



Post-Mortem Tax Planning



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Estate Tax Return Requirements & Elections



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Estate Tax Return (Form 706) Filing Requirements

- A Federal estate tax return (IRS Form 706) is required if the gross estate, plus adjusted taxable gifts, exceeds the decedent's lifetime exemption threshold (\$15 million in 2026).
- Returns are generally due nine months after death; An automatic 6-month extension can be requested using Form 4768.
- An estate tax return may also need to be filed for a decedent who was a nonresident and not a U.S. citizen if the decedent had more than \$60,000 of U.S.-situated assets.
- **State Estate Taxes:** Specific states may have lower, separate estate or inheritance tax filing thresholds.

Portability Election

*The portability election is made on the deceased spouse's federal estate tax return (Form 706).

*The estate elects to transfer the deceased spouse's unused exclusion amount; allowing the surviving spouse to utilize it in addition to their own.

***Example:** Surviving spouse has full \$15M available. Through a portability election, she now has available \$3M of her deceased husband's lifetime exemption as well; for a total available exemption of \$18M. (Spouse's lifetime gifts would first utilize the ported exemption from her deceased husband; prior to utilization of her own.).

*Like any estate required to file a return; an estate making a portability election is also required to file a timely return, **irrespective of the size of the gross estate.**

*If the estate representative did not timely file an estate tax return; the portability election may still be available.

Alternative Deadline for Filing 706 to Elect Portability

*Availability depends on whether or not the estate otherwise had a filing requirement, based on the filing threshold provided under § 6018(a). (\$15M for 2026).

*If the deceased spouse's adjusted taxable gifts and gross estate was less than the filing threshold; Revenue Procedure 2022-32 provides a simplified method to obtain an extension of time to make a "portability" election.

*The simplified method requires that a completed and accurate estate tax return be filed on or before the fifth anniversary of the decedent's death.

*It requires a notation on the estate tax return that the return is "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)." No user fee is required.

Portability Rules

"Last Deceased Spouse" Rule: Only the DSUE of the most recently deceased spouse can be used.

***Generation Skipping Tax:** No Election for GSTT: The Generation-Skipping Transfer Tax (GSTT) exemption (also \$15M for 2026) cannot be ported.

***Effect of Remarriage:** If the surviving spouse remarries and the new spouse also dies, the first spouse's DSUE is lost.

Estate Tax Deductions

*For federal estate tax purposes, deductions are subtracted from the gross estate to determine the taxable estate. These deductions can significantly reduce or even eliminate total tax liability.

***Marital Deduction:** This is often the largest deduction, allowing an unlimited amount of property to pass to a surviving spouse tax-free, provided the spouse is a U.S. citizen.

***Charitable Deduction:** The full value of any assets left to qualified charitable, religious, or educational organizations is generally deductible from the gross estate.

Further Deductions

***Funeral Expenses:** Reasonable costs for the funeral service, burial or cremation, and monuments (like a headstone) can be deducted.

***Debts and Liens:** Outstanding debts at the time of death are deductible.

Mortgages and other secured loans;

Unpaid taxes: Accrued property taxes / decedent's final income taxes.

Personal debts, such as credit card balances and medical bills.

***Administration Expenses:** Costs incurred while managing and settling the estate are deductible: executors or trustees fees; attorney, accountant, & appraiser fees; court costs and probate filing fees.

***Casualty and Theft Losses:** Losses from fire, storm, shipwreck, or theft that occur during the estate's settlement and are not compensated by insurance are deductible.

***State Death Tax Deduction:** Taxes paid to any state or the District of Columbia as a result of the decedent's death (inheritance or estate taxes) are deductible on the federal estate tax return.

Deduction Options

- **"Double Deduction" Rule:**

In general, administration expenses can be claimed as a deduction on either the Estate Tax Return (Form 706) or the Estate / Admin. Trust Income Tax Return (Form 1041), but not both.

- **Selection Strategy:**

If the estate is unlikely to owe federal estate tax (Example: because of \$15M exemption; combined with either a marital deduction; charitable deduction; or both over the balance); it's generally more beneficial to take administration expenses on the income tax return (Form 1041) to reduce income tax liability.

- **Medical Expenses:**

Unpaid medical expenses can be deducted on the estate tax return or, if paid within one year of death, on the decedent's final income tax return.



QTIP Trusts



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Qualified Terminable Interest Property (QTIP) Election

Typically, a marital deduction would only be allowed for property either provided outright to the surviving spouse or over which they have control (ex: General Power of Appointment property.) A QTIP election however, which is typically irrevocable, allows a marital deduction for property placed in trust, from which the surviving spouse can benefit, but has no direct ownership.

Estate Tax Deferral: By making this election, assets held in the trust are deducted as part of a marital deduction, from the first spouse's taxable estate. Taxes are paid when surviving spouse passes away; as part of their estate tax return filing.

Qualifying Property: To be eligible for the election (per IRC Section 2056(b)(7):

- 1.) The surviving spouse must receive all income from the property for life, paid at least annually.
- 2.) No one else can have the power to appoint the property to anyone other than the surviving spouse during their lifetime.

Why a QTIP Trust?

Control Over Heirs: A useful tool for blended families. The deceased spouse can provide for their surviving spouse's lifetime needs while ensuring the remaining principal goes to their own chosen beneficiaries (like children from a prior marriage) after the spouse dies.

Post-Mortem Flexibility: Executor can decide after death; based on current tax laws and asset values; how much of the estate should qualify for the marital deduction versus being placed in a bypass trust.

Basis "Step-Up": Assets in a QTIP trust receive a second step-up in tax basis upon the death of the second spouse, which can significantly reduce capital gains taxes for the final beneficiaries.

QTIP Election Variations

Partial Election: An executor can elect to treat only a fraction or percentage of a trust as QTIP property if it is more tax-efficient. Usually, marital trust would be severed into QTIP portion and non-QTIP portion).

Reverse QTIP Election: Used for Generation-Skipping Transfer (GST) tax purposes. It allows the first spouse to be treated as the "transferor" so they can use their own GST exemption on the trust assets.(QTIP election does not apply for GST purposes, so first spouse remains transferor).

Portability Coordination: Under IRS Revenue Procedure 2016-49, the IRS will generally respect a QTIP election even if it wasn't strictly necessary to reduce estate taxes to zero, provided the estate also makes a portability election to transfer unused exemption amounts. (Generally, a QTIP election must reduce taxes).



Valuation Considerations



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Valuation of Property included in Gross Estate

*Estate Tax Valuation;

Fair market value (FMV): The price a willing buyer and willing seller would agree upon.

Date of Death: Assets are typically valued as of the date of death, though an alternate valuation date (generally six months later) can sometimes be elected.

Alternate Valuation Date(s):

- 1.) Date (generally six months after death) that can be used to value the same assets held at the date of death; (not the value of the assets held 6 months later, if different) if it reduces both the total value of the gross estate and the estate tax liability.
- 2.) Date assets are sold or distributed within first six months following death; If the asset is sold, its gross sales price would be the alternate value; if distributed, its FMV on the date of distribution.

Appraisals

^Real Estate Appraisal: Local assessed values for property taxes are generally not accepted; an appraisal reflecting FMV is generally required.

***Business Interests:** Closely held businesses often require complex valuations. Discounts for "lack of control" or "lack of marketability" can be applied if properly supported by a Qualified Appraiser.

***Special Use Valuation (Section 2032A):** Farmland or closely held business real estate may be valued based on its current use rather than "highest and best use," reducing the gross estate by up to (\$1,000,000).

***Documentation:** Appraisals must be professional, independent, and generally meet IRS guidelines such that the adequate disclosure rules would be met.



Valuation Considerations with Life Insurance



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Life Insurance Included in Estate Tax Value of Corporation Without Offset for Redemption Obligation

- In *Connelly v. United States*, the 8th Circuit Court of Appeals considered the estate tax value of shares in closely held corporation and concluded that:
 - The buy-sell agreement did not fix the estate tax value because it did not satisfy the section 2703 or case law requirements - no fixed or determinable price
 - The value of the corporation included life insurance proceeds used to fund the purchase of the decedent's shares in accordance with the corporation's obligation to do so under the buy-sell agreement
 - There was no reduction in the value of the corporation attributable to the contractual obligation to purchase the decedent's shares
- The 11th Circuit Court of Appeals had allowed the obligation to offset the proceeds in *Estate of Blount v. Commissioner*.
- The U.S. Supreme Court granted the *Connelly* estate's petition for writ of certiorari in December.

Life Insurance Included in Estate Tax Value of Corporation Without Offset for Redemption Obligation

- The redemption obligation should arguably not reduce the value of the entity
 - The redemption obligation is a liability of the corporation because it is a contractual obligation.
 - However, the redemption liability simultaneously reduces shareholder equity in an amount equal to the redemption obligation.
 - The buy-sell agreement transforms the decedent's interest from that of a residual equity owner to that of a contract creditor.
 - And the value of the corporation remains the same after accounting for that adjustment.
- In essence, the company does owe the estate the value of the deceased shareholder's shares – but they only owe that amount one time – to the estate as a creditor rather than as both a creditor and a shareholder.
- Structuring and funding buy-sell agreements can be very complicated – careful consideration should be given to section 2703 and cases like *Connelly* in connection with this effort

Life Insurance Included in Estate Tax Value of Corporation Without Offset for Redemption Obligation

- Supreme Court Decision
 - In a 9-0 decision, the Supreme Court agreed with the IRS on that fact that the value of life insurance death benefit proceeds for a decedent owner of the entity - which were paid to the entity in cash - must be included in the underlying stock value at the date of death of the decedent (or at least his proportionate share, through his ownership of the entity).



Estate Liquidity



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Estate Liquidity

Refers to the ability of an estate to meet immediate cash obligations without being forced to sell non-liquid assets (real estate, businesses, collectibles) at a loss; especially within the first 9 months following death when most estate costs could generally be due.

A liquid estate would typically be one that has the ability to convert assets into cash quickly and without a significant loss in value.

Typical Costs:

Federal & State Estate Taxes: Often the largest immediate cash requirement.

Debts & Mortgages: Outstanding personal or business liabilities.

Administrative Expenses: Legal fees, accounting, and appraisal costs.

Family Income Needs: Maintaining the lifestyle of surviving spouse / dependents during estate administration.

Typical Illiquid Assets

Closely-Held Businesses: Hard to value and harder to sell quickly.

Real Estate: High transaction costs and long closing times.

Alternative Investments: Private equity or hedge funds with lock-up periods.

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Collectibles: Art, jewelry, and classic cars require specialized markets.

Long Term Investment Portfolios

Lifetime Strategic Solutions: Insurance & Cash

Life Insurance: The most common liquidity tool; provides tax-free cash exactly when needed post death.

ILIT (Irrevocable Life Insurance Trust): Keeps insurance proceeds out of the deceased insured's taxable estate. By placing the policy within an ILIT, the death benefit is kept outside of the taxable estate, providing liquidity without increasing the estate's value. This structure can also offer creditor protection and control over how and when proceeds are distributed.

Buy-Sell Agreements: Pre-arranged contracts for partners to buy out the deceased's interest.

Cash Reserves: Maintaining a dedicated "liquidity fund" in high-yield accounts.

Available Post-Mortem Solutions to Liquidity Concerns

Section 6166 Deferral: Spreading estate tax payments over 10–14 years (for business owners).

Section 6161: Extension of Time to Pay (Can get up to 10 Years).

Graegin Loan: A specialized, non-prepayable loan used by illiquid estates, to pay estate taxes and get a current deduction for all interest payable under the loan.

Section 303 Redemptions: Allows a corporation to buy back stock from a shareholder's estate at capital gain rates rather than as a dividend; providing liquidity for death taxes and expenses.

Apportionment: Estate taxes can be apportioned via a will, trust document, or local law such that they could be paid from different estate included property.

Liquidity Planning is Part of Estate Planning

Three basic ways to handle liquidity concerns could be to:

***Be sure that the full \$15 million (2026) or \$13.99 million (2025) Lifetime Exemption has been utilized; potentially through annual gifts and other lifetime planning techniques such as GRATS or QPRTs.**

***Reduce expenses by avoiding or minimizing Probate and using a Living Trust or properly drafted Will.**

***Increase the cash and liquidity of the estate through conversion of assets and the use of life insurance.**

IRC Section 6166

Section 6166 allows certain estates to pay estate taxes in installments up to a 14-year period. This election is primarily designed to prevent the forced sale of a closely held business(es) in order to timely pay federal estate taxes.

Key Requirements:

- *Citizenship:** The decedent must have been a U.S. citizen or resident at the time of death.
- *35% Threshold:** The value of the decedent's interest in a "closely held business", that must also be considered an active trade or business and not just a passive investment (So, a sole proprietorship; partnership or corporation) must exceed 35% of the adjusted gross estate.

Partnerships & Corporations:

- *Partnerships:** Qualified if 20% or more of the total capital interest must be included in the gross estate; or the partnership must have 45 or fewer partners.
- *Corporation:** 20% or more of the voting stock must be included; or the corporation must have 45 or fewer shareholders.

Section 6166 - Deadlines & Procedures

Filing Deadline: The election must be filed with a timely federal estate tax return (Form 706), including any extensions.

Notice of Election: A written statement must be attached to the return containing specific details, such as the decedent's TIN, the amount of tax to be deferred, and the facts justifying the election.

Payment Schedule:

First 4 Years of extension period: Only interest is typically paid annually.

Year 5: Interest at end of fifth year; and first principal payment.

Next 9 Years: Interest and tax is paid in 9 further annual installments.

Security: The IRS may require a bond or a special lien on the business assets to ensure payment.

Interest Rates: 2% on First \$776,000 of tax; 45% of regular underpayment rate on rest.

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IRC Section 6161: Extension of Time for Paying Tax

General Rule: IRS may extend payment of tax shown/required on a return for up to 6 months; (12 months for estate tax).

Estate tax: Can actually be extended up to 10 years with reasonable cause (Generally requires occasional payments be made).

Interest Rate: Standard underpayment interest rates would apply.

Often used for estates with illiquid assets; especially estates that don't meet the requirements to qualify for a Section 6166 election.

Graegin Loan

A specialized, non-prepayable loan used by illiquid estates to pay estate taxes.

Lender can be a related lender as long as terms are comparable to a commercial loan.

Allows all future interest to be deducted immediately as an administrative expense.

Requirements include:

A fixed interest rate and a fixed term: a fixed interest rate and the loan term must be set at the outset, ensuring the total interest payable is ascertainable with reasonable certainty.

A prohibition on early prepayment, and

A demonstrated, reasonable necessity for the loan to avoid forced asset liquidation. The loan must be necessary to pay estate taxes and administrative expenses because the estate lacks sufficient liquidity.

Section 303 Redemption

Benefit: Allows a corporation to redeem stock from a deceased shareholder's estate at capital gains rates rather than as a dividend, providing liquidity to pay death taxes and funeral/administration expenses. The stock of the corporation included in the decedent's estate must exceed 35% of the gross estate less allowed deductions (debts, expenses, losses).

Redemption Limited: The redemption amount is limited to the sum of estate and inheritance taxes, funeral, and administration expenses. The redeemed stock must be held by someone whose interest is reduced by the payment of estate taxes and expenses (e.g., executor, beneficiary).

Aggregation Rule: If the decedent owned 20% or more of multiple corporations, these can be aggregated to meet the 35% test.

Timing: The redemption must occur after death and within 3 years and 90 days after the Federal Form 706 is filed. If an IRC Section 6166 deferral election is made, the deadline extends to the end of the installment period.

Estate Tax Apportionment

An apportionment clause determines which beneficiaries will ultimately bear the burden of the federal and state estate taxes.

Equitable Apportionment: Each beneficiary pays the portion of the estate tax generated by the specific assets they receive. This is the default in many states if no other instructions exist.

A Will or Trust may contain language that designates only those assets passing under the Will or Trust are to pay the taxes.

Could have all estate taxes paid from the "residuary estate": Protects all non-residuary transfers
This could also be another default provision

Non-Probate Assets: Federal law may override state defaults for specific assets like life insurance (IRC § 2206) or Qualified Terminable Interest Property (QTIP) (IRC § 2207A).



Consistency in Basis of Property



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Post-Death Basis Consistency

The Post-Death Basis Consistency rules require that the "basis" (value) of property inherited from a decedent matches the value reported on the federal estate tax return.

Reporting: Executors of estates required to file a federal estate tax return (Form 706) must also file Form 8971; Information Regarding Beneficiaries Acquiring Property from a Decedent. This form provides the IRS and beneficiaries with the official "basis" of the inherited property.

Primary Purpose: to ensure "basis consistency"—meaning the tax basis of inherited property reported by the beneficiary matches the final value reported by the estate for tax purposes.

Consistency Requirement: Under Internal Revenue Code § 1014(f), the basis of property in the hands of the person acquiring it cannot exceed its final value for federal estate tax purposes.

Form 8971; Information Regarding Beneficiaries Acquiring Property from a Decedent

Timing: Form 8971 must be filed, and each statement required to be provided to a beneficiary (Schedule A) must be furnished to them, on or before the earlier of:

- (A) The date that is 30 days after the due date of the estate tax return required under section 6018 (including extensions, if any); or
- (B) The date that is 30 days after the date on which that estate tax return is filed with the IRS.

Supplemental Reporting: If the value of the property changes later due to an audit or litigation, or if the property is discovered after the initial filing, a supplemental statement must be filed.

January 31st Filings: a beneficiary that acquires property subject to reporting after the due date of the estate tax return (or the earlier filing of the Information Return), the executor must furnish a Statement to that beneficiary regarding that newly acquired property, on or before January 31 of the year following the beneficiary's acquisition of that property. (Further Schedule A).

By that same January 31, the executor also must attach a copy of each Statement to a supplemental Form 8971 and must file that.

Form 8971: Requirement to File: Only Excepted Property Distributed

Even if only “excepted property” was distributed to a beneficiary, the executor must still file a Form 8971 within the required timeframe.

Excepted Property Examples: U.S. cash, income in respect of a decedent (IRD), U.S. dollar deposits; U.S dollar certificates of deposit, or life insurance proceeds.

The executor, however, is not required to provide information to a beneficiary for excepted property on a Schedule A.”

Zero-Basis Rule Removed: Also, previously, unreported assets could have been previously assigned a zero basis; this penalty has been removed.

Form 8971- Schedule A

Furnishing Schedule A: An executor is required to furnish, within the 30-day deadline, a Schedule A to a beneficiary that acquired property subject to reporting, if:

The beneficiary acquired the property on or before the due date of the estate tax return (or, if earlier, the date on which the estate tax return is filed with the IRS); and the property acquired by the beneficiary is not excepted property.

When property considered acquired:

Distribution: A beneficiary acquires property when an executor or trustee distributes it to them.

Vesting of Title: when title vests in the beneficiary either under local law; or when the beneficiary otherwise has sufficient control over or connection with the property such that they can take action- such as selling or depreciating the property.



Estate Income Tax Planning, Including Section 645 Election



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Estate Income Tax Return: Filing Requirements

An estate income tax return (IRS Form 1041) is required if a decedent's estate generates \$600 or more in gross income, for its reporting period; or has a nonresident alien beneficiary.

Generally, unless a Section 645 election is made, an estate 1041 would include only income from the probate estate assets; which again, are assets held in the decedent's name alone at death; or payable directly to the decedent's estate.

Some usual examples of income producing probate estate assets would be: Bonds, Mutual Funds, Rental Property, Savings accounts, and stocks.

Estate Income Tax Attributes

Tax Entity Status: The estate becomes a separate taxable entity from the individual (decedent) upon death.

Income Reporting: Covers income earned after the date of death until the estate is closed (e.g., interest, dividends, rental income); either using a calendar or fiscal year.

Filing Deadline: Due by April 15 of the following year (if calendar year) or the 15th day of the 4th month after the end of a fiscal tax year.

Extensions: A 5 1/2-month automatic extension is available via Form 7004.

Compressed Tax Brackets: Estates reach top federal income tax brackets at taxable income above \$16,000 (37% & 40.8% if NIIT applies).

Deductions: Estates can deduct expenses like probate fees, legal fees, and other administrative expenses, which can be taken on Form 1041 or the estate tax return (Form 706).

Distributions: Income distributed to beneficiaries is reported on Schedule K-1, transferring the tax liability to them, while retained income is taxed to the estate.

Estate Income Tax Charitable Deduction Rules

Charitable Deductions: If allowed under the terms of the governing instrument, estates can generally claim an income tax deduction under IRC Section 642(c) on Form 1041 for its gross income either paid or permanently set aside for charitable purposes.

"Set Aside" Definition: It must be a clear, permanent, and irrevocable allocation of income to a charitable beneficiary, often requiring a formal accounting entry or segregation of assets.

No Limitation: Unlike charitable deductions for individuals; the estate's deduction under section 642(c) is not generally limited by a percentage of adjusted gross income. (Would be if income was considered “unrelated business taxable income.”).

No Carryover: Estates, like trusts, cannot carry over unused charitable deductions to future years.

Section 645 Election

- **Qualified Revocable Trust (QRT):** Only a trust that was treated as owned by the decedent under Section 676 (revocable) qualifies. A Section 645 election allows a Qualified Revocable Trust (QRT) to be treated as part of the decedent's estate for federal income tax purposes.
- **Irrevocability:** Once the election is made, it cannot be revoked.
- **Election Period:** The trust is treated as part of the estate for all taxable years ending after the decedent's death and before the "applicable date". This is generally two years if no estate tax return is required, or six months after the final determination of liability if a return is required. (1 Year following Closing Letter).
- **How to Elect:** The trustee and the executor (if any) must file with the IRS Form 8855; *Election to Treat a Qualified Revocable Trust as Part of an Estate*.

Form 8855: Election To Treat a Qualified Revocable Trust as Part of an Estate

Separately filed to make an election to treat a Qualified Revocable trust as part of an Estate.

- **Who files form:** Appointed executor and filing trustee; or just filing trustee if no executor is appointed; would file **Form 8855 by return due date, including any allowable extension.**

*Form 8855 must be filed by the due date of the Form 1041 for the first tax year of the related Estate; (calendar or fiscal year); even if no return is required for that initial year.

Tax Identification Numbers

- An estate would of course need to get a TIN.
- All lifetime revocable trusts must also obtain a new Taxpayer Identification Number (TIN) following the death of the decedent.
 - This applies regardless of whether, or not, a Section 645 election is to be made.
- If a 645 election is made and there is a named executor, the return would be filed under the estate's TIN at the end of the Section 645 period.
- If there was no named executor, and the filing trustee filed the return utilizing the trust's new EIN; the trust would then need to get another EIN following the end of the Section 645 election period.

Section 645 Election Attributes

- When making an IRC Section 645 Election; income tax rules applicable to an estate would also then apply to the income from the QRT.
 1. Ability to utilize a fiscal year instead of just a calendar year; allowing for greater income tax planning and income tax deferral opportunities.
 2. Availability of a permanent charitable set aside deduction, instead of only being able to deduct allowable payments of gross income to charity when actually made.
 3. An estate is allowed to deduct losses related to the in-kind funding of a true worth pecuniary trust; a trust by itself; is not.
 4. Utilize the special offset for rental real estate activities with respect to the Passive loss rules.
 5. Hold “S Corp” stock longer than 2 years following the decedent’s death ,since the 2-year testamentary trust allowable holding period doesn’t begin until the end of 645 election period.
 6. Since treated as an estate, electing trusts are exempted from making estimated income tax payments for the first two taxable years after the decedent's death. Without election, only a QRT that was receiving property from a pour over will would be exempt.

65 Day Election

- A fiduciary can make an election to treat distributions made in the first 65 days of the next year as paid in the preceding year and therefore pass taxable income out to the beneficiary
- The 65-day election must be made on the Form 1041 and can be made for a trust or estate.
- The amount that may be elected under the 65-day rule cannot exceed the greater of TAI or DNI for the prior year, reduced by payments made, credited or required to be made in the prior year.

Example:

During 2025, a trust has \$1,000 of TAI and \$800 of DNI. The trustee distributes \$600 to the beneficiary in July 2025 and \$500 in January 2026. The maximum amount that may be elected under the 65-day rule is \$400. However, the trustee may only want to make a 65-day election for \$200 because the distribution deduction is limited to DNI. (Or pass out the additional \$200, income tax free to the beneficiary).

What questions do you have?



A low-angle photograph of a cable-stayed bridge, looking up at the structure against a cloudy sky. A large, solid blue rectangle is overlaid on the left side of the image. Inside this rectangle, the text "Thank you!" is written in a bold, white, sans-serif font.

Thank you!



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