



January 12, 2012

The Honorable Max Baucus, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dave Camp, Chairman
House Committee on Ways & Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sander M. Levin
Ranking Member
House Committee on Ways & Means
1236 Longworth House Office Building
Washington, DC 20515

RE: Request for Legislation to Treat Consistently All Federal Tax Payments of Trusts and Estates

Dear Chairmen Baucus and Camp, and Ranking Members Hatch and Levin:

The American Institute of Certified Public Accountants (AICPA) continues to encourage Congress to pass legislation that simplifies the tax compliance burden of taxpayers. To further this mission, we request that Congress enact legislation that would permit consistent treatment of all federal tax payments of trusts and estates, including estimated tax payments, backup withholding, and regular withholding.

Present Law

Currently, the ability of a trust or estate to allocate its tax payments to its beneficiaries is different for estimated federal tax payments, backup withholding, and regular withholding, and the different treatment becomes very confusing and unnecessarily complex to taxpayers and tax practitioners. In some instances, estimated tax payments may be allocated by the fiduciary to the beneficiaries, but only if an election to do so is made within 65 days after the close of the trust or estate's tax year. Backup withholding follows its corresponding income, and the beneficiary's share is reported to the beneficiary on the Schedule K-1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credits, etc.*, which is filed with the Form 1041. Regular withholding may not be allocated to the beneficiary, but must be reported by the trust or estate even if its corresponding income is reported by the beneficiary.

Specifically, for estimated tax payments, a trust or, for its final tax year, a decedent's estate may elect under IRC section 643(g) to have any part of its estimated tax payments allocated to beneficiaries. The fiduciary makes this election by filing [Form 1041-T, Allocation of Estimated Tax Payments to Beneficiaries](#), by the 65th day (i.e., generally March 5 for calendar year taxpayers) after the close of the tax year. Absent a timely election, the estimated tax payments

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are reported by the trust or estate on its [Form 1041](#), *U.S. Income Tax Return for Estates and Trusts*, and cannot be allocated to beneficiaries on Schedule K-1 (Form 1041), *Beneficiary's Share of Income, Deductions, Credits, etc.*

For backup withholding, the tax credit under IRC section 31(c) for payments subject to IRC section 3406 (backup withholding) is allocated between the trust or estate and its beneficiaries on the basis of their respective shares of payment, which is subject to backup withholding under IRC section 643(d). Schedule K-1 (Form 1041) is used to report the beneficiaries' share of the backup withholding.

For regular withholding, the credit under IRC section 31(a) for amounts withheld as tax under chapter 24 (regular withholding) may not be allocated by the trust or estate to a beneficiary. See [Chief Counsel Advice 200644018](#) (Dec. 25, 2005), in which the Internal Revenue Service stated that neither section 643(d) nor section 643(g) is relevant to the treatment of the withholding credit under section 31(a), and neither Form 1041-T nor any other form or schedule can be used to allocate this credit, except in two situations. Those situations involve (1) a trust that is a grantor trust, in which case the credit appears on the grantor's income tax return, and (2) the recipient of income in respect of a decedent, who is entitled to any section 31 credit associated with the income taxed to the recipient. Also, the [instructions to Form 1041](#) state that withheld income tax (other than backup withholding) cannot be passed through to beneficiaries on either Schedule K-1 or Form 1041-T.

Reason for Proposal

There are many professional fiduciaries and trust companies facing this inconsistency in the reporting treatment of the various types of tax payments. In addition, trusts and probate estates frequently are administered by family members or other individuals, for whom this inconsistent treatment causes great confusion and unnecessary complexity. With regard to the election for estimated tax payments, fiduciaries frequently miss making this election because of its due date. Fiduciaries often are unable to determine whether federal taxes have been overpaid by the sixty-fifth day of the next year, especially when Forms 1099 (the information returns reporting various types of income) are not available to the trust or estate until the forty-sixth day of the next year and many Forms K-1 (the information returns reporting income from partnerships, S-corporations, and trusts) are not available to the trust or estate until much later in the following year, well past the 65-day period.

The treatment of regular withholding and estimated payments becomes most critical in the final year of the trust or estate. If the fiduciary misses the 65-day period for making the election for estimated tax payments, then those payments must be refunded to the fiduciary. Regular withholding payments must always be refunded to the fiduciary. Since the refund is made after the close of the trust or estate's final year, the fiduciary may already have been discharged and is no longer able to act on behalf of the entity. The fiduciary also may have closed all financial

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accounts in connection with the final distribution of assets so has no way to cash the check or make a further distribution.

A related issue arises with respect to federal tax payments submitted with a fiduciary's request for an extension of time to file the trust or estate's income tax return. It is not possible to allocate any of those payments to the beneficiaries, rather they can only be applied to a later year's tax or refunded to the fiduciary.

Details of the Proposal

We propose that the fiduciary of a trust or estate be permitted to allocate estimated tax payments, including payments made with extension requests, to the trust's or estate's beneficiaries on Schedule K-1 (Form 1041) attached to a timely filed Form 1041 (including extensions) and that regular withholding be treated the same as the current treatment of backup withholding. This proposal would allow estimated tax payments (including any tax payment made with an extension request) to be allocated to the beneficiary on the Schedule K-1, which would be the same way that backup and regular withholding would be reported to the beneficiaries. We believe that having all such taxes attributed to the beneficiaries reported on the Schedule K-1 would be much less confusing and reduce complexity to the fiduciaries.

With respect to regular withholding, the title of section 643(d) could be changed to "Coordination with withholding" and section 643(d)(1) could be amended to include a reference to section 31(a) so that it would read: "...(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(a) or 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter)...."

With respect to estimated tax payments and extension payments, we suggest that estates be added to the general rule of section 643(g)(1) with the result that section 643(g)(3) would be repealed and that amendments be made to section 643(g)(1) and (2) to read as follows:

- (g) Certain payments of tax treated as paid by beneficiary.
 - (1) In general. In the case of trust or estate—
 - (A) the trustee or fiduciary of the estate may elect to treat any portion of a payment of estimated tax (including a tax payment with an extension request) made by such trust or estate for any taxable year of the trust or estate as a payment made by a beneficiary of such trust or estate,
 - (B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year of the trust or estate, and

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(C) for purposes of subtitle F, the amount so treated—

- (i) shall not be treated as a payment of tax made by the trust or estate, but
- (ii) shall be treated as a payment of estimated tax made by such beneficiary on the fifteenth day of the first month following the close of the trust or estate's taxable year.

(2) Time for making election. An election under paragraph (1) shall be made on the tax return of the trust or estate filed on or before its due date (including extensions of time actually granted) and in such manner as the Secretary may prescribe

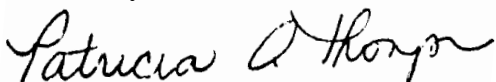
Adding estates to the general rule will allow the estate's tax payments to be treated as paid by estate beneficiaries in years other than just the estate's last tax year if the executor so chooses. We believe these proposals will simplify processing for the Internal Revenue Service as well as taxpayers. We think that any revenue cost for this proposal would be negligible as it only deals with allocating tax payments between taxpayers.

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The AICPA is the national professional organization of certified public accountants comprised of approximately 377,000 members. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses. Many of our members advise taxpayers on estate and gift tax planning.

We urge you to enact this tax simplification and consistency proposal. We look forward to working with you on this issue to achieve simplicity, effectiveness, and efficiency as Congress considers this and other simplification legislation. If you have any questions or if we can be of further assistance, please contact Frances Schafer, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at fran.schafer@us.gt.com, or (202) 521-1511; or Eileen Sherr, AICPA Senior Technical Manager, at esherr@aicpa.org, or (202) 434-9256.

Sincerely,



Patricia A. Thompson, CPA
Chair, AICPA Tax Executive Committee

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The Honorable Orrin Hatch
The Honorable Sander Levin
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cc: The Honorable Douglas H. Shulman, Commissioner of the Internal Revenue Service
Mr. Jeffrey Van Hove, Tax Legislative Counsel, Department of the Treasury
Mr. Curtis G. Wilson, Associate Chief Counsel for Passthroughs and Special Industries, Internal
Revenue Service
Ms. Catherine Hughes, Attorney Advisor, Treasury Department, Room 4212B