero and no distributions were actually made or available on demand to the beneficiaries in the tax year, then do not complete Schedule B.

Cemetery perpetual care fund.—On line 18, deduct the amount, not more than \$5 per gravesite, paid for maintenance of cemetery property. Write the number of gravesites to the right of the entry space for line 18. 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 (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 which 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 Publication 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 fiduciary's share of these deductions on line 19.

Line 20

Exemption.—The exemption amount is determined by whether the fiduciary is filing for a decedent's estate or a trust; and whether this is the final year of the estate or trust.

If you are filing for a decedent's estate, you are entitled to a \$600 exemption; unless you are filing for the final year, in which case no exemption is allowed.

If you are filing for a trust, and the governing instrument requires that all income be distributed currently, then you are entitled to a \$300 exemption, even though you may have distributed amounts other than income during the tax year. No exemption is allowed for the final year. See Regulations section 1.642(b)-1.

All other trusts (i.e., complex trusts) are allowed a \$100 exemption, unless you are filing for the final year, in which case no exemption is allowed.

Line 22

Taxable income of fiduciary.—If line 22 is less than zero, you may have a net operating loss (NOL) that you can carry to another tax year. If you carry the loss back to earlier tax years, use Form 1045 (or file an amended return) to apply for a refund of taxes. See the line 15a instructions for a discussion of computation of an NOL for an estate or trust.

Line 24a

1991 Estimated tax payments and 1990 overpayment credited to 1991.—Enter the amount of any estimated tax payment you made on Form 1041-ES for 1991 plus the amount of any overpayment from the 1990 return that was applied to the 1991 estimated tax.

If the 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

Treated as credited to beneficiaries.—The trustee (or executor, under certain circumstances) 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 which must be filed on or before the 65th day after the close of the trust's tax year. Form

Page 10

1041-T shows the amounts to be allocated to each beneficiary. This amount is to be reflected on the beneficiary's Schedule K-1, line 13a.

Failure to file Form 1041-T by March 6, 1992, 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. Be sure to attach Form 1041-T to your return ONLY if you have not already 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, enter the amount that you paid 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: (1) an employer on wages and salaries of a decedent received by the decedent's estate; or (2) a payer of certain gambling winnings (e.g., state lottery winnings) received by a decedent's estate or trust. Attach a copy of Form W-2, Wage and Tax Statement, or Form W-2G, Certain Gambling Winnings.

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 on line 24g 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 on Fuels. See Publication 378, Fuel Tax Credits and Refunds, for more information.

Line 24h

Include on line 24h any credit for backup withholding (under section 3406) for income retained by the estate or trust. Report on Schedule K-1 (Form 1041), line 13, any credit for backup withholding for income distributed to the beneficiary.

Line 26

Underpayment of estimated tax.—If line 27 is at least \$500 and more than 10% of the tax shown on your return, or you underpaid your 1991 estimated tax liability for any payment period, you may owe a penalty. See Form 2210, Underpayment of Estimated Tax by Individuals and Fiduciaries, to determine whether you owe a penalty, and to figure the amount of the penalty.

Note: The penalty may be waived under certain conditions. See Publication 505,

Tax Withholding and Estimated Tax, for details.

Line 27

Tax due.—The tax of both a trust and an estate must be paid in full when the return is filed.

Make your check or money order payable to "Internal Revenue Service." Write the EIN and "1991 Form 1041" on the payment.

Line 29a

Credit to your 1992 estimated tax.—Enter the amount from line 28 that you want applied to your 1992 estimated tax.

See page 13 for "Signature" instructions.

Instructions for Schedule A (Form 1041) Charitable Deductions

General Instructions

Use Schedule A (Form 1041) to determine the charitable contribution deduction for an estate or complex trust.

The percentage limitations applicable to individuals do not apply to estates and trusts.

The charitable contribution must be authorized by the will or governing instrument and must be made from gross income. Distributions of corpus generally do not qualify for the charitable deduction. If you elect to treat a charitable contribution as paid in the preceding tax year, you must file the statement described in Regulations section 1.642(c)-1 with the return (or amended return) for the tax year in which the contribution is treated as paid. The statement must be filed by the due date including extensions for the return for the succeeding tax year.

Who Must File

1. *Simple Trusts.*—Simple trusts may not claim the charitable deduction.

2. *Complex Trusts.*—Complex trusts may deduct amounts actually paid, but amounts permanently set aside may be deducted only if authorized for certain events that happened on or before October 9, 1969.

All complex trusts claiming a charitable deduction must also file Form 1041-A, U.S. Information Return—Trust Accumulation of Charitable Amounts.

3. *Estates.*—Estates may deduct any part of gross income that under the terms of the will is paid or permanently set aside for a charitable purpose during the tax year.

4. *Other.*—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 (Form 1041) to compute the charitable deduction.

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

Specific Instructions

Line 1.—Enter the full amount paid or permanently set aside from the current year's gross income that qualifies for the charitable deduction. *Do not include capital gain allocable to corpus.* Do include capital gain treated as income under the governing instrument and local law.

Line 2.—Multiply the amount on line 1 by the total of all tax-exempt interest included in the current year's income. Then divide the result by the total of all the current year's income. (Do not subtract any losses, such as from the sale or exchange of property.) Enter the result on line 2.

Line 4.—Enter the total of all net short-term capital gain and net long-term capital gain of the current year that is:

- Allocable to corpus;
- Paid or permanently set aside for charitable purposes; and
- Not included on line 1.

Line 5.—Enter the total of deductible amounts paid or permanently set aside for charitable purposes from gross income of a prior tax year (and for which no charitable deduction was claimed in the prior tax year). Attach a statement to show the details.

Instructions for Schedule B (Form 1041) Income Distribution Deduction

Note: Both "simple" and "complex" trusts, and estates are required to complete Schedule B. Pooled income funds are not required to complete Schedule B for regular tax purposes. See Schedule G, line 6 instructions for alternative minimum tax rules.

General Instructions

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. 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 less than zero and the negative number is attributable wholly or in part to the capital loss limitation rules under section 1211(b) (line 4), then enter as a negative number on Schedule B, line 1, the lesser of the loss from line 17 on page 1, or the loss from line 4 on page 1.

If the negative number is not attributable to the capital loss on line 4, enter -0-.

Line 2

Adjusted tax-exempt interest.—To figure the adjusted tax-exempt interest, subtract the total of:

(1) Tax-exempt interest on Schedule A (Form 1041), line 2; and

(2) Any expenses allowable under section 212 allocable to tax-exempt interest, and any interest expense allocable to tax-exempt interest from the amount of tax-exempt interest received.

Figure section 212 expenses allocable to tax-exempt interest as follows: Divide the total tax-exempt interest received by the total of all the items of gross income (including tax-exempt interest) included in DNI. Multiply the result by the total section 212 expenses that are not directly attributable to any items 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 about the adjustments to deductions for expenses and interest relating to tax-exempt interest.

Line 5

Figure the amount to enter on line 5 as follows: Multiply line 1 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; the denominator of which is all items of income (including the amount of such long-term capital gains) included in DNI.

Line 6

Figure line 6 in the same manner as line 5, except the numerator of the fraction includes only short-term capital gains that are included in the accounting income of the estate or trust and distributed to charities.

Line 10

Accounting income.—If you are filing for an estate, enter -0-. If you are filing for a simple or 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 an earlier year's return that were required to be distributed in the earlier 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

Enter income of the estate or trust that is required to be distributed currently to all beneficiaries, whether it is distributed or not. The governing instrument and local law determine the items of income and whether an amount must be distributed currently. If the governing instrument requires that stated amounts be paid to a beneficiary and that these amounts may come from either income or corpus, include on line 11 any part of these amounts paid from the current year's income.

Line 12

Enter other amounts actually paid, credited, or required to be distributed to beneficiaries in the tax year, whether from income or corpus.

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 after June 1, 1984, 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 to the estate or trust on the distribution (basis of beneficiary), or

(2) The fair market value of such property. This rule does not apply to any noncash property distributed in satisfaction of a specific sum of money. If a section 643(e)(3) election is made by the fiduciary, then the amount entered on line 12 will be the fair market value of the property.

Line 13

Total distributions.—Add lines 11 and 12 and enter the total on line 13. 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 complex trust has no previously accumulated income.

Line 14

In computing the income distribution deduction for beneficiaries, the estate or trust is not allowed a deduction for any item of DNI that is not included in the gross income of the estate or trust. Thus, for purposes of computing the allowable income distribution deduction, the DNI (line 9) is computed 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 compute the adjustment as follows:

Multiply 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 as follows:

From tax-exempt income included on line 13, subtract the total of:

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

To compute the expenses allocable to tax-exempt income, divide tax-exempt income by total income. Multiply the result by expenses not directly allocable to any item of income.

Instructions for Schedule G (Form 1041) Tax Computation

Line 1a

Tax rate schedule.—For tax years beginning in 1991, figure the tax using the Tax Rate Schedule below. Enter the tax on line 1a.

1991 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	\$3,450	15%	\$0
3,450	10,350	\$517.50 + 28%	3,450
10,350	-----	2,449.50 + 31%	10,350

Schedule D.—If you are eligible for the maximum 28% rate on net capital gains, complete Part VI of Schedule D (Form 1041), enter the amount, and check the "Schedule D" box.

Line 1b

Other taxes.—Include on line 1b any additional tax from the following and attach each form to the return. If there is more than one, list on a separate sheet:

- **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" recognized by the trust; and
- (2) At the time the trust received the property, the property had a fair market value 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 fair market value 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 recognized 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 right of the amount column on line 1c. 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. Do not include the section 644 gain in the trust's taxable income.

Line 2a

Fiduciary's share of foreign tax credit.—Attach **Form 1116**, Foreign Tax Credit (Individual, Fiduciary, 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 claim credit for that part of the foreign taxes not allocable to the beneficiaries (including charitable beneficiaries). Enter the fiduciary's share of the credit on line 2a. See **Publication 514**, Foreign Tax Credit for Individuals, for more information about the foreign tax credit.

Line 2b

Credit for fuel produced from a nonconventional source.—If you claim any section 29 credit for producing fuel from a nonconventional source, figure the credit on a separate sheet. Write "section 29 computation" on the separate sheet and attach it to the return.

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 in the space provided and the amount of the credit.

If the estate or trust is claiming more than one credit, a credit from a passive activity, 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 allocated to the beneficiary.

Form 3468, Investment Credit.—This credit was generally repealed for property placed in service after 1985. For exceptions, see Form 3468.

Form 5884, Jobs Credit.—If the estate or trust operates a business that hires people who are members of special targeted groups, it may qualify for this credit. Use Form 5884 to figure the fiduciary's share of the credit.

Form 6478, Credit for Alcohol Used as Fuel.—If the estate or trust sells straight alcohol (or an alcohol mixture) at retail or uses it as fuel in a trade or business, it may be able to take a credit for the alcohol used as fuel. Use Form 6478 to figure the fiduciary's share of the credit.

Form 6765, Credit for Increasing Research Activities.—The estate or trust may be able to take a credit for research and experimental expenditures paid or incurred in carrying on a trade or business. Use Form 6765 to figure the fiduciary's share of the credit.

Form 8586, Low-Income Housing Credit and **Form 8609**, Low-Income Housing Credit Allocation Certification.—If the estate or trust owned a building that was part of a low-income housing project, it may be able to take a credit. Use Form 8586, Schedule A (Form 8609), and Form 8609 to figure the fiduciary's share of the credit.

Form 8826, Disabled Access Credit.

Form 8830, Enhanced Oil Recovery Credit.—If the estate or trust paid or incurred costs in connection with qualified enhanced oil recovery projects located in the United States for which the first injection of liquids, gases, or other matter began after 1990, it may be eligible for this credit. Use Form 8830 to figure the credit.

Line 2d

Credit for prior year minimum tax.—If the estate or trust paid alternative minimum tax in a previous year, it may be eligible for a minimum tax credit in 1991. See **Form 8801**, Credit for Prior Year Minimum Tax—Individuals (and Fiduciaries).

Line 5

Recapture taxes.—Figure the increase in tax allocable to the fiduciary on an attached **Form 4255**, Recapture of Investment Credit. Enter the tax on line 5. Also, attach **Form 8611**, Recapture of Low-Income Housing Credit, for any recapture allocable to the fiduciary.

Line 6

Alternative minimum tax.—Estates and trusts compute their alternative minimum tax by determining distributable net income on a minimum tax basis.

Use **Form 8656**, Alternative Minimum Tax—Fiduciaries, 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. If the estate or trust takes an income distribution deduction, be sure to attach Form 8656 to Form 1041, regardless of whether the estate or trust is liable for the alternative minimum tax. In computing distributable net alternative minimum taxable income (DNAMTI) of the estate or trust, no deduction is allowed for any:

(1) Miscellaneous itemized deduction (except for administration expenses of the estate or trust); or

(2) Taxes described in section 164(a)(1), (2), or (3) (State and local income and property taxes).

Additional adjustments may apply.

To determine the DNAMTI of the estate or trust, both items of adjustment and items of tax preference under sections 56, 57, and 58, must be taken into account. Some of these items include:

- Accelerated depreciation.
- Mining exploration and development costs.
- Installment sales of certain property.
- Depletion.
- Intangible drilling costs.
- Tax-exempt interest from specified private activity bonds.
- Tax shelter farm losses.
- Passive activity losses.

Line 7

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 7 of Schedule G, Form 1041, with the notation "Section 453A(c) interest." Attach a schedule showing the computation.

Interest 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.

Other Information

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 7.

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.—See the instructions on page 7, for a discussion of the rules of passive

activity losses and credits. If you checked "Yes," complete **Form 8582**, Passive Activity Loss Limitations, to determine allowable passive losses, and the amount of carryforward of any "suspended" passive activity losses for the year.

Question 3.—All salaries, wages, and other compensation for personal services must be included in the return of the person who earned the income, even though 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 3, see the Specific Instructions for "Grantor Type Trust" on page 5.

Question 4.—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 financial account in a foreign country (such as a bank account, securities account, or other financial account).

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 account, securities account, or other financial account in a foreign country.

If you checked "Yes" for Question 4, file Form TD F 90-22.1 by June 30, 1992, 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 from an IRS Forms Distribution Center.

Question 5.—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, is required to 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 7.—Check the box for a complex trust making the section 663(b) election to treat any amount properly paid or credited to a beneficiary within the first 65 days following the close of the tax year as being properly paid or credited on the last day of the preceding tax year.

Question 8.—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 9.—Check the box if the decedent's estate has been open for more than two years and attach an explanation for the delay in closing the estate.

Question 10.—Check the box if the trust participates in a Common Trust Fund that was required to change its tax year in 1988. Also, be sure to see "Participants in Common Trust Funds" on page 3 for additional amounts that may be required to be included in income.

Signature

Form 1041 must be signed by the fiduciary or by an authorized representative.

Financial institutions that submitted estimated tax payments for trusts for which they are the trustee must enter their Employer Identification Number (EIN) in the space provided. Do not enter the EIN of the trust. For this purpose a financial institution is one which maintains a Treasury Tax and Loan account.

Note: 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, the Paid Preparer's space should remain 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 Notice 89-48, 1989-1 C.B. 688.
- Give you a copy of the return in addition to the copy to be filed with the IRS.

Instructions for Schedule D (Form 1041) Capital Gains and Losses

General Instructions

File Schedule D (Form 1041) with 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**, Casualties and Thefts.

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 memorandums 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 that are available from the Internal Revenue Service:

Publication 537, Installment Sales;

Publication 544, Sales and Other Dispositions of Assets; and

Publication 551, Basis of Assets.

Short-Term or Long-Term.—Separate your 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 one year or less. The holding period for long-term capital gains and losses is more than one year. Property acquired by a decedent's estate from the decedent and sold or otherwise disposed of within one year is considered as held for more than one 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 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. The distribution deduction is the property's fair market value. 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 include section 644 gains on Schedule D.* The tax is reported separately on Form 1041. For more information, see the instructions for Schedule G, line 1b.

Transfer of Appreciated Property to a Political Organization.—If an estate or trust transfers property to a political organization as defined in section 527(e)(1), and if at the time of the transfer the fair market value of the property is more than the adjusted basis, treat the transfer as a sale of property on the date of transfer. Report the fair market value of the property at the time of transfer as the sale price. Ordinary income or capital gain provisions apply as if a sale had actually occurred. For more information, see section 84.

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 discussion below), and before 2 years after the date of the last transfer which 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.

Report on Schedule D (or Form 4797, whichever applies) the exchange of like-kind property, even if no gain or loss is recognized. Also complete and attach **Form 8824**, Like-Kind Exchanges. To identify the exchange, in column (a) write "From Form 8824."

Skip columns (b) through (e). Enter the gain or loss, if any, from Form 8824 in column (f). If one or more exchange was made with a related party, write "Related Party Like-Kind Exchange" in the top margin of Schedule D (or Form 4797). See Form 8824 and its instructions for details.

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:

- Wash sales of stock or securities (section 1091).
- Gain or loss on options to buy or sell (section 1234).
- Certain real estate subdivided for sale which 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).
- Gain on the sale of qualified reinvested dividends from a qualified public utility. See Publication 550 for details.
- Loss on sale, exchange, or worthlessness of small business stock (section 1244 stock).
- Distributions received from an employee pension, profit-sharing, or stock bonus plan. See Form 4972.

Disposition of Market Discount Bonds.—See section 1276 for rules on the disposition of any market discount bonds that were issued after July 18, 1984.

Section 1256 Contracts and Straddles.—Use **Form 6781**, Gains and Losses From Section 1256 Contracts and Straddles, to report gains or losses from section 1256 contracts or straddles that you held during the tax year. See Publication 550.

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). Gross sales price.—Enter the selling price of the property sold.

Column (e). Cost or other basis, as adjusted, plus expense of sale.—Enter the cost or adjusted basis of the property sold or exchanged, plus any expense of sale, such as broker's fees, commissions, etc. **Note:** See section 852(f) for treatment

of load charges incurred in acquiring stock in a regulated investment company.

The basis of property acquired from, or passing from, a decedent is generally the fair market value at the date of death. For more information, see Publication 551, Publication 559, and section 1014.

For an election under section 2032A (special valuation for farm or business real property), use the rules of section 2032A to determine basis. See section 1040 for amount of gain to be recognized by the estate.

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.

The basis of property acquired by gifts made before January 1, 1977, generally is the basis of the property in the hands of the donor plus any gift tax paid. For gifts made after December 31, 1976, only part of the gift tax may be added to the basis of the property in the hands of the donor. See Publication 448 and section 1015 for more information.

For any debt instrument having original issue discount issued after July 1, 1982, the basis is increased by the amount of original issue discount that has been included in gross income. See Publication 550.

Attach an explanation if the basis used is other than the actual cash cost of the property.

Lines 2 and 8

Installment sales.—If you sold estate or trust property at a gain this year and are to receive any payment in a later tax year, use the installment method and file **Form 6252**, Installment Sale Income, unless you elect not to.

Also use Form 6252 if you received a payment in 1991 from a sale made in an earlier year on the installment basis.

If you elect not to use the installment method and are reporting a note or other obligation at less than full face amount, state that fact in the margin and give the percentage of valuation.

If you file Form 6252, enter on Schedule D (Form 1041), line 2, the short-term capital gain from installment sales from Form 6252. Enter on Schedule D (Form 1041), line 8, the long-term capital gain from installment sales from Form 6252.

Line 10

Capital gain distributions.—Enter any amounts shown on **Form 2439**, Notice to Shareholder of Undistributed Long-Term Capital Gains, 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. To the basis of the stock, add the excess of the amount included in income over the credit if the amount is not distributed.

Line 15, column (a)

Net short-term capital gain or loss allocated to beneficiaries.—Enter the amount of net short-term capital gain or loss allocable to the beneficiary or beneficiaries. 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.

Line 15, column (b)

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

If the losses from the sale or exchange of capital assets are more than the gains, all of the losses are allocated to the fiduciary and none are allocated to the beneficiaries.

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 the same as the net short-term capital gain or loss on line 15.

Part IV. Computation of 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. Computation of Capital Loss Carryovers From 1991 to 1992.

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. To the extent the capital loss subject to the limitation is deducted from ordinary income, consider the net short-term capital loss as deducted first.

Part VI. Tax Computation Using Maximum Capital Gains Rate

Line 37.—If any beneficiary received capital gains that were derived from income in respect of a decedent and a section 691(c)(4) deduction was claimed, then line 37 must also include the portion of the section 691(c)(4) deduction claimed.

Line 44.—To compute the regular tax, use the 1991 Tax Rate Schedule on page 12.

Line 45.—If the tax using the Maximum Capital Gains Rate on line 43 is less than the regular tax on line 44, then enter the amount from line 45 on line 1a of Schedule G, Form 1041, and check the "Schedule D" box.

Instructions for Schedule J (Form 1041) Trust Allocation of an Accumulation Distribution (Section 665)

General Instructions

Purpose of Form.—File Schedule J (Form 1041) with Form 1041 to report an accumulation distribution by a domestic complex trust.

Specific Instructions

Part I.—Accumulation Distribution in 1991

Line 1

Distribution under section 661(a)(2).—Enter the amount from Schedule B (Form 1041), line 12, for 1991. 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 (Form 1041), line 9, for 1991. 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 (Form 1041), line 11, for 1991. This is the amount of income for the current tax year required to be distributed currently.

Line 5

Accumulation distribution.—Subtract line 4 from line 1. If Schedule B (Form 1041), line 13, is more than Schedule B (Form 1041), line 10, 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 becomes 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 becomes age 21. Then the beneficiary claims the exclusion when filing **Form 4970**, Tax on Accumulation Distribution of Trusts, if the multiple trust rules do not apply. This is because one trustee may be unaware that the beneficiary may be a beneficiary of other trusts with other trustees.

There are examples of accumulation distributions in Regulations section 1.665(b)-1A(b) that include: (1) payments from one trust to another trust, and (2) amounts distributed for a dependent's support.

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
1983-1990	Schedule B (Form 1041), line 9

For information about throwback years, see the instructions for line 13. For purposes of line 6 of Schedule J, 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
1983-1990	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. 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 undistributed net income 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 undistributed net income 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: (1) during that year the trust received "outside income" or (2) the trustee did not distribute all of the income of the trust that was required to be distributed currently for that year. In this case, undistributed net income 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: (1) income taxable to the trust under section 691, (2) unrealized accounts receivable that were assigned to the trust, and (3) distributions from another trust that include the DNI or undistributed net income 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 one of 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)
1983-1990	Schedule B (Form 1041), line 2

Part III.—Taxes Imposed on Undistributed Net Income

Note: *The alternative tax on capital gains was repealed for tax years beginning after December 31, 1978. Neither the 1981 nor 1987 maximum rate on net capital gains is an alternative tax for this purpose.*

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; do not complete Part III. If the trust received an accumulation distribution from another trust, see Regulations section 1.665(b)-1A.

A. Regular Tax Computation

Line 18

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
1988-1990	Schedule G (Form 1041), line 1a

Line 19

Net short-term gain allocated to trust.—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 -0- 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).
1983-1990	{ Schedule D, line 15, column (b), or Schedule D, line 17, column (b).

Line 20

Net long-term gain taxable to the trust.—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.
1987-1990	{ 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
1988-1990	Form 1041, line 22

B. Alternative Tax on Capital Gain

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

Net short-term gain taxable to the trust.—If there is a loss on any of the following lines, enter -0- 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

Total taxable income less section 1202 deduction for capital gain allocated to the trust.—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 five throwback years are involved, attach additional schedules.

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 United States withholding tax.

The beneficiary uses Form 4970 to compute 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.

Instructions for Schedule K-1 (Form 1041) Beneficiary's Share of Income, Deductions, Credits, Etc.

General Instructions

Purpose of Form

File Schedule K-1 (Form 1041) with Form 1041 to report the beneficiary's share of income from the estate or trust.

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. If reasonable cause exists, please explain in a signed affidavit and attach 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 in Publication 1167 or is an exact copy of an IRS Schedule K-1. Other substitute Schedules K-1 require approval. You may apply for approval of a substitute form by writing to: Internal Revenue Service; Attention: Substitute Forms Program Coordinator, R:R:R; 1111 Constitution Ave. NW; 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. The determination of whether trust income is required to be distributed currently depends upon the terms of the trust instrument and the applicable local law.

If the amount of income required to be distributed currently to beneficiaries exceeds the DNI of the trust, each beneficiary includes in his or her gross income an amount equal to his or her proportionate share of the DNI (less tax-exempt interest as adjusted for expenses). See Regulations section 1.652(c)-4 for a comprehensive example.

Estates and complex trusts.—The beneficiary of an 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; and

(2) All other amounts properly paid, credited, or required to be distributed to the beneficiary by the estate or complex trust. See Regulations section 1.662(c)-4 for a comprehensive example of the computation when the amount of income required to be distributed currently exceeds the DNI (less tax-exempt interest as adjusted for expenses and the charitable contributions), and amounts are set aside for a charitable contributions deduction.

For estates and complex trusts that have more than one beneficiary, and if different beneficiaries have substantially separate and independent shares, their shares are treated as a single trust 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 (for example, half dividends and half interest if the entity's income is half dividends and half interest).

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

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

Second, deductions which are not directly attributable to one class of income, such as fiduciary fees, may be allocated to any class of income, as long as a reasonable portion is allocated to any tax-exempt income.

Finally, any excess deductions which 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 non-passive 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.

Allocation of credits.—In general, the estate or trust or the beneficiaries may claim applicable tax credits according to how the income is divided. For more information, see Form 3800.

Also, see **Form 8582-CR**, Passive Activity Credit Limitations, for rules on credits from passive activities.

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 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 Publication 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.

Line 2

Dividends.—Enter the beneficiary's share of dividend income.

Line 3a

Net short-term capital gain.—Enter the beneficiary's share of the net short-term capital gain. Do not enter a loss for any year before the final year of the estate or trust. If, for the final year, 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 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. Do not enter a loss for any year before the final year of the estate or trust. If, for the final year, 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 as an attachment to Schedule K-1.

Line 4a

Business income and other non-passive income.—Enter on line 4a the beneficiary's share of annuities, royalties, or any other income that is NOT subject to any passive activity loss limitation rules at the beneficiary level. Use line 5a to report income items that could be subject to the passive activity rules at the beneficiary's level.

Lines 4b and 5b

Depreciation (including cost recovery).—Enter the beneficiary's share of the depreciation deductions attributable to each activity reported on lines 4a and 5a. See the instructions on page 7 for a discussion of the allocation of the depreciation deduction between the beneficiaries and the estate or trust. Report any tax preference 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 depletion deduction under section 611 attributable to each activity reported on lines 4a and 5a. See the instructions on page 7 for a discussion of the allocation of the depletion deduction between the beneficiaries and the estate or trust. Report any tax preference 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. Divide the amortization deductions between the fiduciary and the beneficiaries in the same way that the depreciation and depletion deductions are divided. Report any tax preference attributable to amortization separately on line 11c.

Lines 5a 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 allocate depreciation, depletion, and amortization deductions to the beneficiaries. These deductions are referred to as "directly allocable deductions."*

The rules for treating a beneficiary's income and directly allocable deductions from an estate or trust and other rules for applying the passive loss and credit limitations to beneficiaries will be provided in future regulations.

Any directly allocable 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 computing any applicable passive activity loss limitations, also attach a separate schedule showing the beneficiary's share of income derived from: (1) rental; (2) rental real estate; and (3) business activities.

Line 6

Income for minimum tax purposes.—Enter the beneficiary's share of the income distribution deduction computed on a minimum tax basis from line 27 of Form 8656.

Line 8

Adjustment for minimum tax purposes.—To assist the beneficiary in computing the correct credit for prior year minimum tax, enter the beneficiary's share of this adjustment that is attributable to exclusion items (lines 4e and 6d of Form 8656) separately on line 11d.

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 9), 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 compute the beneficiary's foreign tax credit. See Publication 559, Publication 514, section 642(a), and related regulations for special rules about foreign taxes.

Line 11

Tax preference items.—Enter any minimum tax 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 12a

Excess deductions on termination.—If this is the final return and there are excess deductions on termination, then enter the beneficiary's share of the excess deductions on line 12a.

Excess deductions on termination occur only during the last taxable year of the estate or trust when the total deductions (other than the deductions allowed under section 642(b) (relating to the exemption amount) or section 642(c) (relating to the

charitable contributions) are greater than the gross income during that tax year. Figure the deductions on a separate sheet and attach to the form.

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 estate or trust, 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 compute the amount of capital loss carryover to be allocated to the beneficiary.

Line 12d

Net Operating Loss (NOL) carryover.—Generally, a deduction based upon 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)), then the NOL carryover is considered an excess deduction on the termination of the entity 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.

Upon termination of an estate or trust, a beneficiary succeeding to its property is allowed to deduct any unused net operating loss (NOL) carryover. Enter on line 12d the unused carryover amount.

Line 13

Other.—Itemize on line 13, or on a separate sheet if more space is needed, the beneficiary's tax information for which there is no other line on Schedule K-1. This includes the allocable share, if any, of:

- Overpayment of estimated tax to be credited to the beneficiary (section 643(g));
- Tax-exempt interest realized by the trust (including exempt-interest dividends

received as a shareholder in a mutual fund or other regulated investment company);

- Gross farming and fishing income;
- Credit for backup withholding (section 3406);
- Investment income (section 163(d));
- Qualified rehabilitation expenditure;
- Low-income housing credit;
- The jobs credit;
- The alcohol fuel credit;
- The increased research credit;
- The information a beneficiary will need to refigure an earlier year investment credit; and
- The information a beneficiary will need to compute 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 distributed 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.