



# Instructions for Form 8960

## Net Investment Income Tax— Individuals, Estates, and Trusts

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

### General Instructions

These instructions are based mostly on Regulations sections 1.1411-1 through 1.1411-10, which are effective for tax years beginning after 2013. However, you may rely on these instructions for your 2013 tax year.

### Future Developments

For the latest information about developments related to Form 8960 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form8960](http://www.irs.gov/form8960).

### Who Must File

Attach Form 8960 to your return if Form 8960, line 17, is greater than zero (individuals) or line 21 is greater than zero (estates and trusts).

### Purpose of Form

Use Form 8960 to figure the amount of your Net Investment Income Tax (NIIT).

### Definitions

**Controlled foreign corporation (CFC).** A corporation defined in section 953(c)(1)(B) or 957(a).

**Excluded income.** Excluded income means:

- Items of income excluded from gross income in IRC chapter 1,
- Items of income not included in net investment income, and
- Items of gross income and net gain specifically excluded by section 1411, related regulations, or other guidance published in the Internal Revenue Bulletin.

Examples of excluded items are:

- Wages,
- Unemployment compensation,
- Alaska Permanent Fund Dividends,
- Alimony,
- Social Security benefits,
- Tax-exempt interest income,
- Income from certain qualified retirement plan distributions, and
- Income subject to self-employment taxes.

**Net investment income.** Net investment income is defined in section 1411(c) and Regulations section 1.1411-4. It is

adjusted according to the rules described in Regulations section 1.1411-10(c).

**Passive foreign investment company (PFIC).** A PFIC is as defined in section 1297(a).

**Qualified electing fund (QEF).** A QEF, as defined in section 1295, is a PFIC with respect to which an election under section 1295(b) is in effect.

**Section 1.1411-10(g) election.** An election made under Regulations section 1.1411-10(g)(section 1.1411-10(g) election). See [Regulations Section 1.1411-10\(g\) Election](#), later.

**Section 1411 trade or business.** A trade or business described in section 1411(c)(2) and Regulations section 1.1411-5(a). Generally, a trade or business that is a passive activity, or is engaged in trading financial instruments or commodities.

**Substitute interest or substitute dividends.** Payments made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction.

### Recordkeeping

For the NIIT, certain items of investment income and investment expense receive different treatment than for the regular income tax. Therefore, you need to keep all records and worksheets for the items you need to include on Form 8960. Keep all records for the entire life of the investment to show how you calculated basis. Also, you will need to know what you did in prior years if the investment was part of a carryback or carryforward.

### Application to Individuals

**U.S. citizens and residents.** Individuals who have for the tax year (a) modified adjusted gross income (MAGI) that is over an applicable threshold amount, and (b) net investment income, must pay 3.8% of the smaller of (a) or (b) as their NIIT.

The applicable threshold amount is based on your filing status:

- Married Filing Jointly or Qualifying Widower with Dependent Child is \$250,000,
- Married Filing Separately is \$125,000, or
- Single or Head of Household is \$200,000.

**Nonresidents.** The NIIT does not apply to nonresident alien (NRA) individuals. If you are a U.S. citizen or resident married to an NRA, your filing status will be married filing separately for purposes of determining your MAGI, net investment income, and whether you are subject to the NIIT. However, see information later about certain elections to file jointly with NRA spouses.

**Dual-resident individual.** If you are a dual-resident individual, within the meaning of Regulations section 301.7701(b)-7(a)(1), generally you will be treated as a U.S. resident for purposes of the NIIT. However, you will be treated as an NRA for purposes of the NIIT if:

- You determine you would be treated as a resident of a foreign country for purposes of an income tax treaty between the United States and that foreign country,
- You elect to be treated as a resident of the foreign country for purposes of computing your U.S. income tax liability, and
- You file Form 1040NR, U.S. Nonresident Alien Income Tax Return, and Form 8833, Treaty-Based Return Position Return Disclosure Under Section 6114 or 7701(b), as provided in Regulations section 301.7701(b)-7(b).

**Dual-status individual.** If you are a dual-status individual — i.e., an individual who was a resident of the United States for part of the year and an NRA for the other part of the year — you are subject to the NIIT only with respect to the portion of the year during which you were a U.S. resident. The relevant threshold amount is not reduced or prorated for a dual-status resident. For more information, see Pub. 519, U.S. Tax Guide for Aliens. If you file Form 1040NR and owe NIIT, include the tax from Form 8960, line 17, on Form 1040NR, line 59. Attach Form 8960 to Form 1040NR.

### Election To File Jointly With Nonresident Spouse—Section 6013(g) or 6013(h)

If spouses elect to file a joint return under section:

- 6013(g) (where an NRA is married to a U.S. citizen or resident at the end of the tax year); or
- 6013(h) (where at least one spouse was an NRA at the beginning of the tax year, but is a U.S. citizen or resident married to

a U.S. citizen or resident at the end of the tax year); they can also elect to apply the joint return election for NIIT purposes.

If spouses make either election for NIIT purposes, spouses should use their combined items of income, gain, loss, and deduction from their joint return to figure their net investment income and MAGI, and use the married filing joint return applicable threshold amount (\$250,000).

Additionally, if you make the election to file under section 6013(g), you must check the check-box near the top of Form 8960, Part I.

Once you make either election, its duration and termination is governed by sections 6013(g) and 6013(h), respectively, and related regulations.

You can make either election on an amended return only if the tax year for which you are making the election, and all tax years affected by the election, are not closed by the period of limitations on assessments under section 6501.

If you make a section 6013(g) election for NIIT purposes and later determine you did not meet the criteria for making that election at the time you made it, the original election will have no effect for that year and all future years. In that case, you must make adjustments to your return to reflect the ineffective election. However, if you meet the criteria for the same election in a later year, you will be considered to have made the original election in that later year unless you file (or amend) the return for that later year to report your NIIT without the original election.

## Application to Estates and Trusts

**Domestic estates and trusts.** The NIIT applies to estates and trusts that have undistributed net investment income and adjusted gross income (AGI) in excess of the threshold amount. The NIIT is 3.8% of the lesser of:

- the undistributed net investment income for the tax year, or
- the excess, if any, of AGI (as defined in section 67(e)) over the applicable threshold amount.

The applicable threshold amount is the dollar amount at which the highest tax bracket in section 1(e) begins for the tax year. See Form 1041, U.S. Income Tax Return for Estates and Trusts, and its instructions for the highest tax bracket.

**Exception for certain domestic trusts.** The following trusts are not subject to the NIIT:

- Trusts that are exempt from income taxes imposed by Subtitle A of the Internal Revenue Code:

1. Charitable trusts and qualified retirement plan trusts exempt from tax under section 501, and

2. Charitable Remainder Trusts exempt from tax under section 664;

- A trust or decedent's estate in which all of the unexpired interests are devoted to one or more of the purposes described in section 170(c)(2)(B);
- Trusts that are classified as "grantor trusts" under sections 671-679;
- Electing Alaska Native Settlement Funds (described in section 646);
- Perpetual Care (Cemetery) Trusts (described in section 642(i)); and
- Trusts that are not classified as "trusts" for federal income tax purposes. For example:

1. Real Estate Investment Trusts, and
2. Common Trust Funds.

**Special computational rules for qualified funeral trusts (QFTs).** The NIIT applies to the QFT (as defined in section 685) by treating each beneficiary's interest in that beneficiary's contract as a separate trust. Complete one consolidated Form 8960 for all beneficiary contracts subject to NIIT.

If a QFT has one or more beneficiary contracts that have net investment income in excess of the threshold amount:

- Complete Form 8960, lines 1-12, using only the sum of the net investment income of the beneficiary contracts that have net investment income in excess of the threshold amount, and
- On line 19b:
  1. Insert the number of beneficiary contracts that have net investment income in excess of the threshold amount next to the entry on the line, and
  2. Multiply the number of beneficiary contracts that have net investment income in excess of the threshold amount by the threshold amount for the year and enter that amount on line 19b.

**Example.** A QFT has a beneficiary contract with \$13,000 of interest income and another beneficiary contract with \$12,000 of dividend income. Neither contract has any properly allocable deductions. The threshold amount for the year is \$11,950. Therefore, the QFT has 2 beneficiary contracts with net investment income in excess of the threshold amount for the year.

The QFT will report \$13,000 on line 1 (interest) and \$12,000 on line 2 (dividends). Lines 12, 18a, and 19 would each be \$25,000. Enter "2" on the dotted line at the end of line 19b and enter \$23,900 ( $\$11,950 \times 2$ ) on the entry line for 19b. Lines 19c and 20 will be \$1,100 ( $\$25,000$  less  $\$23,900$ ). On line 21, enter

the NIIT liability of \$41.80 ( $\$1,100 \times 3.8\%$ ).

### Special computational rules for electing small business trusts (ESBTs).

The NIIT has special computational rules for ESBTs. In general, ESBTs compute their NIIT in 3 steps:

1. The ESBT separately calculates the undistributed net investment income of the S portion and non-S portion according to the general rules for trusts under IRC chapter 1, and then combines the undistributed net investment income of the S portion and the non-S portion. In the case of an ESBT that has an S portion and a non-S portion, complete lines 1-11 of Form 8960 using the items from the non-S portion, and add undistributed net investment income of the S portion to net investment income on line 7.

2. The ESBT determines its AGI, solely for purposes of NIIT, by adding the net income or net loss from the S portion to the AGI of the non-S portion as a single item of income or loss. See instructions to line 19a for more information.

3. To determine whether the ESBT is subject to NIIT, the ESBT compares the combined undistributed net investment income with the excess of its AGI over the section 1(e) threshold.

See Regulations section 1.1411-3(c) for more details and examples.

**Special computational rules for bankruptcy estates of an individual.** A bankruptcy estate of an individual debtor is treated as an individual for purposes of the NIIT. Regardless of the actual marital status of the debtor, the applicable threshold for purposes of determining the NIIT is the amount applicable for a married person filing separately.

**Distributions from foreign estates and foreign trusts.** If you are a U.S. person who receives a distribution of income from a foreign estate or foreign trust, generally, you must include the distribution in your net investment income calculation to the extent that the income is included in your AGI for regular income tax purposes. However, you do not need to include any distributions of accumulated income that you receive from a foreign trust.

**Note.** The NIIT does not apply directly to foreign estates or foreign trusts.

## Passive Activity

### General Rules

Net investment income generally includes income and gain from passive activities. A passive activity for purposes of net investment income has the same meaning as under section 469. A passive activity includes any trade or business in which you do not materially participate. A

passive activity also includes any rental activity, regardless of whether you materially participate. There are limited exceptions for rentals. See the discussion on rentals later. For more details on passive activities, see the Instructions for Form 8582, Passive Activity Loss Limitations, and Pub. 925, Passive Activity and At-Risk Rules.

## Trade or Business Activities

The definition of trade or business for NIIT purposes is limited to a trade or business within the meaning of section 162. This is more restrictive than the definition of a trade or business activity for the purposes of the passive activity loss rules. For example, under the passive activity loss rules, a trade or business includes any activity conducted in anticipation of the commencement of a trade or business and any activity involving research or experimentation. In some cases, income from activities that are not passive activities under section 469 will be included in net investment income because the activity does not rise to the level of a trade or business within the meaning of section 162. The activity must be a trade or business within the meaning of section 162 and be nonpassive for the purposes of section 469 before the income is excluded from the NIIT. If you own an interest in a pass-through entity, the determination of whether that is a trade or business is made at the entity level.

## Material Participation

A trade or business is a passive activity if you did not materially participate in the activity during the year. If you are an individual, you materially participate in your trade or business activity if you are involved in the operations of the activity on a regular, continuous, and substantial basis. You will be treated as materially participating in a trade or business only if you meet one of the following tests:

1. You participate in the activity for more than 500 hours,
2. Your participation was substantially all the participation in the trade or business of all individuals for the tax year, including the participation of individuals who did not own any interest in the trade or business,
3. You participated in the trade or business for more than 100 hours during the tax year, and you participated at least as much as any other individual (including individuals who did not own any interest in the trade or business) for the year,
4. The trade or business activity is a significant participation activity, and you participated in all significant participation activities for more than 500 hours. A significant participation activity is any trade or business activity in which you

participated for more than 100 hours during the year and in which you did not materially participate under any of the other material participation tests,

5. You materially participated in the activity for any 5 (whether or not consecutive) of the 10 immediately preceding tax years,
6. The trade or business is a personal service activity in which you materially participated for any 3 (whether or not consecutive) preceding tax years. A trade or business is a personal service activity if it involves the performance of personal services in the fields of health (including veterinary services), law, engineering, architecture, accounting, actuarial science, performing arts, consulting, or any other trade or business in which capital is not a material income-producing factor, or
7. Based on all the facts and circumstances, you participated in the trade or business on a regular, continuous, and substantial basis during the year.

You did not materially participate in the trade or business under the last test if you participated in the trade or business for 100 hours or less during the year. Your participation in managing the trade or business does not count in determining whether you materially participated under this test if any person other than you received compensation for managing the trade or business, or any individual spent more hours during the tax year managing the trade or business than you did.

There are special rules applicable to limited partners. If you owned an interest in a trade or business as a limited partner, you generally are treated as not participating in the trade or business. You can be treated as materially participating in the activity if you met the first, fifth, or sixth tests under the [material participation tests](#), earlier.

## Rental Activities

Generally, a rental activity is a passive activity regardless of whether you materially participate. A rental activity is an activity where payments are principally for the use of tangible property (real or personal) that is used or held for use by customers. However, your activity involving the use of tangible property is not a rental activity under Regulations section 1.469-1T(e)(3)(ii) if any of the following apply:

- The average period of customer use of the property is 7 days or less,
- The average period of customer use is 30 days or less and you provide significant personal services with the rental,
- You provide extraordinary personal services in connection with making such property available for customer use, or

- You provide the property for use in a nonrental activity in your capacity as an owner of an interest in the partnership, S corporation, or joint venture conducting that activity.

If you meet one of the exceptions listed above, the income will not be from a passive activity if you materially participated in the activity for the tax year. However, your income for the activity is included in net investment income even if you meet one of the exceptions and materially participated in the activity if it is not a trade or business within the meaning of section 162.

## Real Estate Professionals

If you are a real estate professional for purposes of section 469(c)(7), your rental income, or loss will not be passive if you materially participated in the rental real estate activity. For additional information on real estate professionals, see section 469(c)(7) and Pub. 925.

However, your rental income is included in net investment income if the income is not derived in the ordinary course of a trade or business. Qualifying as a real estate professional does not necessarily mean you are engaged in a trade or business with respect to the rental real estate activities. If your rental real estate activity is not a section 162 trade or business or you do not materially participate in the rental real estate activities, the rental income will be included in NIIT.

## Safe Harbor for Real Estate Professionals

You qualify for the safe harbor if you are a real estate professional for purposes of section 469 and you:

- Participate in each rental real estate activity for more than 500 hours during the tax year, or
- Participated in a rental real estate activity for more than 500 hours in any 5 tax years (whether or not consecutive) during the 10 tax years immediately prior to this tax year.

If you qualify, your gross rental income from your rental real estate activity is treated as though derived in the ordinary course of a trade or business and is not included in your net investment income. If you qualify in the year you dispose of the property used in the rental real estate activity, the amount of gain or loss from the disposition is also deemed to be derived from property used in the ordinary course of a trade or business and is not included in your net investment income.

**Note.** For real estate professionals with a Regulations section 1.469-9(g) election in effect, all of your rental real estate activities constitute a single activity for purposes of applying the 500-hour test

described in [Safe Harbor for Real Estate Professionals](#), earlier.

**Note.** If you are a real estate professional under section 469(c)(7), but you are unable to satisfy the qualifications for the safe harbor, you are not precluded from establishing that the gross income and gain or loss from the disposition of property associated with your rental real estate activity is not included in net investment income.

### Recharacterization of Passive Income

The regulations under section 469 provide special rules that treat income from the following activities as not from a passive activity:

- Significant participation passive activities,
- Rental of property if less than 30% of the unadjusted basis of the property is subject to depreciation,
- Passive equity-financed lending activities,
- Rental of property incidental to a development activity,
- Rental of property to a nonpassive activity, or
- Acquisition of an interest in a pass-through entity that licenses intangible property.

The income from these activities may be included in net investment income if the income is not derived in the ordinary course of a trade or business and it constitutes income from interest, dividends, annuities, royalties, or rents. For more information on recharacterization of passive income, see Temporary Regulations section 1.469-2T(f), Regulations section 1.469-2(f), and Pub. 925.

### Special Rules for Certain Rental Income

For income tax purposes, Regulations section 1.469-2(f)(6) generally recharacterizes what otherwise would be passive rental income from a taxpayer's property as nonpassive where the taxpayer rents the property for use in a trade or business in which the taxpayer materially participates. Similarly, for income tax purposes, a rental activity that is properly grouped with a trade or business activity in which the taxpayer materially participates under Regulations section 1.469-4(d)(1) is a nonpassive activity. For purposes of calculating your net investment income, the gross rental income in both of these situations is treated as though it is derived in the ordinary course of a trade or business. Further, upon the disposition of the assets associated with the rental activity, any gain or loss is also treated as gain or loss attributable to the disposition of property

held in a nonpassive trade or business and not included in your net investment income.

### Treatment of Former Passive Activities

A former passive activity is any activity that was a passive activity in a prior tax year but it is not a passive activity in the current year. A prior tax year's unallowed loss from a former passive activity is allowed to the extent of current year income from the activity. For purposes of determining your net investment income, suspended losses from former passive activities are allowed as a properly allocable deduction, but only to the extent nonpassive income from the same activity is included in your net investment income in that year. For more information, see Regulations section 1.1411-4(g)(8) and examples.

### Disposition of Entire Interest

If you disposed of your entire interest in a passive activity or a former passive activity to an unrelated person in a fully taxable transaction, your losses allocable to the activity for that year are not limited by the passive activity loss rules for income tax purposes. A fully taxable transaction is a transaction in which you recognize all realized gain or loss. For purposes of calculating your net investment income, these losses may be properly allocable deductions, depending on the underlying character and origin of the losses.

**Note.** If you dispose of an activity that has always been a passive activity, the suspended passive losses from that activity are allowed in full as a properly allocable deduction.

**Note.** If you dispose of an activity that is a former passive activity, any suspended passive losses allowed in the year of disposition by reason of section 469(f)(1) (A) are included as properly allocable deductions, but only to the extent the gain on the disposition of the activity is included in net investment income (before taking into account any suspended losses). Any suspended passive losses that are allowed by reason of section 469(g) are allowed as additional properly allocable deductions.

### Economic Grouping

You can treat one or more trade or business activities, or rental activities, as a single activity if those activities form an appropriate economic unit for measuring gain or loss under the passive activity loss rules. For additional information on passive activity grouping rules, see Pub. 925.

**Regrouping rules.** The passive activity grouping rules determine the scope of

your trade or business and whether that trade or business is a passive activity for purposes of the NIIT. The proper grouping of a rental activity with a trade or business activity generally will not convert any gross income from rents into gross income derived from a trade or business.

Generally, you may not regroup activities unless your grouping was clearly inappropriate when originally made, or has become clearly inappropriate because of changed facts and circumstances. However, under the NIIT "fresh start" election you may regroup for the first tax year you are subject to the NIIT (without the effect of the regrouping). You may regroup only once under this election and that regrouping will apply to the tax year for which you regroup and all future tax years. If you are subject to the NIIT for 2013 and you do not regroup, you may make the election for the first tax year beginning after 2013 that you are subject to the NIIT.

**Disclosure requirements.** Regroupings under the NIIT "fresh start" are subject to the disclosure requirements of Rev. Proc. 2010-13.

### Disposition of Partnership Interest or S Corporation Stock

In general, an interest in a partnership or S corporation is not property held for use in a trade or business and, therefore, gain or loss from the sale of a partnership interest or S corporation stock is included in your net investment income.

### Adjustment

The amount of the gain or loss from the disposition for regular income tax purposes is included on Form 8960, line 5a, as a gain or loss. If you materially participated (as defined under the passive activity loss rules) in a trade or business activity of the partnership or S corporation (or one of its subsidiaries) and that trade or business activity is not the trade or business of trading in financial instruments or securities, then you must calculate the adjustment to report on line 5c. The adjustment described below only applies to dispositions of equity interests in partnerships and stock in S corporations and does not apply to gain or loss recognized on, for example, indebtedness owed to the taxpayer by a partnership or S corporation.

For tax year 2013, you may use the calculation and reporting methods from either the 2012 Proposed Regulations or the 2013 Proposed Regulations. For more information on how to calculate the adjustment to report on line 5c, see the 2012 Proposed Regulations section 1.1411-7 or the 2013 Proposed Regulations section 1.1411-7.

**Note.** If the tax basis of the interest in the partnership or S corporation for NIIT purposes is different than for regular income tax purposes due to certain adjustments associated with income from CFCs or QEFs, the amount of gain or loss may exceed the amount reported for regular income tax purposes.

**Required statements.** If your adjustment on line 5c is based on the 2012 Proposed Regulations, attach a statement to your return for the year of disposition. Your statement must include:

- A description of the disposed interest,
- The name and taxpayer identification number of the entity disposed of,
- The fair market value of each property of the entity,
- The entity's adjusted basis in each property,
- Your allocable share of gain or loss with respect to each property of the entity,
- Information regarding whether the property was held in a trade or business in which you materially participated and was not trading in financial instruments or commodities,
- The amount of gain you reported on line 5a, and
- The amount of your adjustment.

If your adjustment on line 5c is based on the 2013 Proposed Regulations, attach a statement to your return for the year of disposition. Your statement must include:

- The name and taxpayer identification number of the partnership or S corporation of which the interest was transferred,
- The amount of the transferor's gain or loss on the disposition of the interest for regular income tax purposes included on line 5a,
- The information provided by the partnership or S corporation to the transferor relating to the disposition (if any), and
- The amount of adjustment to gain or loss due to basis adjustments attributable to ownership in certain CFCs and QEFs.

**Deferred recognition sales (installment sales and private annuities).** If you disposed of a partnership interest or S corporation stock in an installment sale transaction to which section 453 applies, you need to calculate your adjustment to net gain in the year of the disposition, even if the disposition occurred prior to 2013. The difference between the amount reported for regular income tax and NIIT will be taken into account when each payment is received. You must attach the statement described above to your return in the first year you are subject to NIIT. In subsequent years, attach a statement to your return that provides "Adjustment relates to a deferred recognition sale first reported on line 5c of the (enter year) return."

## Regulations Section 1.1411-10(g) Election

In general, you may make the election provided in Regulations section 1.1411-10(g) if you own stock of a CFC or QEF. If a section 1.1411-10(g) election is in effect for stock of a CFC or QEF, generally, the amounts you include in income for regular income tax purposes under sections 951 and 1293 from the stock of the CFC or QEF are included in net investment income, and distributions from the stock of the CFC or QEF described in section 959(d) or 1293(c) are excluded from net investment income.

Your election applies only to the specific stock of the CFC and QEF for which it is made and stock of the CFC or QEF that you subsequently acquire. If you own a CFC or QEF through certain domestic pass-through entities, such as a domestic partnership, the entity may make the election with respect to the stock of the CFC or QEF and you will be considered as having made the election with respect to the stock of the CFC or QEF owned or subsequently acquired by the pass-through entity. The election by the pass-through entity applies only to stock of the CFC or QEF held or subsequently acquired directly or indirectly by the pass-through entity. The pass-through entity's election does not apply to any stock of the CFC or QEF that you personally hold or subsequently acquire. If the entity does not make the election, you may make the election with respect to the stock of the CFC or QEF owned through the entity. For tax years beginning in 2013 only, a domestic partnership may make the election only if consent is received from all of the partners.

**Timing of election.** Your election applies to the tax year for which it is made and later tax years, and applies to all interests in the CFC or QEF that you later acquire. You cannot revoke the election. In general, the election must be made no later than the first tax year beginning after 2013, in which you include an amount in income for regular income tax purposes under section 951(a) or 1293(a) with respect to the stock of the CFC or QEF, and are subject to NIIT or would be subjected to NIIT if you made the election with respect to the stock of the CFC or QEF. The election may be made for a tax year beginning before January 1, 2014. The election can be made on an original or an amended return, provided that the tax year for which the election is made, and all tax years affected by the election, are not closed by the period of limitations on assessments under section 6501. For more information, see Regulations section 1.1411-10(g).

**Example.** If in 2014, a single individual acquires stock in a QEF, has a QEF

inclusion of \$5,000, and has MAGI of \$150,000, the individual would not have to make a section 1.1411-10(g) election for 2014 because section 1411 is not applicable. If in 2015, the individual has MAGI in excess of 200,000, and the individual would like to take QEF inclusions into account for purposes of section 1411 in the same manner and in the same tax year as those amounts are taken into account for IRC chapter 1 purposes, the individual must make the section 1.1411-10(g) election for 2015 in the time and manner described in Regulations section 1.1411-10(g).

**Content requirements of election.** If you are making the election, you must check the check-box for "Regulations section 1.1411-10(g) election" on the Form 8960 filed with your original or amended return for the tax year in which the election is made. In addition, you must attach a statement to your return which includes the following:

- Your name and SSN (individuals) or EIN (estates and trusts),
- A declaration that you elect under Regulations section 1.1411-10(g) to apply the rules in section 1.1411-10(g) to the CFCs and QEFs identified in the statement, and
- The following information with respect to each CFC and QEF for which an election is made:

1. The name of the CFC or QEF, and
2. Either the EIN of the CFC or QEF, or, if the CFC or QEF does not have an EIN, the reference ID number of the CFC or QEF.

## Special Rule for Traders in Financial Instruments or Commodities

Gains and losses from your trade or business of trading in financial instruments or commodities are not subject to self-employment taxes. However, interest expense and other investment expenses are deducted by a trader on Schedule C (Form 1040), Profit or Loss From Business, if the expenses are from the trading business. A special rule may apply to a trader in financial instruments or commodities to reduce net investment income. The trader's interest and other investment expenses, to the extent the expenses are not used to reduce the trader's self-employment income, may be deductible for NIIT.

## Specific Instructions

### Part I—Investment Income

#### Elections for Investment Income

If you are making the section 6013(g) election (see [Election To File Jointly With Nonresident Spouse—Section 6013\(g\) or 6013\(h\)](#), earlier), check the “Section 6013(g) Election” check-box.

**Note.** There is no check-box for the section 6013(h) election.

If you are making the section 1.1411-10(g) election (see [Regulations Section 1.1411-10\(g\) Election](#), earlier), check the “Regulations section 1.1411-10(g) election” check-box and attach a statement to your return as described earlier under [Content requirements of election](#).

#### Line 1—Taxable Interest

Enter the amount of interest received.

Interest income earned in the ordinary course of your non-section 1411 trade or business is excluded from net investment income. If this type of interest income is included in line 1, use line 7 to adjust your net investment income.

If line 1 includes self-charged interest income received from a partnership or S corporation that is a nonpassive activity (other than a trade or business of trading in financial instruments or commodities), see [Line 7—Other Modifications to Investment Income](#), later, for a possible adjustment to net investment income.

#### Line 2—Ordinary Dividends

Enter the amount of ordinary dividends received.

**Note.** If line 2 includes dividends from employer securities held in an employee stock ownership plan (ESOP) that are deductible under section 404(k) or Alaska Permanent Fund Dividends, include those amounts as negative modifications on line 7. See [Line 7—Other Modifications to Investment Income](#), later.

#### Line 3—Annuities

Enter the gross income from all annuities, except annuities paid from the following:

- Section 401 - Qualified pension, profit-sharing, and stock bonus plans;
- Section 403(a) - Qualified annuity plans purchased by an employer for an employee;
- Section 403(b) - Annuities purchased by public schools or Section 501(c)(3) tax-exempt organizations;

- Section 408 - Individual Retirement Accounts (IRAs) or Annuities;
- Section 408A - Roth IRAs;
- Section 457(b) - Deferred compensation plans of a state and local government and tax-exempt organization; and
- Amounts paid in consideration for services (for example, distributions from a foreign retirement plan that are paid in the form of an annuity and include investment income that was earned by the retirement plan).

Net investment income from annuities is reported to a recipient on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. However, the amount reported on 1099-R may also include annuity payments from retirement plans that are exempt from NIIT.

Annuity amounts subject to NIIT should be identified with the special Distribution Code “D” in box 7 of Form 1099-R for “Annuity payments from nonqualified annuities and distributions from life insurance contracts that may be subject to tax under section 1411.” If Distribution Code “D” is shown in box 7 of Form 1099-R, include on Form 8960, line 3, the taxable amount reported on Form 1099-R, box 2a. However, if the payor checks box 2b indicating the taxable amount cannot be determined, you may need to calculate the taxable portion of your distribution. See Pub. 939, General Rule for Pensions and Annuities, and Pub. 575, Pension and Annuity Income, for details.

#### Line 4b—Adjustment for Net Income or Loss Derived in the Ordinary Course of a Non-Section 1411 Trade or Business

Enter the net positive or net negative amount for the following items included in line 4a that are not included in determining net investment income:

- Net income or loss from a section 162 trade or business that is not a passive activity and is not engaged in a trade or business of trading financial instruments or commodities,
- Net income or loss from a passive section 162 trade or business activity that is taken into account in determining self-employment income,
- Royalties derived in the ordinary course of a section 162 trade or business that is not a passive activity, and
- Passive losses of a former passive activity that are allowed as a deduction in the current year by reason of section 469(f)(1)(A).

In addition, use line 4b to adjust for certain types of nonpassive rental income

or loss derived in the ordinary course of a section 162 trade or business. For example, line 4b includes the following items:

- Nonpassive net rental income or loss of a real estate professional where the rental activity rises to a section 162 trade or business. See [Real Estate Professionals](#), earlier.
- Net rental income or loss that is a nonpassive activity because it was grouped with a trade or business under Regulations section 1.469-4(d)(1). See [Special Rules for Certain Rental Income](#), earlier.
- Other rental income or loss from a section 162 trade or business reported on Schedule K-1 (Form 1065), Partner’s Share of Income, Deductions, Credits, etc., line 3, from a partnership, or Schedule K-1 (Form 1120S), Shareholder’s Share of Income, Deductions, Credits, etc., line 3, from an S corporation, where the activity is not a passive activity.
- Net income that has been recharacterized as not from a passive activity under the section 469 passive loss rules and is derived in the ordinary course of a section 162 trade or business. For example:

1. Net income from property rented to a nonpassive activity. See [Special Rules for Certain Rental Income](#), earlier,
2. Net income from the rental of property with less than 30% of the unadjusted basis subject to depreciation that is a section 162 trade or business, or
3. Net rental income or loss from a rental that meets an exception under Regulations section 1.469-1T(e)(3)(ii), the activity rises to a section 162 trade or business, and you materially participated in the activity.

**Note.** Any income attributable to an estate or trust reported on Part III of Schedule E (Form 1040), Supplemental Income and Loss, that excluded net investment income is taken into account on line 7 (using code “H” from box 14 of the Schedule K-1). Do not report any adjustments on line 4b.



For line 4b adjustments, enter net positive amounts as a negative adjustment and enter net negative amounts as a positive adjustment.

#### Lines 5a-5d—Gains and Losses on the Dispositions of Property

Net investment income includes net gain attributable to the disposition of property that is taken into account in computing taxable income. Generally, the general income tax rules in IRC chapter 1 will determine whether there has been a

disposition of property for NIIT purposes. Generally, the term disposition means a:

- Sale,
- Exchange,
- Transfer,
- Conversion,
- Cash settlement,
- Cancellation,
- Termination,
- Lapse,
- Expiration,
- Deemed disposition, for example under section 877A, or
- Other disposition.

Net gain attributable to the sale, exchange, or other disposition of property not used in a trade or business is included in net investment income. Net gain or loss from the sale, exchange, or other disposition of property held in a passive activity or attributable to a trade or business of trading in financial instruments or commodities is also included in net investment income.

Gains and losses that are not taken into account in computing taxable income are not taken into account in computing net investment income. For example, gain that is not taxable by reason of section 121 (sale of a principal residence) or section 1031 (like-kind exchanges) is not included in net investment income.

See [Lines 5a-5d — Net Gains and Losses Worksheet](#), later, for assistance in calculating net gain or loss includable in net investment income.

### Line 5a—Gains and Losses From the Disposition of Property

If you incur gain or loss from a disposition that is not reported on Form 1040, U.S. Individual Income Tax Return, lines 13 and 14, or Form 1041, lines 4 and 7, report those gains on Form 8960, line 7. For example, gain or loss attributable to the disposition of a life insurance contract or gain attributable to the disposition of an annuity contract to the extent the sales price of the annuity exceeds the annuity's surrender value is considered net investment income, and should be reported on Form 8960, line 7.

### Line 5b—Net Gain or Loss From Disposition of Property That Is Not Subject to Net Investment Income Tax

Use line 5b to adjust the amounts included on line 5a for gains and losses that are excluded from the calculation of net investment income. Enter the amount of gains (as a negative number) and losses (as a positive number) included on line 5a that are excluded from net investment

income. For example, line 5b will include amounts such as:

- Gain or loss from the sale of property held in a non-section 1411 trade or business.

1. However, if the losses are attributable to formerly suspended passive losses of the non-section 1411 trade or business, such gains and losses are excluded from net investment income to the extent the nonpassive income from the non-section 1411 trade or business is excluded from net investment income. See Regulations section 1.1411-4(g)(8) for more information and examples.

2. Gain or loss from the sale of property held in a non-section 1411 trade or business does not include substantially appreciated property that is recharacterized as portfolio income. See [Substantially appreciated property](#), later.

- In the case of a QEF for which a section 1.1411-10(g) election is not in effect, enter the net long-term capital gain taken into account in computing taxable income by reason of section 1293(a)(1)(B).
- Gain attributable to net unrealized appreciation (NUA) in employer securities held by a qualified plan. See [Net gain attributable to NUA in employer securities held by a qualified plan](#), later.
- Adjustments to your capital loss carryforwards for items of excluded loss. See [Adjustments to your capital loss carryforwards](#), later.

#### Substantially appreciated property.

Generally, Regulations section 1.469-2(c)(2)(iii)(A) provides that if an interest in property previously used in a nonpassive activity but not used in a passive activity for more than 2 years prior to disposition is substantially appreciated at the time of disposition, any gain from the disposition is treated as not from a passive activity. The recharacterized gain may be taken into account under section 1411(c)(1)(A)(iii) if the gain is attributable to the disposition of property and recharacterized as portfolio income.

**Net gain attributable to NUA in employer securities held by a qualified plan.** Any gain attributable to NUA (within the meaning of section 402(e)(4)) that you realize on a disposition of employer securities held by a qualified plan is a distribution within the meaning of section 1411(c)(5) and is not included in net investment income. However, any gain realized on a disposition of employer securities attributable to appreciation in the value of your employer securities after the distribution from a qualified plan is not a distribution within the meaning of section 1411(c)(5) and is included in net investment income.

**Shareholders of CFCs and QEFs without a section 1.1411-10(g) election.** In

the case of a QEF (other than a QEF held in a section 1411 trade or business) with respect to which a section 1.1411-10(g) election is not in effect, enter the amount treated as long-term capital gain for regular income tax purposes under section 1293(a)(1)(B).

Also, in the case of a disposition of a CFC or QEF (other than a CFC or QEF held in a section 1411 trade or business) with respect to which a section 1.1411-10(g) election is not in effect, enter the increase or decrease in the amount of gain or loss for NIIT purposes over the amount of gain or loss for regular income tax purposes. However, if the gain is higher (or the loss larger) for NIIT purposes compared to regular income tax purposes, in which case there is no impact to the adjustment for capital loss carryforwards for NIIT purposes, enter the difference on line 6.

#### Adjustments to your capital loss carryforwards.

Starting in your 2nd tax year that begins after 2012 (generally, your 2014 tax year), capital loss carryforwards must be adjusted if any sum of all capital gain or loss amounts excluded from net investment income on lines 5b and 5c was a net loss (the sum of all excluded capital losses was greater than the sum of all excluded capital gains). Generally, the annual adjustment to your capital losses carryforward is the lesser of:

- The amount of your capital loss carryforward from the previous year (the sum of carryforward amounts reflected on Schedule D (Form 1040), Capital Gains and Losses, lines 6 and 14, or
- The amount of excluded capital losses in excess of excluded capital gain in the previous year.

See [Lines 5a-5d — Net Gains and Losses Worksheet](#), later, for assistance with the calculation of capital loss carryforwards. In addition, see Proposed Regulations section 1.1411-4(d)(4)(iii) for more information and a comprehensive example of the application of this rule.

**Pass-through entities.** If you hold an interest in a pass-through entity, the determination of whether a trade or business exists is made at the entity level.

### Line 5c—Adjustment From Disposition of Partnership Interest or S Corporation Stock

Enter the amount from the worksheet for lines 5a-5d, Part II, line 3d. Attach a statement as described in [Required statements](#), earlier, to your return for the year of the disposition.

**Lines 5a-5d — Net Gains and Losses Worksheet**

	(A) Capital gains/(losses) Form 1040, Line 13, or Form 1041, Line 4	(B) Ordinary gains/(losses) Form 1040, Line 14, or Form 1041, Line 7	Total of columns (A)+(B)																								
<b>1. Beginning net gains and losses</b>			Enter this amount on line 5a _____																								
<b>2. Gains and losses excluded from net investment income</b>																											
<p>(a) Enter net gains from the disposition of property used in a non-section 1411 trade or business (enter as negative amounts):</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;"><u>Name of Trade or Business</u></td> <td style="width: 10%; text-align: center;"><u>Amount</u></td> <td style="width: 10%; text-align: center;">( _____ )</td> <td style="width: 10%;"></td> </tr> <tr> <td>_____</td> <td style="text-align: center;">( _____ )</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td style="text-align: center;">( _____ )</td> <td></td> <td></td> </tr> </table> <p>(b) Enter net losses from the disposition of property used in a non-section 1411 trade or business (enter as positive amounts):</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;"><u>Name of Trade or Business</u></td> <td style="width: 10%; text-align: center;"><u>Amount</u></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td>_____</td> <td style="text-align: center;">_____</td> <td></td> <td></td> </tr> <tr> <td>_____</td> <td style="text-align: center;">_____</td> <td></td> <td></td> </tr> </table> <p>(c) Enter net losses from a former passive activity (FPA) allowed by reason of section 469(f)(1)(A) . . . . . _____</p> <p>(d) Gains recognized in the current year for payments received on an installment sale obligation or private annuity for the disposition of property used in a non-section 1411 trade or business . . . . . ( _____ )</p> <p>(e) Enter the net gain attributable to the net unrealized appreciation (NUA) in employer securities . . . . . ( _____ )</p> <p>(f) In the case of a QEF (other than a QEF held in a section 1411 trade or business) with respect to which a section 1.1411-10(g) election is not in effect, enter the amount treated as long-term capital gain for regular income tax purposes under section 1293(a)(1)(B) . . . . . ( _____ )</p> <p>(g) Enter any other gains and losses included in net investment income that are not otherwise reported on Form 8960 and any other gains and losses excluded from net investment income reported on line 5a (enter excluded gains as a negative number and excluded losses as a positive number) . . . . . _____</p> <p>(h) If you do not have a capital loss carryover to the next year, skip this line and go to line 2(i). Otherwise, enter the lesser of (h)(1) or (h)(2) as a negative amount . . . . . ( _____ )</p> <p><b>(h)(1)</b> If the sum of the amounts reported on lines 2(a)-2(g) and line 3(d), column (A), is greater than zero, enter that amount here. Otherwise, enter -0- on line 2(h) and go to line 2(i) . . . . . _____</p> <p style="text-align: center;"><b>OR</b></p> <p><b>(h)(2)</b> The amount of capital loss carried over to the following year (Schedule D (Form 1040), line 16, less the amount allowed as a current deduction on Schedule D (Form 1040), line 21) entered as a positive number . . . . . _____</p> <p>(i) Enter the amount reported on line 2(h) of this worksheet from your prior year tax return calculations. Enter as a positive number . . . . . _____</p> <p><b>(j) Sum of lines 2(a) through 2(i)</b></p>	<u>Name of Trade or Business</u>	<u>Amount</u>	( _____ )		_____	( _____ )			_____	( _____ )			<u>Name of Trade or Business</u>	<u>Amount</u>			_____	_____			_____	_____			<p>N/A in 2013</p>		<p>Enter this amount on line 5b _____</p>
<u>Name of Trade or Business</u>	<u>Amount</u>	( _____ )																									
_____	( _____ )																										
_____	( _____ )																										
<u>Name of Trade or Business</u>	<u>Amount</u>																										
_____	_____																										
_____	_____																										

Lines 5a-5d — Net Gains and Losses Worksheet—continued

Keep for Your Records



		(A) Capital gains/(losses) Form 1040, Line 13, or Form 1041, Line 4	(B) Ordinary gains/ (losses) Form 1040, Line 14, or Form 1041, Line 7	Total of columns (A)+(B)
<b>3. Adjustment for gains and losses attributable to the disposition of interests in partnerships and S corporations</b>				
<b>(a) Net Gains</b>	(i) Enter the amount of net gain from the disposition of a partnership or S corporation included in line 5a to which section 1411(c)(4)(A) applies .....	_____	_____	
	(ii) Enter the amount of net gain included in net investment income after the application of Regulations section 1.1411-7. (The sum of columns A and B of line 3(a)(ii) must be less than, or equal to, the sum of columns A and B of line 3(a)(i).) .....	_____	_____	
	(iii) Enter the difference between line 3(a)(i) and line 3(a)(ii) .....	_____	_____	
<b>(b) Net Losses</b>	(i) Enter the amount of net loss from the disposition of a partnership or S corporation included in line 5a to which section 1411(c)(4)(B) applies .....	_____	_____	
	(ii) Enter the amount of net loss included in net investment income after the application of Regulations section 1.1411-7. (The sum of columns A and B of line 3(b)(ii) must be less than, or equal to, the sum of columns A and B of line 3(b)(i).) .....	_____	_____	
	(iii) Enter the difference between line 3(b)(i) and line 3(b)(ii) .....	_____	_____	
<b>(c) Deferred Sales</b>	(i) Enter the amount of gain recognized in the current year attributable payments received on an installment sale obligation or private annuity that was attributable to the disposition of an interest in a partnership or an S corporation in a year preceding the current year. Also report any gain or loss associated with section 736(b) payments on this line .....	_____	_____	
	(ii) Enter the amount of adjustment attributable to such gain .....	_____	_____	
	(iii) Subtract 3(c)(ii) from 3(c)(i) .....	_____	_____	
<b>(d)</b>	<b>Combine the amounts on lines 3(a)(iii), 3(b)(iii), and 3(c)(iii) .....</b>	_____	_____	<b>Enter this amount on line 5c</b> _____
<b>4. Sum of items reported on lines 5a-5c</b>				
<b>Add lines 1, 2(j), and 3(d) .....</b>		_____	_____	<b>Enter this amount on line 5d</b> _____
<div style="display: flex; align-items: flex-start;"> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin-right: 10px;"> <b>TIP</b> </div> <div> <p><i>If the amount of gain for NIIT purposes is less than the amount of gain for regular income tax purposes, the entry on lines 3(a)(iii), 3(b)(iii), or 3(c)(iii) should be a negative number.</i></p> <p><i>If the amount of loss for NIIT purposes is less than the amount of loss for regular income tax purposes, the entry on lines 3(a)(iii), 3(b)(iii), or 3(c)(iii) should be a positive number.</i></p> </div> </div>				

## Line 6—Changes to Investment Income for Certain CFCs and PFICs

If you own stock, directly or indirectly, in a CFC or a PFIC (other than certain CFCs and PFICs held in a section 1411 trade or business), use line 6 for adjustments necessary to calculate your net investment income.

Income with respect to investments in CFCs and PFICs is generally included in the calculation of net investment income and, in many cases, will be included (in whole or in part) on other lines of Form 8960. Generally, dividends from a CFC or a PFIC that are included in your regular income tax base are included on Form 8960, line 2, and gains and losses derived with respect to the stock of a CFC or a PFIC that are included in your regular income tax base generally are included on Form 8960, line 5. Also, income derived with respect to CFCs and certain PFICs you hold in a section 1411 trade or business is generally reported on Form 8960, line 4a.

Line 6 is used for adjustments that are the result of additional rules. These additional rules may apply when you own an interest in a CFC or PFIC and may require you to subtract amounts not reported on Form 8960 or add amounts not reported on Form 8960. These additional rules vary depending upon the set of anti-deferral rules that apply to you for regular income tax purposes, and for CFCs and QEFs, and depending upon whether you have a section 1.1411-10(g) election in effect with respect to the CFC or QEF. For more information about determining the amount to report on line 6, see Regulations section 1.1411-10.

**Mark to Market PFICs.** Generally, if you are subject to the section 1296 mark to market rules with respect to a PFIC, you will include in net investment income any amounts included in income for regular income tax purposes under section 1296(a)(1) and deduct from net investment income any amounts deducted from income for regular income tax purposes under section 1296(a)(2). Use line 6 to make increases or decreases to net investment income as a result of this rule (with respect to items that are not otherwise reflected on Form 8960).

**Section 1291 funds.** If you are subject to the section 1291 rules with respect to a PFIC, you will include in net investment income any “excess distributions that are dividends for NIIT purposes as well as any gains that are treated as excess distributions for regular income tax purposes.” Use line 6 to make the increases to net investment income as a result of the application of this rule (with

respect to items that are not otherwise reflected on Form 8960).

**CFCs and QEFs with a section 1.1411-10(g) election in effect.** If you have a section 1.1411-10(g) election in effect with respect to a CFC or QEF, you will include in net investment income any inclusions under section 951(a) or 1293(a) derived with respect to the CFC or QEF. Inclusions under section 1293(a)(1)(B) may be reported elsewhere on Form 8960, such as on line 5a. Use line 6 to make the increases to net investment income as a result of the application of this rule (with respect to items that are not otherwise reflected on Form 8960).

**CFCs and QEFs without a section 1.1411-10(g) election in effect.** If you do not have a section 1.1411-10(g) election in effect with respect to a CFC or QEF, generally, you will include in net investment income certain distributions of previously taxed income from the CFC or QEF that are not subject to regular income tax. In addition, other special rules may apply, including rules that provide, as applicable, alternative basis calculations with respect to your basis in the CFC or QEF, or your basis in a domestic partnership or S corporation that owns the interest in the CFC or QEF. Also, the amount of investment interest expense you take into account for NIIT purposes may be increased or decreased from the amount taken into account for regular income tax purposes. (For additional information on all of these rules, see Regulations section 1.1411-10.) As a result of these rules, you may need to include amounts in net investment income that aren't otherwise reported on Form 8960 or make adjustments to amounts reported elsewhere on Form 8960. For example, you may need to include distributions from a CFC or a QEF in net investment income. Use line 6 to make increases or decreases to net investment income as a result of the application of this rule (with respect to items that are not otherwise reflected on Form 8960).

**Note.** Use line 5b to deduct inclusions under section 1293(a)(1)(B) that are allowed on line 5a, or to adjust the amount of gain or loss derived from the disposition of shares of a CFC or QEF. However, if the gain included in net investment income is higher than the amount reported for regular income tax (or the loss is greater), report the adjustment on line 6.

## Line 7—Other Modifications to Investment Income

Use line 7 to report additional net investment income modifications to net investment income that are not otherwise specified in lines 1-6. For example, use

line 7 to report additions and modifications to net investment income such as

- Section 1411 net operating loss (NOL) (enter as a negative amount). See [Section 1411 NOL](#), later.
- Any deductions described in section 62(a)(1) that are properly allocable to a passive activity or trading business, but are not taken into account on lines 4a or 5a (enter as a negative amount). See [Other section 62\(a\)\(1\) deductions](#), later.
- Adjustments for distributions from Estates and Trusts. See [Distributions from estates and trusts](#), later.
- Section 404(k) dividends reported on line 2 (enter as a negative amount). See [Line 2—Ordinary Dividends](#), earlier.
- Interest income reported on line 1 received from certain nonpassive activities (entered as a negative amount). See [Self-charged interest](#), later.
- Recoveries of deductions taken on a prior year's Form 8960. See [Deduction recoveries](#), later.
- Other items of net investment income (or properly allocable deductions) reported on Form 1040, line 21, or Form 1041, line 8. For example, these items could include:
  1. Amounts reported on Form 8814, Parents' Election To Report Child's Interest and Dividends, line 21. See [Form 8814 election](#), later,
  2. Substitute interest and dividend payments (generally reported on Form 1099-MISC, Miscellaneous Income), and
  3. Net positive periodic payments received from a notional principal contract (NPC) that is referenced to property (including an index) that produces (or would produce if the property were to produce income) interest, dividends, royalties, or rents. For example, an interest rate swap, cap, or floor and an equity swap would be treated as an NPC that produces net investment income.
- Gains and losses from the disposition of property not included on line 5a that are taken into account in computing taxable income. For example:
  1. Gain or loss from the disposition of an annuity or life insurance contract. See [Line 3—Annuities From Nonqualified Plans](#), earlier.
  2. Casualty and theft losses reported on Schedule A (Form 1040), Itemized Deductions, line 20 (enter as a negative amount).

However, gains and losses attributable to assets held in a non-section 1411 trade or business are not included in net investment income. For more information, See [Line 5b—Net Gain or Loss From Disposition of Property That Is Not Subject to Net Investment Income Tax](#), earlier.

**Other section 62(a)(1) deductions.**

Use line 7 to report additional deductions attributable to a section 1411 trade or business that are not included on lines 4-6. Generally, these deductions are above-the-line deductions reported on Form 1040, lines 23-35.

**Note.** Expenses associated with the trade or business of trading in financial instruments or commodities that are reported on your Schedule C (Form 1040) are reported on Form 8960, line 10. See [Special rule for traders in financial instruments or commodities](#), later.

**Note.** Early withdrawal penalty (Form 1040, line 30) is reported on Form 8960, line 10.



*Use line 7 to report the amount of your domestic production activities deduction from Form 1040, line 35, attributable to a section 1411 trade or business. Using Form 8903, Domestic Production Activities Deduction, as a worksheet, compute the domestic production activities deduction using only the information from your section 1411 trade or business. On line 7, enter the lesser of the amount on Form 1040, line 35 or the amount of the deduction reported on the recomputed Form 8903 worksheet. Keep the recomputed Form 8903 for your records; do not include it with your return.*

**Form 8814 election.** Parents electing to include their child's dividends and capital gain distribution in their income by filing Form 8814 include on Form 8960, line 7, the amount on Form 8814, line 12, excluding Alaska Permanent Fund Dividends.

**Distributions from estates and trusts.**

Enter the amount from Schedule K-1, Form 1041, Beneficiary's Share of Income, Deductions, Credits, etc., box 14, code "H."

**Note.** If the amount reported on Schedule K-1, Form 1041, box 14, with a code "H" is a positive number, enter the amount from box 14 on Form 8960, line 7, and increase your MAGI on Form 8960, line 13 (or Form 8960, line 19a) by the same amount.

If the amount reported on Schedule K-1, Form 1041, box 14, with a code "H" is a negative number, and the trust has indicated some (or all) of the adjustment also requires a MAGI adjustment, enter the amount from box 14 on Form 8960, line 7, and make the applicable increase or decrease to your MAGI on Form 8960, line 13 (or Form 8960, line 19a) as necessary.

**Section 1411 NOL.** If you have an NOL allowed under section 172 for purposes of determining your regular income tax, you may also be allowed to deduct some, or all, of the NOL in computing net investment income. Because NOLs are computed and carried over year by year, you must determine for each NOL year what portion of the NOL is attributable to net investment income. To determine how much of the accumulated NOL you can use in the current tax year as a deduction against your net investment income, you must first calculate your applicable portion of the NOL for each loss year. For more information and examples on the calculation of a section 1411 NOL and its use, see Regulations section 1.1411-4(h).

**Note.** No portion of an NOL incurred in a tax year beginning before 2013 is permitted to reduce net investment income.

**Calculating your section 1411 NOL.**

In any tax year in which a taxpayer incurs an NOL, the section 1411 NOL is the lesser of:

- The amount of the NOL for the loss year the taxpayer would incur if only items of gross income that are used to determine net investment income and only properly allocable deductions (other than a section 1411 NOL) are taken into account in determining the NOL in accordance with sections 172(c) and 172(d), or
- The amount of the taxpayer's NOL for the loss year.



*For purposes of calculating the section 1411 NOL, compute your NOL using Form 1045, Application for Tentative Refund, Schedule A—NOL, with only items of income, gain, loss, and deduction on Form 8960 for that year. If this amount is less than your NOL computed for regular income tax purposes, then this amount is the applicable portion of your NOL. If this amount is equal to, or greater than, your NOL computed for regular income tax purposes, then your applicable portion is 100% of the regular income tax NOL (which means the entire NOL will be deductible in computing net investment income when the NOL is used for regular income tax purposes).*

**Using your section 1411 NOL.**

When you deduct an NOL that originated in a previous year against the current year income, a portion of the NOL will be deductible in computing net investment income for that year, regardless of whether you are subject to the NIIT in that year without the NOL deduction. The amount of the regular income tax NOL used in calculating net investment income is called the "applicable portion." The applicable portion is the percentage of the

regular income tax NOL that is a section 1411 NOL. Because NOLs are calculated on a year by year basis, the applicable portion of each NOL that is used in the current year may be different.

**Note.** If you incur an NOL in 2013 or 2014 and carry back that NOL to offset income in years preceding the imposition of the NIIT (for example, a carryback to calendar year 2011 and/or 2012), the amount of 1411 NOL that is included in the NOL carryback will be used (as an applicable portion) even though the NIIT was not in effect.

See [Example Calculation of Section 1411 NOL for NIIT](#), later, for an illustration of the calculation and use of a section 1411 NOL for NIIT purposes.

**Deduction recoveries.** A recovery or refund of a previously deducted item increases net investment income in the year of the recovery. There are 2 exceptions to this general rule.

Generally, for purposes of determining the gross amount of the recovery, include the recovery of any amount that was deducted in a prior year, regardless of the application of the tax benefit rule (see section 111). For example, if a taxpayer receives a refund of state income taxes from a prior year, such a refund would be included in the taxpayer's gross income. However, if the taxpayer was subject to the alternative minimum tax in the year of the payment, the taxpayer may not have received any tax benefit under IRC chapter 1, and therefore section 111 may exclude some or all of the refund from gross income. However, the deductibility of state income taxes for NIIT is independent of the taxes for alternative minimum tax purposes. Therefore, the applicability of the recovery rule is determined without regard to whether the recovered amount was excluded from gross income by reason of section 111.

There are 2 exceptions to including recovered amounts in net investment income. The 2 exceptions apply the tax benefit rule of section 111 within the NIIT system, and therefore operate independently of the application of section 111 for IRC chapter 1 purposes. First, properly allocable deductions are not reduced in the year of the recovery if the amount deducted in the prior year did not reduce the amount of section 1411 liability. Second, properly allocable deductions are not reduced in the year of the recovery if the amount deducted in the prior year is included in net investment income.

**Note.** The total amount of recovery reported on Form 8960, line 7, cannot exceed the total amount of properly allocable deductions for the year.

## Example Calculation of Section 1411 NOL for NIIT

Assume an unmarried individual incurs the following NOLs:

NOL Origination Year	(A) Regular Income Tax NOL	(B) Section 1411 NOL	(C) Applicable Portion of NOL [Column B divided by Column A]
2012 Calendar Year	\$150,000	None	0.00%
2013 Calendar Year	\$100,000	\$30,000	30.0%
2014 Calendar Year	\$40,000	\$40,000	100%
2015 Calendar Year	\$120,000	\$60,000	50.0%

Beginning in 2016, the unmarried individual begins to use the NOLs to offset his income:

Tax Year	NOL Origination Year	Regular Income	Applicable Portion	Section 1411 NOL
2016 Tax Year		\$300,000		
	2012 NOL	(\$150,000)	0.00%	None
	2013 NOL	(\$100,000)	30.0%	(\$30,000)
	2014 NOL	(\$40,000)	100.0%	(40,000)
	2015 NOL	(\$10,000)	50.0%	(\$5,000)

**Total Section 1411 NOL allowed as deduction against 2016 net investment income** . . . . . **(\$75,000)**

In 2016, the regular income tax NOLs from 2012-2015 has caused the taxpayer's AGI (\$0) to fall below the statutory threshold, therefore the individual is not subject to the NIIT.

Tax Year	NOL Origination Year	Regular Income	Applicable Portion	Section 1411 NOL
2017 Tax Year		\$600,000		
	2015 NOL	(\$110,000)	50.0%	(\$55,000)

**Total Section 1411 NOL allowed as deduction against 2017 net investment income** . . . . . **(\$55,000)**

In 2017, the regular income tax NOL remaining from 2015 has reduced the taxpayer's income for regular income tax to \$490,000. The individual is entitled to reduce his net investment income by \$55,000 (entered as a negative on Form 8960, line 7).

**TIP** If the recovered amount relates to a deduction taken in a tax year beginning before 2013, none of the recovery is included in net investment income in the year of recovery.

**TIP** If the recovered amount relates to a deduction taken in a tax year beginning after 2012 and you were not subject to the NIIT because your MAGI (see [Line 13—Modified Adjusted Gross Income \(MAGI\)](#), later), was below the applicable threshold on line 14, then none of the recovery is included in net investment income in the year of recovery. However, this rule does not apply if you incurred an NOL in the year of the deduction, and a portion of your NOL is a section 1411 NOL.

**TIP** If the recovered amount is included in net investment income on line 1-6, none of the recovery is included in net investment income on line 7.

For more information and examples, see Regulations section 1.1411-4(g)(2). See [Line 7—Deduction Recoveries](#)

[Worksheet](#), later, to determine the amount of recovery (if any) to include on line 7.

**TIP** In the case of multiple recoveries in a single year, complete this worksheet for each recovery. If multiple recoveries relate to a single deduction year, the amount reported on lines 8 and 9 of the first recovery worksheet will become lines 7 and 10, respectively, on the second recovery sheet.

**Self-charged interest.** The self-charged interest rules under section 469 (passive activity loss limitation) apply to lending transactions between a taxpayer and a pass-through entity in which the taxpayer owns a direct or indirect interest, or between certain pass-through entities. The section 469 self-charged interest rules apply only to items of interest income and interest expense that are recognized in the same tax year. The self-charged interest rules:

- Treat certain interest income resulting from these lending transactions as passive activity income,

- Treat certain deductions for interest expense that are properly allocable to the interest income as passive activity deductions, and
- Allocate the passive activity gross income and passive activity deductions resulting from this treatment among the taxpayer's activities.

The rules for computing net investment income adopt a similar rule with respect to self-charged interest. See Regulations section 1.1411-4(g)(5). Include on line 7 (as a negative amount) the amount of interest income you received that is equal to the amount of interest income that would have been considered passive income under the self-charged interest rules (Regulations section 1.469-7) had the nonpassive activity been considered a passive activity.

**Note.** This rule does not apply to interest received on loans made to a trade or business engaged in the trading of financial instruments or commodities.

**Note.** Do not include any adjustment for interest income on line 7 (as a negative amount) if the corresponding interest deduction is also taken into account in determining your self-employment income that is subject to tax under section 1401(b).

## Part II—Investment Expenses Allocable to Investment Income and Modifications

### Investment Expenses

Part II of Form 8960 includes deductions and modifications to net investment income that are not otherwise included in Part I. Generally, expenses associated with a passive activity trade or business, or the trade or business of trading in financial instruments or commodities conducted through a pass-through entity are already included on line 4a (because line 4a uses net income (loss) from Schedule E (Form 1040)), or on line 5a. Part II is used to report deductions that are, predominately, itemized deductions. For more information on what constitutes properly allocable deductions, see Regulations sections 1.1411-4(f)-(g).

**Note.** If you did not itemize your deductions for regular income tax purposes, you may not take any deductions that would be reported on Schedule A (Form 1040) on your Form 8960.

**Reasonable method allocations.** To the extent that you have a properly allocable deduction that is allocable to both net investment income and excluded income, you may use any reasonable

**Line 7—Deduction Recoveries Worksheet**

Keep for Your Records



1. Enter total amount of recovery included in gross income ..... 1. \_\_\_\_\_

- Do not include recoveries of items that are included in net investment income in the year of recovery (included on lines 1-6).
- Do not include recoveries of items if the amount relates to a deduction taken in a tax year beginning before 2013.
- Do not include recoveries of items if the amount relates to a deduction taken in a tax year beginning after 2012, and you were not subject to the NIIT solely because your MAGI was below the applicable threshold.

 *This rule does not apply if you incurred a net operating loss (NOL) in such year, and a portion of such NOL constitutes a section 1411 NOL.*

2. Amount of the recovery that would have been included in gross income but for the application of the tax benefit rule under section 111 ..... 2. \_\_\_\_\_

3. Total amount of recovery (add lines 1 and 2) ..... 3. \_\_\_\_\_

4. Enter the percentage of the deduction allocated to net investment income in the prior year. (If the deduction was not allocated between investment income and non-investment income, enter 100%.) ..... 4. \_\_\_\_\_

5. Enter the lesser of (a) line 3 multiplied by line 4, or (b) the total amount deducted on the prior year Form 8960 attributable to item recovered (after any deduction limitations imposed by section 67 or 68) ..... 5. \_\_\_\_\_

**Calculation of recoveries when the deduction is not taken into account in computing your section 1411 NOL.**

6. Multiply line 5 by .038 ..... 6. \_\_\_\_\_

7. Enter the amount of net investment income in the year of the deduction (previous year's Form 8960, line 12) ..... 7. \_\_\_\_\_

8. Add the amount of line 5 to line 7 ..... 8. \_\_\_\_\_

9. Using the previous year's Form 8960, recalculate the NIIT for the year of the deduction by replacing the amount reported on line 12 with the amount reported on line 8 of this worksheet (do not use the net investment income reported on that year's Form 8960, line 12). Enter your recalculated NIIT here ..... 9. \_\_\_\_\_

10. Enter the NIIT reported for the year of the deduction ..... 10. \_\_\_\_\_

11. Subtract line 10 from Line 9 ..... 11. \_\_\_\_\_

12. Enter the smaller of line 6 or Line 11 ..... 12. \_\_\_\_\_

13. Divide line 12 by 3.8% (line 12 ÷ .038). Enter this amount on line 7 in the year of recovery ..... 13. \_\_\_\_\_

**Calculation of recoveries when the deduction is taken into account in computing your section 1411 NOL**

14. Enter the amount of the section 1411 NOL in the year of the deduction (entered as a positive number) ..... 14. \_\_\_\_\_

15. Enter the amount of the section 1411 NOL in the year of the deduction recomputed without the amount on line 5 (entered as a positive number, but not less than zero) ..... 15. \_\_\_\_\_

16. Subtract line 15 from line 14. Enter this amount on line 7 in the year of recovery ..... 16. \_\_\_\_\_

method to determine that portion of the deduction that is properly allocable to net investment income. The 3 items that may be allocated between net investment income and excluded income are:

- State, local, and foreign income taxes deducted on Schedule A (Form 1040), line 5 (or Form 1041, line 11),
- All ordinary and necessary expenses paid or incurred during the tax year to determine, collect, or obtain a refund of any tax owed (Schedule A (Form 1040), line 22), and
- Amounts paid or incurred by the fiduciary of an estate or trust on account of administration expenses, including fiduciaries' fees and expenses of litigation, which are ordinary and necessary in connection with the performance of the duties of administration.

If you have more than one of the deductions described above, you may use a different method of allocation for each one. The reasonable method of allocation may differ from year to year.

Examples of reasonable methods of allocation include, but are not limited to, an allocation of the deduction based on the ratio of the amount of a taxpayer's gross investment income (Form 8960, line 8) to the amount of the taxpayer's AGI (Form 1040, line 38). In the case of an estate or trust, an allocation of a deduction pursuant to rules described in Regulations section 1.652(b)-3(b), and in the case of ESBT, Regulations section 1.641(c)-1(h), is also a reasonable method.

**Note.** If an estate or trust allocates expenses for regular income tax purposes under Regulations section 1.652(b)-3(b) or 1.641(c)-1(h), any deviation from that allocation may not be a reasonable allocation method for NIIT purposes.

**Items not deductible in calculating net investment income.** Unless a deduction is specifically identified as properly allocable to net investment income in the section 1411 regulations, or in supplemental guidance issued by the IRS in the Internal Revenue Bulletin, the deduction is not permitted. For example, the following items are not deductible in computing net investment income:

- Deductions for moving expenses (Form 1040, line 26),
- Expenses that are not deductible for regular income tax (for example, interest expense and investment expenses

associated with investments in tax-exempt bonds),

- Deduction for alimony paid (Form 1040, line 31),
- Deduction for contributions to IRAs or other qualified plans,
- The standard deduction,
- Personal exemptions (Form 1040, line 42),
- Deductions for charitable contributions (Schedule A (Form 1040), line 19),
- Deductions for medical expenses (Schedule A (Form 1040), line 4),
- Deductions for mortgage interest expense (Schedule A (Form 1040), lines 10-13),
- Deductions for real estate taxes or personal property taxes that do not constitute investment expenses under section 163(d)(4)(C) and are reported on Form 4952, Investment Interest Expense Deduction, line 5 (Schedule A (Form 1040), lines 6-7),
- Deductions for state and local sales tax (Schedule A (Form 1040), line 5), and
- Deductible contributions to Capital Contribution Funds under section 7518.

### Line 9a—Investment Interest Expenses

Enter on Form 8960, line 9a, interest expense you paid or accrued during the tax year from either Schedule A (Form 1040), line 14 or the amount from Form 4952, line 8. For further details, see Form 4952 instructions or Pub. 550, Investment Income and Expenses.

**Note.** If Form 4952 includes investment interest expense that is deducted on Schedule E (Form 1040) and already taken into account on line 4a, do not include the same amount on line 9a.

**Note.** If you own a CFC or QEF with respect to which a section 1.1411-10(g) election is not in effect, you may calculate your section 163(d) investment expense deduction for NIIT purposes differently than for regular income tax purposes. See Regulations section 1.1411-10(c)(5) for additional guidance. Any modification to your section 163(d) investment expense deduction for NIIT purposes is taken into account on line 6.

### Line 9b—State Income Tax

Include on line 9b any state or local income taxes, or foreign income taxes you

paid that are attributable to net investment income. This may be all or part of the amount you reported on Schedule A (Form 1040), line 5a (or Form 1041, line 11). For purposes of line 9b, sales taxes are not deductible in computing net investment income.

**Foreign taxes.** If you took an income tax credit for foreign income taxes (generally, reported using Form 1116, Foreign Tax Credit), those foreign taxes are not deductible in computing net investment income.

You can determine the portion of your state and local income taxes allocable to net investment income using any reasonable method. See [Reasonable method allocations](#), earlier, and [Deductions subject to AGI limitations under section 67 or section 68](#), later.

**Note.** Enter the amount of state, local, or foreign income taxes on Form 8960, line 9b, net of any deduction limitations imposed by section 68. See [Lines 9 and 10 — Application of Itemized Deduction Limitations on Deductions Properly Allocable to Investment Income Worksheet](#), later, for assistance in figuring the amount to report on line 9b.

### Line 9c—Miscellaneous Investment Expenses

Investment expenses you incur that are directly connected to the production of investment income are deductible expenses in determining your net investment income. Generally, these amounts are reported on Form 4952, line 5. See Form 4952 for the instructions for line 5 for more information. As in the case with line 5 of Form 4952, the amounts reported on line 9c are the amounts allowable after the application of the deduction limitations imposed by sections 67 and 68. See [Deductions subject to AGI limitations under section 67 or section 68](#), later.

**Note.** Enter the amount of miscellaneous investment expenses on Form 8960, line 9c, net of any deduction limitations imposed by section 67 or section 68. See [Lines 9 and 10 — Application of Itemized Deduction Limitations on Deductions Properly Allocable to Investment Income Worksheet](#), later, for assistance in figuring the amount to report on line 9c.

**Lines 9 and 10 — Application of Itemized Deduction Limitations on Deductions Properly Allocable to Investment Income Worksheet**

**Part I — Application of Section 67 to Deductions Properly Allocable to Investment Income**

1. Enter the amount of Miscellaneous Itemized Deductions properly allocable to investment income before any itemized deduction limitations (Description and Form 8960 line number where they will be reported):

	<u>Description</u>	<u>Line</u>	<u>Amount</u>
(a)	_____	_____	_____
(b)	_____	_____	_____

2. Enter the total of all items listed in line 1 ..... **2.** \_\_\_\_\_

3. Enter the amount of all Miscellaneous Itemized Deductions after the application of the section 67 limitation (Schedule A (Form 1040), line 27) ..... **3.** \_\_\_\_\_

4. Enter the lesser of the total reported on line 2 or line 3 ..... **4.** \_\_\_\_\_

**Part II — Application of Section 67 Limitation to Specific Deductions**

<b>(A)</b> Reenter the amounts and descriptions from Part I, line 1.			<b>(B)</b> IF line 3 is less than line 2, THEN divide line 3 by line 2 AND enter the amount in column (B). IF amounts reported on Part I, lines 2 and 4 are equal, THEN enter 1.00 in column (B).	<b>(C)</b> Multiply the individual amounts in column (A) by the amount in column (B).
<u>Description</u>	<u>Line</u>	<u>Amount</u>		
(a) _____	_____	_____	×	= _____
(b) _____	_____	_____	×	= _____



**Individuals** — Use the amounts in column (C) on Part III, line 1, to determine the amount of these deductions that are allowable after the application of the section 68 limitation.

**Estates or trusts** — Enter the amounts in column (C) in the appropriate location on lines 9 and 10. Do not complete Parts III or IV of this worksheet.

**Lines 9 and 10 — Application of Itemized Deduction Limitations on Deductions Properly Allocable to Investment Income Worksheet—  
continued**

Keep for Your Records



**Part III — Application of Section 68 to deductions properly allocable to investment income (Individuals Only)**

1. Enter the amount of Miscellaneous Itemized Deductions properly allocable to investment income from column (C) of Part II:

	<u>Description</u>	<u>Line</u>	<u>Amount</u>
(a)	_____	_____	_____
(b)	_____	_____	_____

2. Enter the amount of state, local, and foreign income taxes that are properly allocable to investment income. . . . . **2.** \_\_\_\_\_

3. Enter the amounts of other Itemized Deductions subject to the section 68 limitation and properly allocable to investment income before any itemized deduction limitations (Description and Form 8960 line number):

	<u>Description</u>	<u>Line</u>	<u>Amount</u>
(a)	_____	_____	_____
(b)	_____	_____	_____

4. Enter the total deductions properly allocable to investment income subject to the section 68 limitation. Enter the sum of lines 1 through 3 . . . . . **4.** \_\_\_\_\_

5. Enter the amount of total itemized deductions reported on Form 1040, line 40 . . . . . **5.** \_\_\_\_\_

6. Enter all other itemized deductions allowed but not subject to the section 68 deduction limitation:

- (a) Investment Interest Expense . . . . . \_\_\_\_\_
- (b) Casualty Losses (other than losses described in section 165(c)(1)) . . . . . \_\_\_\_\_
- (c) Medical Expenses . . . . . \_\_\_\_\_
- (d) Gambling Losses . . . . . \_\_\_\_\_
- (e) Total of lines 6(a) through 6(d) . . . . . **6e.** \_\_\_\_\_

7. Subtract line 6e from line 5 . . . . . **7.** \_\_\_\_\_

8. Enter the lesser of line 7 or line 4 . . . . . **8.** \_\_\_\_\_



*This is the amount of itemized deductions that are properly allocable to investment income after the application of the sections 67 and 68 deduction limitations. Use Part IV of this worksheet to reconcile this amount to the individual deduction amounts reported on Form 8960, lines 9 and 10.*

**Lines 9 and 10 — Application of Itemized Deduction Limitations on Deductions Properly Allocable to Investment Income Worksheet—  
continued**

Keep for Your Records



(A)			(B)		(C)
Reenter the amounts and descriptions from Part III, lines 1 – 3.			IF Part III, line 8 is less than Part III, line 4, THEN divide line 8 by line 4 AND enter the amount in column (B). IF the amounts reported on Part III, lines 4 and 8 are equal, THEN enter 1.00 in column (B).		Multiply the individual amounts in column (A) by the amount in column (B). Enter these amounts in the appropriate location on lines 9 and 10.
<b>Part IV — Reconciliation of Schedule A Deductions to Form 8960, lines 9 and 10 (Individuals Only)</b>					
<b>Miscellaneous Itemized Deductions properly allocable to investment income:</b>					
	<u>Description</u>	<u>Line</u>	<u>Amount</u>	x	=
1.	(a) _____	_____	_____	x	_____ = _____
	(b) _____	_____	_____	x	_____ = _____
2.	State, local, and foreign income taxes .....	_____	_____	x	_____ = _____
<b>Itemized Deductions Subject to Section 68 included on Line 3 of Part III:</b>					
3.	(a) _____	_____	_____	x	_____ = _____
	(b) _____	_____	_____	x	_____ = _____

**Line 10—Additional Modifications**

Use line 10 to report additional deductions and modifications to net investment income that are not otherwise reflected in lines 1-9. Enter amounts on line 10 as positive numbers.

**Note.** Enter the amount on line 10 after the application of section 67 or 68. See [Lines 9 and 10 — Application of Itemized Deduction Limitations on Deductions Properly Allocable to Investment Income Worksheet](#), earlier, for assistance in figuring the amount to report on line 10.

You may use line 10 to report properly allocable deductions such as:

- The penalty paid for an early withdrawal of savings under section 62(a)(9) (Form 1040, line 30),
- The amount treated as an ordinary loss by a holder of a contingent payment debt instrument under Regulations section 1.1275-4(b) or an inflation-indexed debt instrument under Regulations section 1.1275-7(f)(1),
- Net negative periodic payments paid on a notional principal contract (NPC) that is referenced to property (including an index) that produces (or would produce if the property were to produce income) interest, dividends, royalties, or rents.
- Excess deductions allocated to a beneficiary upon the termination of an estate or trust under section 642(h)(2) that would otherwise have been allowable but

for the fact that the terminating trust or estate had negative net investment income upon termination. This amount may be some or all of the amount reported on Schedule K-1 (Form 1041), line 11a. See Regulations section 1.1411-4(g)(4)(iii),

- Certain amounts reported on Schedule A (Form 1040), line 28:
  1. The amount of the deduction allowed to an annuitant for the annuitant's last tax year under section 72(b)(3), provided the income from the annuity (had the annuitant lived to receive such income) would have been included in net investment income and not otherwise excluded as a distribution from a qualified plan,
  2. Deduction for payment of amounts under a claim of right if over \$3,000, to the extent that such repayments relate to items of income included in net investment income in a preceding year that began after 2012. See Pub. 525, Taxable and Nontaxable Income, for details,
  3. The amount of the deduction for estate taxes allowed by section 691(c) that is allocable to net investment income, except to the extent that the section 691(c) deduction is taken into account in computing net gain on line 5(a) (or line 7 if applicable), and
  4. The amount of the deduction allowable under section 171(a)(1) for the amortizable bond premium on a taxable bond. Do not include the amount of bond

premium amortization that is used to offset interest income under section 171(e) on your Schedule B (Form 1040A or 1040), Interest and Ordinary Dividends. This amount of bond premium amortization is already taken into account in computing interest income on Form 8960, line 1.

- If you are a partner in an Electing Large Partnership and receive a Schedule K-1 (Form 1065-B), Partner's Share of Income (Loss) From an Electing Large Partnership, and box 2 contains a loss, report this loss on line 10,
- To the extent these items are properly allocable to net investment income. See [Reasonable method allocations](#), earlier,
  1. All ordinary and necessary expenses paid or incurred during the tax year to determine, collect, or obtain a refund of any tax owed, but only to the extent the expenses are allocable to net investment income (Schedule A (Form 1040), line 22), and
  2. Amounts paid or incurred by the fiduciary of an estate or trust on account of administration expenses, including fiduciaries' fees and expenses of litigation, which are ordinary and necessary in connection with the performance of the duties of administration.

**Special rule for traders in financial instruments or commodities.** If your only business is trading in financial instruments or commodities, you may use the net loss amount on your Schedule C (Form 1040)

## Line 10—Worksheet for Traders in Financial Instruments That Maintain More Than One Trade or Business

Use this worksheet to determine the amount on line 10.

1	Enter the total amount from Schedule SE (Form 1040), line 3. ....	1	_____
2	a If the amount on Schedule SE (Form 1040), line 3, is zero or greater, you cannot use the expenses from your trade or business to reduce your investment income. Stop here.		
	b If the amount on Schedule SE (Form 1040), line 3, is a negative amount, enter your expenses from your trade or business of trading in financial instruments or commodities (entered as a positive amount). ....	2 b	_____
3	Add line 1 to line 2b. ....	3	_____
	a If the amount on line 3 of this worksheet is zero or less, include the trade or business expenses (line 2b of the worksheet) on Form 8960, line 10.		
	b If the amount on line 3 of this worksheet is a positive number, convert the amount from Schedule SE (Form 1040), line 3 (line 1 of this worksheet) into a positive number and include it on Form 8960, line 10.		

as a deduction on line 10, and you do not need to complete Schedule SE (Form 1040), Self-Employment Tax.

If you have more than one trade or business, you must complete Schedule SE (Form 1040) to determine whether you can include some or all of the trading business Schedule C (Form 1040) expenses as a deduction on line 10. Complete the [Line 10—Worksheet for Traders in Financial Instruments That Maintain More Than One Trade or Business](#), earlier.

**Note.** Although Schedule SE (Form 1040) must be completed to determine the amount of expenses that may be used as a modification on line 10, if Schedule SE (Form 1040), line 3, is a negative amount, do not file the Schedule SE (Form 1040) with your Form 1040. See the Instructions for Schedule SE (Form 1040) for who must file a Schedule SE (Form 1040). Retain the Schedule SE (Form 1040) and the worksheet used to determine the expenses included as a modification on line 10 with your records. Do not file the worksheet with Form 1040.

The amounts reported on line 10 are the amounts allowable after the application of the deduction limitations imposed by sections 67 and 68, as applicable. See [Deductions subject to AGI limitations under section 67 or section 68](#), later.

**Deductions subject to AGI limitations under section 67 or section 68.** Any deduction allowed against net investment income that, for purposes of computing your regular income tax, is subject to either the 2% floor on miscellaneous itemized deductions (section 67) or the overall limitation on itemized deductions (section 68) is allowed in determining net investment income, but only to the extent the items are deductible after application of both limitations.

### Miscellaneous itemized deductions.

The amount of your miscellaneous itemized deductions, after application of the 2% floor but before application of the overall limitation, used in determining your net investment income is the lesser of:

- That portion of your miscellaneous itemized deductions before the application of the 2% floor that is properly allocable to net investment income, or
- Your total miscellaneous itemized deductions allowed after the application of the 2% floor but before the application of the overall limitation on itemized deductions.

**Itemized deductions.** The amount of your itemized deductions allowed in determining your net investment income after applying both the 2% floor and overall limitation is the lesser of:

- The sum of:
  1. The amount of your miscellaneous itemized deductions allowed as a deduction against your net investment income (before application of the overall limitation), and
  2. The total amount of your itemized deductions that are not subject to the 2% floor and are properly allocable to items of income or net gain for purposes of determining your net investment income, or
- The total amount of your itemized deductions allowed after the application of both the 2% floor and the overall limitation on itemized deductions.

For more information and examples, see Regulations section 1.1411-4(f)(7).

## Part III—Tax Computation Individuals

Individuals complete lines 13-17.

### Line 13—Modified Adjusted Gross Income (MAGI)

If you did not exclude any amounts from your gross income under section 911 and you do not own a CFC or PFIC, your MAGI is your AGI as reported on Form 1040, line 38. If you exclude amounts under section 911 or own certain CFCs or PFICs, your MAGI is your AGI as modified by certain rules described in Regulations section 1.1411-10(e)(1).

**Section 911.** If you exclude amounts from income under section 911, to calculate your MAGI, you must increase your AGI by the excess of the amount excluded from income under section 911(a)(1) over the amount of any deductions (taken into account in computing AGI) or exclusions disallowed under section 911(d)(6) with respect to the amount excluded from income under section 911(a)(1). Use [Line 13 — MAGI Worksheet](#), later, to compute your MAGI.

**CFCs and PFICs.** If you own, directly or indirectly, stock in a CFC or PFIC other than certain CFCs and PFICs held in a section 1411 trade or business or PFICs with respect to which an election under section 1296 is in effect, to calculate your MAGI, you may need to make certain adjustments to your AGI, as provided in Regulations section 1.1411-10(e)(1). Generally, these adjustments include:

- 1291 funds.

1. Increase AGI by the amount of any excess distributions derived from a PFIC that are dividends included in MAGI but not included in gross income for regular income tax purposes, and

2. Increase AGI by the amount of any gain treated as an excess distribution under section 1291 included in MAGI but not included in gross income for regular income tax purposes.

<b>1. Enter your Adjusted Gross Income</b> .....	<b>1.</b> _____
<b>2. Foreign Earned Income Exclusion:</b>	
<b>(a)</b> Enter your Foreign Earned Income Exclusion (from Line 42 of Form 2555) .....	_____
<b>(b)</b> Enter the deductions reported on Line 44 of Form 2555 allocable to your Foreign Earned Income Exclusion .....	( _____ )
<b>(c)</b> Combine Lines 2(a) and 2(b) .....	<b>2.</b> _____
<b>3. Adjustments for Certain CFCs and Certain PFICs</b> .....	<b>3.</b> _____
<b>4. Enter the sum of Line 1, Line 2(c), and Line 3. (Enter this amount on Form 8960, Line 13.)</b> .....	<b>4.</b> _____

- CFCs and QEFs without a section 1.1411-10(g) election in effect.
  1. Decrease AGI by the amount of any section 951(a) or 1293(a) inclusions,
  2. Increase AGI by the amount of any distributions described in section 959(d) or 1293(c) included in your net investment income as a dividend,
  3. Increase or decrease AGI (as appropriate) by the amount of any adjustment to gain or loss on the disposition of the CFC or QEF that results in an adjustment to your MAGI,
  4. Increase or decrease AGI (as appropriate) by the amount of any adjustment to gain or loss on the disposition of an interest in a domestic partnership or S corporation that holds a CFC or QEF that results in an adjustment to your MAGI,
  5. Increase or decrease AGI (as appropriate) by the amount of any adjustment to investment interest expense under Regulations section 1.1411-10(c)(5) that is taken into account in computing MAGI, and
  6. Enter the amount reported to you on Schedule K-1 (Form 1041) in box 14 with a code "H" that requires a MAGI adjustment.

- CFCs and QEFs held in a section 1411 trade or business or with a section 1.1411-10(g) election in effect.
  1. Enter the amount of any distributions described in section 959(d) or 1293(c) included in your net investment income as a dividend (not applicable to tax years beginning before 2014).

**TIP** *If you do not own (directly or indirectly) any interests in CFCs or PFICs, and do not exclude any foreign earned income on Form 2555, Foreign Earned Income, enter your AGI from Form 1040, line 38 on line 13.*

**Line 14—Threshold Based on Filing Status**

The threshold amount is based on your filing status.

Filing Status	Threshold Amount
Married Filing Jointly	\$250,000
Qualifying Widower with Dependent Child	\$250,000
Married Filing Separately	\$125,000
Single or Head of Household	\$200,000

A bankruptcy estate of an individual enters \$125,000 and uses Form 8960, lines 13-17, to compute the tax.

**Estates and Trusts**

Estates and trusts complete lines 18-21.

**Line 18b—Deductions for Distributions of Net Investment Income and Deductions Under Section 642(c)**

The undistributed net investment income of an estate or trust is its net investment income reported on line 18a, reduced by the net investment income included in the distributions to beneficiaries deductible by the estate or trust under section 651 or 661, and by the net investment income for which the estate or trust was entitled to a section 642(c) deduction, in each case as computed in accordance with Regulations section 1.642(c)-2 and the allocation and ordering rules under Regulations section 1.662(b)-2. Regulations section 1.1411-3(e) applies the class system of income categorization, generally embodied in sections 651 through 663 and related regulations, to arrive at the trust's net investment income reduction in the case of distributions that are comprised of both net investment income and net excluded income items. See Regulations section 1.1411-3(e) for more

information and examples on the calculation of undistributed net investment income.

**Charitable deduction.** Report the amount of net investment income distributed to beneficiaries of the estate or trust and the amount of net investment income allocated to distributions to charity pursuant to section 642(c). The amount of the deduction for net investment income distributed to charities under section 642(c) is the amount of the net investment income allocated to the charity in accordance with Regulations section 1.642(c)-2(b) and the allocation and ordering rules under Regulations section 1.662(b)-2.

**TIP** *Form 1041, Schedule A, provides for a calculation of an estate's or trust's charitable deduction for regular income tax purposes. Form 1041, Schedule A, can be used as a worksheet to calculate the amounts of net investment income allocable to charitable distributions. For the worksheet, the Form 1041, Schedule A, line 2, includes both tax-exempt income and the difference between adjusted total income and Form 8960, line 18a.*

**TIP** *The amount of the deduction for net investment income distributed to beneficiaries should equal the sum of net investment income reported to the beneficiaries on their respective Schedules K-1 (Form 1041).*

**Note.** In general, the deduction for distributions of net investment income may not exceed the taxable income distributed to the beneficiary for regular income tax purposes. However, in the case of an estate or trust that owns an interest in certain CFCs or PFICs, the distribution of net investment income can exceed the distribution of taxable income when the amount of distributions exceed distributable net income for regular income tax purposes.



*Form 1041, Schedule B, provides for a calculation of an estate's or trust's income distribution*

*deduction for regular income tax purposes. Form 1041, Schedule B can be used as a worksheet to calculate the income distribution deduction for NIIT purposes. For example, Form 1041, Schedule B can be used as a worksheet by replacing line 1 with the trust's net investment income (from Form 8960, line 18a) and line 2 includes both adjusted tax-exempt interest and the difference between Form 1041, Schedule B, line 1, and Form 8960, line 18a.*

### **Line 19a—Adjusted Gross Income (AGI)**

If the estate or trust does not own a CFC or PFIC, enter its AGI for regular income tax purposes. See the Instructions for Form 1041, line 15c.

If the estate or trust owns a CFC or PFIC, it may need to make adjustments. See [Line 13—Modified Adjusted Gross Income \(MAGI\)](#), earlier.

### **Line 19b—Highest Tax Bracket for Estates and Trusts**

For the highest tax bracket for estates and trusts for the year, see Form 1041, Schedule G instructions for the tax rate schedule.

In the case of a QFT, see [Special computational rules for qualified funeral trusts \(QFTs\)](#), earlier, to determine the amount to report on Form 8960, line 19b.