Revenue Canada Taxation   Revenu Canada Impôt

Supplementary Guide

Guide for Preparing T1 Returns for Deceased Persons

1992

Your Guide

In this Guide

- **Contents**
- **T2086**
- **Index**

PLUS

- **Common Questions**
- **Examples**

Revenue Canada offers services to the public in both official languages.

Revenu Canada offre ses services au public dans les deux langues officielles.

T4011(E) Rev. 92

Canada

Before you start

Is this guide for you?

Use this guide if you are a legal representative and you have to file a T1 income tax return for a deceased person. Please note that this guide may not have all the details you need to file the return. See the *General Tax Guide* for step-by-step details.

Are you the legal representative?

If you are an executor or an administrator, you can be the legal representative (rep) of a deceased person.

Executor. This is someone the will names to act as the legal rep to handle the estate of the deceased person.

Administrator. There may not be a will or the will may not name an executor. In this case, a court will appoint someone to handle the estate of the deceased. This person is an administrator. An administrator is often the spouse or the next of kin.

Your duties as the legal representative

As the legal rep of an estate, you will have many duties. This guide deals mostly with your duties under the *Income Tax Act* (the Act).

Under the Act, your main duties are as follows:

- File all required returns.
- Pay all taxes owing.
- Tell the beneficiaries which amounts they get from the estate are taxable.

As the legal rep, you may want to get a clearance certificate from us before you distribute any property under your control. You get this certificate so that you are not liable for any unpaid taxes, interest and penalties. See page 21 for more details.

As the legal rep, your first step should be to find the will. The will is often with the deceased's lawyer or in a safety deposit box. The will lists the beneficiaries of the estate. The will may also help you to find out the deceased's assets and liabilities.

It is important that you list the deceased's assets. Also, try to find the original cost and the fair market value right before the date of death for these assets. Fair market value is the price you would buy or sell an item for in a normal business deal.

These details can help you because you may be able to file special returns for the deceased. See Chapter 3 for more details on these returns.

If the assets were bought before 1972, you will need to find out their Valuation Day (V-Day) value. Contact your district office for more details about V-Day value.

Dealing with Revenue Canada, Taxation

To do your duties, you may have to get the deceased's income tax details from Revenue Canada, Taxation. When you deal with us, put the "The Estate of the Late" in front of the deceased person's name. For example, you would say the "The Estate of the Late Bogden W. Wortz." Always give us the social insurance number of the deceased. Use your address on any letters you write to us so we can send our reply directly to you.

Before we can give you any details from the deceased's records, we need **all** the following:

- A copy of the deceased person's death certificate.
- A copy of the will or other document that shows that you are the legal rep. This other document can be "Letters Probate" or "Letters of Administration." Letters Probate is an official document a court issues to prove the will is valid. "Letters of Administration" is an official document a court issues when there is no will or when the will does not name an executor. Letters of Administration proves your right to handle the estate of the deceased.
- Something to identify yourself to us.

How do we divide the guide?

This guide has six chapters. At the back, you will find a part with common questions and answers.

Chapter 1 talks about filing income tax returns.

Chapter 2 deals with filing the final return of a deceased person. It covers the due dates for filing the return. It also tells you how to fill in the more common parts of the return.

Chapter 3 covers the special returns you may be able to file for the deceased. We explain what these returns are, how you file them and what details go on them.

Chapter 4 talks about what happens to the property of the deceased when he or she dies.

Chapter 5 covers any net capital loss that the deceased may have. It defines the loss and tells you how to treat it for tax purposes.

Chapter 6 has general information in it. It covers disposing of property by the legal rep and reporting income after death. Chapter 6 also deals with paying taxes and getting a clearance certificate.

Should you read this guide?

You do not have to read all of this guide. Read only the parts that interest you or that you need more details on. Look in the "Contents" or the "Index" for the topics the guide covers.

In this guide we refer you to Interpretation Bulletins (ITs) and Information Circulars (ICs). These publications are more technical than the guide. They give you more details on the less common income tax situations. If you want to order any of these items, please use the order form at the back of the guide. You can also contact your district office.

Contents

	Page
Chapter 1 — Filing income tax returns	5
Chapter 2 — Final return	6
Filing a final return	6
Identification	6
Calculating total income	6
Lines 101 to 104 — Employment income	7
Lines 113 to 115 — Pension income	7
Line 118 — Family allowance payments	7
Line 119 — Unemployment insurance benefits	8
Lines 120 and 121 — Investment income	8
Line 127 — Taxable capital gains	8
Line 129 — Registered retirement savings plan income	8
Lines 130 to 146 — Other types of income	8
Calculating taxable income	9
Line 208 — Registered retirement savings plan contributions	9
Line 237 — Accumulated forward-averaging amount withdrawal	9
Line 253 — Net capital losses of other years	9
Calculating non-refundable tax credits	9
Personal amounts	9
Line 300 — Basic personal amount	9
Line 301 — Age amount	9
Line 303 — Married amount	9
Lines 304 and 305 — Dependent children and additional personal amounts	9
Line 314 — Pension income amount	9
Lines 316 and 318 — Disability amount	10
Line 326 — Amounts transferred from your spouse	10
Line 330 — Medical expenses	10
Line 340 — Charitable donations	10
Summary of tax and credits	10
Provincial or territorial tax credits	11
Goods and services tax (GST) credit	11
Chapter 3 — Elective returns	12
What are elective returns?	12
Return for rights or things — subsection 70(2)	12
What are rights or things?	12
Filing the 70(2) return	12
Other information	13
Return for a partner or proprietor — subsection 150(4)	13
Filing the 150(4) return	13
Return for trust income — paragraph 104(23)(d)	13
Filing the 104(23)(d) return	13
Amounts for elective returns	13
Amounts you can claim in full	13
Amounts you can split	14
Amounts you can claim against certain income	14
Amounts you cannot claim on any elective return	14
Chapter 4 — Deemed disposal of property	15
Definitions	15
General information	15
Depreciable property	15
Deceased's deemed proceeds — transfer to spouse or spouse trust	16
Deceased's deemed proceeds — all other transfers	16
Capital property	17
Deceased's deemed proceeds — transfer to spouse or spouse trust	17
Deceased's deemed proceeds — all other transfers	17
Farm property	17
Meanings	17
Conditions	17
Deceased's deemed proceeds — transfer of land	17
Deceased's deemed proceeds — transfer of depreciable property	18
Chapter 5 — Net capital losses	19
What is a net capital loss?	19
Net capital loss in year of death	19
Method A	19
Method B	19
Net capital loss before the year of death	20
Chapter 6 — Other information	21
Disposal of property by the legal rep — subsection 164(6)	21
Income after death	21
Paying taxes	21
Clearance certificates	21
Common questions and answers	22
Index	22

What's new?

We outline the major changes and highlight them in yellow throughout this guide.

Registered Retirement Savings Plan (RRSP)

Starting in 1992, the date for which someone may contribute to an RRSP where the deceased's spouse is the annuitant has been extended. See page 9 for details.

This guide also includes the following tax changes announced by the Minister of Finance. These changes had not yet become law at the time of printing. However, we are getting ready to apply them.

Proposed changes for 1992

Goods and services (GST) credit

Starting in 1992, for purposes of the GST credit, a spouse includes a common-law spouse. See page 11 for details.

Vesting indefeasibly

Legislation proposes that property will not vest indefeasibly in certain cases. See pages 9 and 16 for details.

Proposed changes for years after 1992

Definition of spouse

After 1992, a spouse will include a common-law spouse.

Family allowance

Family allowance will not be paid for years after 1992. Instead, it will be replaced by payments from the Child Tax Benefit Program. The payments from this program will not be taxable.

Transfers of depreciable property

Changes may affect deemed disposals of property after 1992. See page 16 for details.

Transfers of farm property

Changes may affect transfers of farm property after 1992. See page 17 for details.

For more details on the proposed changes, please contact your district office.

This guide uses plain language to explain the most common income tax situations. If you need more help after you read this guide, please contact your district tax office.

Chapter 1
Filing income tax returns

File any income tax returns the deceased did not file before he or she died. You will have to do this to get a clearance certificate. Contact the district office to find out which returns you still have to file if

- there is no record of prior-year returns being filed, or
- the records of the deceased make it hard to find out if the returns were filed.

Find out the types and sources of income the deceased earned. Also, find out anything else that may be due to the deceased because of his or her death. You will get this information from the payers. Payers include employers, banks and trust companies, stock brokers, and pension plan managers. A safety deposit box may have details about some of the sources of income.

There is no specific return for deceased persons. Therefore, use the T1 General or T1 Special return. Please do not use the T1 65 Plus or the T1 Short.

If you cannot get the return for the year you need, use a return for the prior year. Just change the year on the top right-hand corner of page 1.

For the year of death, you can file up to four separate returns. By doing this, you may be able to reduce the tax the deceased has to pay. The returns you file will depend on the income sources and certain parts of the Act. We list these four returns below.

Return	Purpose
Final	Return for the time from January 1 of the year of death up to and including the date of death except some amounts you show on the elective returns. See page 6.
70(2)	Elective return for "rights or things." See page 12.
150(4)	Elective return for a partner or proprietor. See page 13.
104(23)(d)	Elective return for certain income from a trust. See page 13.

When you file separate returns, you can make certain claims on each return. We talk about each one of these returns in the chapters that follow.

In some cases, you can ask us to adjust a return back to 1985 to give a refund or reduce the tax owing. For more details, contact your district office.

Chapter 2
Final return

Filing a final return

You must file a return for the deceased for the year of death. On it, you report all the income the deceased got from January 1 of the year of death up to and including the date of death. This return is the final return.

As we said before, there is no specific return for a deceased person. So to file a final return, you use the T1 General or the T1 Special return. Please do not use the T1 65 Plus or the T1 Short.

The filing date for the final return depends on the date of death. See the chart to find out the due date for the final return.

Date of death	Final return due date
January 1 to October 31 of this year	April 30 of next year
November 1 to December 31 of this year	within six months of the date of death

For instance, suppose Richard died on March 15, 1993. The due date for his final return, which covers the time from January 1 to March 15, 1993, is April 30, 1994.

In our example, the due date for Richard's 1992 return (which is not his final return) is extended to six months after the date of death. In Richard's case, the due date for his 1992 return would be September 15, 1993. This is because Richard died before May 1993. For more details about filing the 1992 return, see "What is the filing due date?" in the *General Tax Guide.*

As the legal rep for the deceased, you do not have to send in instalments that would be due after death. However, if there is an amount owing on the final return, you should pay it when the return is due. If you do not pay the full amount owing, we will charge interest on the part you did not pay. We start to charge interest on amounts owing right after the due date.

File all prior-year returns that the deceased did not file before he or she died. If the deceased did not file these returns by their due dates, we will charge interest on any amount owing. We start to charge interest from the date the return is due.

The deceased's will or a court order may set up a "spouse trust." When the spouse trust has to pay testamentary debts, the due date for the final return is extended to 18 months after the date of death. However, you have to pay any taxes owing by the due date shown in the chart above. We will charge interest on any amount owing after this date. For more details about spouse trusts, see the *T3 Guide and Trust Return.* You can get this guide from your district office.

If you file a return late, there is a late filing penalty. The penalty is 5% of the amount owing at the time you should have filed the return. To this 5%, we add 1% for each full month the return is late, up to a maximum of 12 months. In other words, a late filing penalty could be as high as 17% of the amount owing.

For example, suppose Peter is the legal rep for the estate of Brent. Since Brent died on May 11, 1992, his final return is due on April 30, 1993. There is also an amount owing. However, Peter did not file the return until March 31, 1994. Because Peter filed the return 11 months late, the late filing penalty will be 16% of the amount owing.

Note
In the rest of this chapter, we often refer to a spouse. Except for purposes of the goods and services tax credit (GST credit), it is proposed that after 1992, a spouse will include a common-law spouse. For GST credit purposes, after 1991 a spouse will include a common-law spouse. If you need more details, please contact your district office.

Identification

In this area of the return, make sure you do **all** the following:

- Write "The Estate of the Late" before the name of the deceased.
- Give your address as the return address.
- Check that the province or territory of residence on December 31 is the one where the deceased lived on the date of death.
- Write the date of death on the proper line.

If you use a return with a label on it, make sure the information on the label is correct.

Calculating total income

In the parts that follow, we cover the lines that you would use most of the time. For more details on these lines and the less common lines, see the *General Tax Guide.*

To fill in the income part of the return, you need to figure out the deceased person's income from all sources. Last year's tax return may help you.

If you file a return early, you may need to contact the payers to get information slips. These slips include:

- T4 — *Statement of Remuneration Paid.*
- T4A — *Statement of Pension, Retirement, Annuity and Other Income.*
- T4A(P) — *Statement of Canada Pension Plan Benefits.*
- T4A(OAS) — *Statement of Old Age Security.*
- T4U — *Statement of Unemployment Insurance Benefits Paid.*

- T5 *Statement of Investment Income.*
- T600 *Ownership Certificate.*
- TFA1 *Statement of Family Allowances.*

You must report all income and deductions even if you cannot get any slips. If you cannot get a slip, get a note from the payer to confirm the income and deductions. Put this note on the return. If you cannot get a note from the payer, estimate the income and deduction amounts. Then, put a note on the return giving the amounts and the name and address of the payer.

Report amounts that are paid regularly, even if the person did not get them before he or she died. Some examples of these amounts are, salary, interest, rent, royalties and most annuities. These amounts accrue in equal daily amounts for the time they are payable.

There are two types of amounts that do not accrue in equal daily amounts. They are:

- Amounts receivable by the deceased but not payable to the deceased on or before the date of death.
- Amounts from some annuity contracts that the Act considers as having been disposed of on death.

For more details about amounts receivable on or before the date of death, see Chapter 3 on page 12. You can also read IT-210, *Income of Deceased Persons — Periodic Payments.*

There may be amounts that the employer will pay to the employee's estate. In most cases, the employer will make out a T4 or T4A slip for these amounts.

Some of the amounts the employer pays are part of the deceased's employment income for the year of death. Therefore, you report them on the final return. Note that these amounts are employment income even if they are received in a year after the year of death. You should find these amounts in box 14 of the T4 slip. The amounts are:

- Salary or wages (includes overtime) from the end of the last pay period to the date of death.
- Salary or wages (includes overtime) for a pay period finished before the date of death but paid after death.
- Payment for accrued vacation leave.

The employer may change any of these amounts later because of an agreement or promotion. If the document that allows the change was signed before the date of death, report these amounts on the final return. However, if the document was signed after the date of death, the amounts are not taxable on any return.

Please note that some amounts may be "rights or things." You may be able to report them on a separate return. See Chapter 3 on page 12 for more details on "rights or things."

Some of the amounts the employer pays are income of the estate. Do not report them on the final return. You report them on the estate's T3 return. You should find these amounts in Box 18 or Box 28 on the T4A slip. These amounts are:

- Salary or wages, and any adjustments the employer pays for the period after the date of death.
- A payment for the full month in which the employee died if he or she was not getting pay but was on authorized leave.
- Severance pay received because of the death. Since this is a death benefit, up to $10,000 is not taxable.
- A future change to severance pay no matter when the collective agreement was signed.
- A refund of pension contributions that is payable because of death.
- A guaranteed minimum pension payment that is not a death benefit.
- A payment from a deferred profit sharing plan.

Lines 101 to 104 — Employment income

On these lines, show all salary or wages received from January 1 to the date of death. You include amounts that accrue from the start of the pay period in which the employee died to the date of death. For example, Denise earns $1,200 every ten working days. She died four working days after her last payday. Therefore, in her income you would include $480 (($1,200 ÷ 10) × 4).

Lines 113 to 115 — Pension income

On these lines, show all pension income received for the period from January 1 to the date of death. Do not include the "Net federal supplements paid" from box 21 on the T4A(OAS) slip.

A pension plan or fund may pay a lump sum because of death. Include the lump sum in the income of whoever gets it. An example of a lump sum would be the death benefit from the Canada or Quebec Pension Plan. A pension plan can pay a lump sum to the spouse, a child or the estate.

For more details on lump sums, see line 114 and line 130 in the *General Tax Guide.* You may also want to read IT-301, *Death Benefits — Qualifying Payments,* and IT-508, *Death Benefits — Calculation.*

Line 118 — Family allowance payments

On this line, you show the family allowance payments. Use one of two methods to report these payments. The method you use will depend on the marital status of the deceased person.

Use "Method 1" if the deceased

- was married from January 1 until the date of death, or
- because of a marriage breakdown, was separated for less than 90 days starting in the year of death.

Use "Method 2" if the deceased

- got married in the year of death, or
- because of a marriage breakdown, was separated for 90 days or more starting in the year of death.

Method 1:
Months before death — For payments received for the months before the month of death, the spouse with the

higher net income reports the payments. The higher net income is the net income before you include the family allowance payments and deduct child care expenses and social benefits repayments.

Rest of the year — The surviving spouse reports the payments received for the month of death and the rest of the year.

Method 2:
Months separated or not married — For all months that the couple was separated or not married, the person who gets payments reports them.

Other months before death — For all the other months before the month of death, the spouse with the higher net income reports the payments. The higher net income is the net income before you include the family allowance payments and deduct child care expenses and social benefits repayments.

Rest of year — The surviving spouse reports the payments received for the month of death and the rest of the year.

A spouse may claim an equivalent-to-married amount for a child. In this case, that spouse has to report the payments for the whole year for that child. This is the case no matter who gets the payments. This applies to both methods.

Note
It is proposed that family allowance will not be paid for years after 1992. Instead, it will be replaced by payments from the Child Tax Benefit Program. The payments from this program will not be taxable. For more details, contact your district office.

Line 119 — Unemployment insurance benefits

On this line, show the Unemployment Insurance payments the deceased got before death.

Note
The deceased may have to repay some of the income at lines 113, 118 or 119. For more details, see line 235 in the *General Tax Guide*.

Lines 120 and 121 — Investment income

On these lines, show investment income received from January 1 to the date of death. This type of income includes dividends and interest. It also includes:

- Amounts that accrue from January 1 to the date of death if they have not yet been paid.
- Bond interest that accrues from the last time it was paid before death to the date of death.
- Compound bond interest that accrues to the date of death if the deceased did not include it in a prior year.

You can report some types of investment income as rights or things. See Chapter 3 for more details.

Line 127 — Taxable capital gains

See Chapter 4 for details about this type of income.

Line 129 — Registered retirement savings plan income

When a person dies, he or she may have a Registered Retirement Savings Plan (RRSP). At the time of death, the RRSP may or may not be mature. Depending on the situation, the amount you include in the deceased's income can vary.

Mature RRSP — A mature RRSP is one that pays retirement income. It normally pays monthly annuity payments.

For a mature RRSP, on line 129 report the RRSP payments the deceased got from January 1 to the date of death. Because of death, the rest of the payments may be payable to the surviving spouse. These payments are income of the spouse.

Unmatured RRSP — An unmatured RRSP is one that does not yet pay retirement income.

For this type of RRSP, there may or may not be a beneficiary. When there is no beneficiary, on line 129 show the fair market value of the property in the RRSP at the time of death. We define fair market value on pages 2 and 15.

When there is a beneficiary, you reduce the amount you show on line 129. The amount you report is

- the fair market value of all the property in the RRSP at the time of death, minus
- any amount the beneficiary gets from the RRSP because of the death.

The beneficiary includes in his or her income, the amount received from the RRSP. A beneficiary can be a spouse, an estate, or a child or grandchild who was financially dependent on the deceased. The amount they get from the RRSP is a "refund of premiums." A beneficiary may be able to transfer a refund of premiums to an RRSP. See the *Pension and RRSP Tax Guide* for details.

Lines 130 to 146 — Other types of income

Use these lines to show other types of income. For other types of income, see the *General Tax Guide*.

Reserves in year of death — A reserve is an amount that you can deduct from income. You can have a reserve when you sell something or if you are self-employed.

When you sell something, you report all the sale proceeds in the year of the sale. However, some of the sale proceeds may not be due to you until after the end of the year of the sale. When this happens, you may be able to deduct as a reserve, the part of the proceeds that are due to you.

You can also have a reserve if you are self-employed. For instance, some professionals can deduct a reserve for some of their work-in-progress.

In most cases, you cannot deduct a reserve in the year of death. However, there may be a transfer to a spouse or spouse trust, of the right to get the proceeds or income that is due. When this happens, the legal rep and the

beneficiary can choose to claim a reserve. To do this, fill in Form T2069, *Election in Respect of Amounts Not Deductible as Reserves for the Year of Death*. Send Form T2069 to us.

For the spouse to claim this reserve, the deceased and the spouse must have lived in Canada right before the person's death. For a spouse trust, it must have been resident in Canada right after the proceeds or income "vests indefeasibly" to it.

Vests indefeasibly means the beneficiary has a right to absolute ownership of the property. They get this right in such a way that some future event cannot take it away. If you need more details, see IT-449, *Meaning of "Vested Indefeasibly."*

The spouse or spouse trust includes in their income, the same amount of the reserve that is on Form T2069. The spouse or spouse trust must include this income on the return that is for the first year after death.

When the reserve is from a capital gain, it may qualify for a capital gains deduction. For more details, see the *Capital Gains Tax Guide*.

Note

Legislation proposes that a property will not vest indefeasibly in a spouse or a spouse trust unless it does so before the spouse dies. This change will apply for deaths that occur after December 20, 1991. If you need more details, contact your district office.

Calculating taxable income

Line 208 — Registered retirement savings plan contributions

Use this line to show contributions to RRSPs of the deceased. Note that when a person dies, no one can contribute to the deceased's RRSP.

However, on behalf of the deceased, as the legal rep you can contribute to an RRSP under which the deceased's spouse is the annuitant. In this case, you can deduct on the deceased's return, the amount you put into the RRSP. The amount you can deduct is subject to the normal dollar limits. For 1992 and later years, you can contribute up to 60 days after the end of the calendar year in which the death occurred. For 1991 and prior years, you could only contribute within 60 days of the date of death.

If you need more details about RRSPs, you can read the *Pension and RRSP Tax Guide*.

Line 237 — Accumulated forward-averaging amount withdrawal

There may be an accumulated forward-averaged amount (amount). As the legal representative, you have **three** choices:

- You can ignore the amount. If you do this, there will not be any tax effects on the deceased's income.
- For the year of death, you can bring into income all or part of the amount. When you do this, we may tax the amount at a lower rate. To make this choice, fill in Form T581, *Forward Averaging Tax Credits*. If you bring in only part of the amount, there is no tax effect on the part you did not bring in.
- You can ask for a three-year carryback of the part you did not bring into income in the second choice. To do this, fill in Form T541, *Forward Averaging Tax Calculation — Deceased Individuals*.

You can get both Forms T581 and T541 at any district office. You have to send us these forms on or before the due date for the final return.

Line 253 — Net capital losses of other years

See Chapter 5 for details about these losses.

Calculating non-refundable tax credits

Personal amounts

If the deceased lived in Canada from January 1 to the date of death, claim the full personal amounts. You do not prorate the personal amounts.

The deceased may have lived outside Canada for some time between January 1 and the date of death. If this is the case, you may have to prorate the personal amounts. If the deceased immigrated to Canada in the year of death, see the *Tax Guide for New Canadians*. If the deceased emigrated from Canada before the date of death, see the *Tax Guide for Emigrants*.

Line 300 — Basic personal amount

Claim the full basic personal amount for the year.

Line 301 — Age amount

If the deceased was 65 or older on the day of death, claim the full age amount for the year.

Line 303 — Married amount

Depending on the spouse's income for the whole year, you may be able to claim a full or partial married amount. Note that you use the spouse's income for the whole year and not the spouse's income to the deceased's date of death.

Lines 304 and 305 — Dependent children and additional personal amounts

Depending on the child's income for the whole year, you may be able to claim a full or partial amount. Note that you use the child's income for the whole year and not the child's income to the deceased's date of death.

The person who reports the family allowance payments for the child claims the personal amount for that child. However, someone may claim the equivalent to married amount for the child. In this case, no one else can claim a personal amount for that child.

Line 314 — Pension income amount

The deceased may have received eligible pension income before the date of death. In this case, you may be able to

claim the pension income amount of up to $1,000. See line 314 in the *General Tax Guide* for more details.

Lines 316 and 318 — Disability amount

You can claim this amount if **both** these conditions are met:

- The deceased had a severe mental or physical impairment in the year. A severe impairment is one that markedly restricts daily living. It must also last or be expected to last for at least 12 continuous months.
- The deceased or someone else, has not claimed medical expenses for a full-time attendant or full-time care in a nursing home because of the impairment.

You can claim either the disability amount or the medical expenses for a full-time attendant or full-time care in a nursing home. You cannot claim both.

In some cases, you may be able to claim the disability amount plus up to $5,000 of attendant care expenses. The attendant must have cared for the deceased in Canada before the date of death to allow the deceased to earn income. These expenses are different from medical expenses for a full-time attendant. If you need more details on these expenses, see line 215 in the *General Tax Guide*.

For more details on the disability credit, see the pamphlet *Tax Information for People with Disabilities*. You can also read IT-519, *Medical Expense and Disability Tax Credits*.

Line 326 — Amounts transferred from your spouse

There can be amounts that the spouse does not need to reduce his or her tax to nil. When this happens, you can transfer the amounts the spouse does not need to the deceased.

On the other hand, the deceased may not need some amounts to reduce his or her tax to nil. In this case, you can transfer the amounts the deceased does not need to the spouse. However, before you can do this, you must reduce the tax to nil for all the returns you file for the deceased.

In either case, you can transfer the

- age amount,
- pension income amount,
- disability amount, and
- tuition fees and education amount.

To transfer these amounts, fill in Schedule 2, *Amounts transferred from your spouse*. This schedule is in the General tax return package.

Line 330 — Medical expenses

You can claim medical expenses that are more than the **lower** of

- $1,614, or
- 3% of the net income from line 236.

The expenses can be for any 24-month period, that includes the date of death, as long as the deceased did not claim them in a prior year.

To claim these expenses, fill in Schedule 4, *Medical Expenses*. Attach this schedule and the receipts for medical expenses to the return. You will find Schedule 4 in the General tax return package.

For more details on medical expenses, see line 330 in the *General Tax Guide*.

Line 340 — Charitable donations

The deceased or the will may give an amount to a charity. As long as you support the amount with a proper receipt, you can claim it in the year of death.

Tax Tip

The deceased may give an amount to a charity in the year of death. In this case, you can choose to claim the amount in the year of death or in the year before the year of death. Make sure you have proper receipts to support the claim.

The deceased may have given amounts in the five years before the year of death. As long as the deceased did not claim them before, you can claim them in the year of death. Put a note on the return to tell us the amount and the year the deceased gave it.

The most you can claim at line 340 is the **lower** of these two amounts:

- Amounts given in the year of death and any amounts given in the five years before the year of death if the deceased did not claim them before.
- 20% of the deceased's net income (line 236) from all returns you file for the year of death.

In the year of death, all or part of the gifts may be more than the 20% limit. Or, the credit for the gifts may be more than the tax the deceased has to pay. In both these cases, you can ask us to adjust the deceased's prior-year return to include the gifts on that return.

Sometimes, a gift can be capital property. At the time the deceased gives the property, its fair market value (FMV) may be more than its adjusted cost base (ACB). We define FMV and ACB on page 15.

When the FMV is more than the ACB, you can choose as the amount of the gift, an amount that is not more than the FMV but not less than its ACB. The amount you choose is the deceased's proceeds of disposal for the gift. You use this amount to figure out the credit for the gift.

If you need more details about gifts, see line 340 in the *General Tax Guide*. If the gift is a gift to Canada or a province, see line 342 in the *General Tax Guide*.

Summary of tax and credits

You will find the details you need about tax and credits in "Step 6 — Summary of tax and credits" in the *General Tax Guide*.

Minimum tax does not apply to a person in the year of death. However, the deceased may have paid this tax in one or more of the five years before the year of death. If

this is the case, you may be able to deduct part of the minimum tax paid in those years from the tax that is owing in the year of death. To do this, fill in Part VIII of Form T691, *Calculation of Minimum Tax.* Send in the T691 with the return.

Provincial or territorial tax credits

Some provinces and both territories have tax credits that work through the federal system. In some cases, you may be able to get these credits. Just fill in the form in the General package that is for the province or territory.

Goods and services tax (GST) credit

When a person dies, he or she cannot get a GST credit based on the year of death.

A single person may ask for the GST credit but dies before the month in which we send out the payment. When this happens, we cannot make any more payments to that person or their estate.

A single person may have asked for the GST credit but dies in or after the month in which we send out the payment. When this happens, you must send the cheque back to the tax centre where the person filed his or her return. We will then send the payment to the person's estate.

A married person may die after claiming the GST credit for himself or herself, and for a spouse. When this happens, the spouse can claim the rest of the payments. To do this, the spouse has to send us a letter to apply for the credit. The letter must give the deceased's income and the number of children eligible for the credit. The spouse must also send us a copy of the death certificate. The spouse must fill in and send us his or her own tax return if he or she did not already do so.

Example

Jay claimed his wife, Lise, for GST credit purposes. Both Jay and Lise filed their own tax returns. They have no children. Jay qualifies to get payments of $95 in July and October of 1992, and January and April of 1993. However, Jay died in August 1992. To get the rest of the payments, Lise will have to send us a letter. She sends the letter to the tax centre with a copy of Jay's death certificate. Since Lise filed her own return, she does not need to file again. Once we process Lise's request, we will send her the other three payments of $95.

We may send out GST credit payments after a person dies because we do not know about the death. You must send these payments back to us. Send them back to the tax centre where you file the deceased's return. Please give us the date of death so we can update our records.

Note

Starting in 1992, for purposes of the GST credit, it is proposed that a spouse will include a common-law spouse.

Chapter 3
Elective returns

What are elective returns?

As the legal rep for the deceased, you must file a final return. Also, you may be able to file an "elective return." An elective return is a separate return that you can choose to file under certain parts of the Act. You can file up to three different elective returns. We talk about each one in the parts that follow.

On the final return, do not report the income you show on an elective return. However, there are some amounts that you can claim on elective returns as well as on the final return. See "Amounts for elective returns" on page 13.

Do not confuse elective returns with the T3 return. After someone dies, the will may form an estate. The estate reports any income from the time after death on a *T3 Trust Income Tax Return and Information Return*. For more details about the T3, see the *T3 Guide and Trust Return*. You can get the T3 guide and return from any district office.

Note

In the rest of this chapter, we often refer to a spouse. It is proposed that after 1992, a spouse will include a common-law spouse. Contact your district office for details.

Return for rights or things — subsection 70(2)

When a person dies, someone may owe the deceased certain amounts. These amounts may be "rights or things." If they are, you can choose to file a separate return to report their value at the time of death. The return you file is a 70(2) return.

What are rights or things?

Rights or things are unpaid amounts that the person, had he or she not died, would later include in income. There are rights or things from employment and other rights or things.

Rights or things from employment are salary, commissions and vacation pay as long as

- the employer owes them to the deceased on the date of death, and
- they are for a pay period that was completed before the date of death.

> **Example**
> Rob's employer owes him vacation pay of $1,400 for the first four months of 1992. However, Rob died on May 2, 1992, before his employer could pay him the money. You have two choices when you report Rob's income for 1992.
>
> Your first choice is to file only a final return. On it you include all income from January 1 to May 2, 1992 plus the vacation pay of $1,400.
>
> Your second choice is to file a final return as well as a 70(2) return. On the final return, you include all income from January 1 to May 2, 1992 except the vacation pay. On the 70(2) return, you include only the vacation pay of $1,400.

Other rights or things include:

- Mature bond coupons that the deceased did not cash by the date of death.
- Bond interest that has accrued before the last interest payment date before the date of death as long as the deceased did not report it in prior years.
- Harvested farm crops.
- Livestock on hand minus the basic herd.
- Supplies on hand, inventory and accounts receivable if the business of the deceased used the cash method.
- Dividends declared before the date of death and still not paid at the date of death.

These items are not rights or things:

- Any amount that accrues on a periodic basis.
- Bond interest accrued between the last interest payment date before the person died and the date of death.
- Eligible capital property.
- Resource properties.
- Land in the business inventory of the deceased.
- Income from an income-averaging annuity contract.

If you need more details about rights and things, you can read the following:

- IT-210, *Income of Deceased Persons — Periodic Payments.*
- IT-212, *Income of Deceased Persons — Rights or Things.*
- IT-234, *Income of Deceased Persons — Farm Crops.*
- IT-427, *Livestock of Farmers.*
- IC 86-6, *Basic Herds.*

Filing the 70(2) return

When you file a 70(2) return, write "70(2)" at the top of page 1 of the return. You have to file this return by the later of

- 90 days after we mail any notice of assessment of tax for the year of death, or
- within one year of the date of death.

If there is an amount owing for the 70(2) return, pay it when the return is due. If you do not pay the amount in full, we will charge interest on the part you did not pay. We start to charge interest on amounts owing right after the due date. However, you can choose not to pay part of the tax that is from rights or things. For more details, see "Paying taxes" on page 21.

You may file a 70(2) return but later decide that you did not want to file it. In this case, you can ask us to cancel the return. To do this, write us a note asking us to cancel the return. You must send us this note by the due date for the 70(2) return.

Other information

You can transfer the deceased's rights or things to a beneficiary. However, you must make this transfer within the time limit for filing the 70(2) return. Report the income from the right or things on the beneficiary's return. Do not include the right or things income on the deceased's return.

Return for a partner or proprietor — subsection 150(4)

You may be able to file a separate return if the deceased was a partner or a sole proprietor of a business. A person may die after the business's fiscal period ends, but before the end of the calendar year in which the fiscal period ends. When this happens, you can choose to file a separate return. This is a 150(4) return.

On this return, you report the income for the time from the end of the fiscal period to the date of death. This period is the "stub period." If you choose not to file a 150(4) return, you report the income for the stub period on the final return.

> **Example**
> Mark died on May 31, 1992. His business has a March 31 fiscal year-end. You have two choices when you report his income for 1992.
>
> Your first choice is to file only a final return. On it you include the business income from April 1, 1991 to May 31, 1992 (14 months).
>
> Your second choice is to file a final return as well as a 150(4) return. On the final return, you include business income from April 1, 1991 to March 31, 1992 (12 months). On the 150(4) return, you report the business income from April 1, 1992 to May 31, 1992 (2 months).

Filing the 150(4) return

When you file a 150(4) return, write "150(4)" at the top of page 1 of the return. You must file the 150(4) return at the same time as the final return. See page 6 for the final return's due date.

If there is an amount owing on the 150(4) return, pay it when you file the return. If you do not pay the amount in full, we will charge interest on the part you did not pay. We start to charge interest on amounts owing right after the due date.

Return for trust income — paragraph 104(23)(d)

Sometimes, a person can get income from a testamentary trust. This kind of trust is set up as a result of a person's death. This trust can have a fiscal period that does not end when the calendar year ends.

The person who gets the income from this kind of trust may die after the trust's fiscal period ends. The income may be for the time after the trust's fiscal period ends to the date of death. When this happens, you can choose to file a separate return. This is a 104(23)(d) return.

> **Example**
> Mrs. Grunietz gets income from a testamentary trust. This trust was formed as a result of her husband's death. The fiscal year of the trust is from April 1 to March 31. Mrs. Grunietz died on June 11, 1992. You have two choices when you report her income from the trust.
>
> Your first choice is to file only a final return. On it you include her trust income from April 1, 1991 to June 11, 1992 (about 14 1/2 months).
>
> Your second choice is to file a final return as well as a 104(23)(d) return. On the final return, you include her trust income from April 1, 1991 to March 31, 1992 (12 months). On the 104(23)(d) return, you report her trust income from April 1, 1992 to June 11, 1992 (2 1/2 months).

Filing the 104(23)(d) return

When you file a 104(23)(d) return, write "104(23)(d)" at the top of page 1 of the return. You must file the 104(23)(d) return at the same time as the final return. See page 6 for the final return's due date.

If there is an amount owing on the 104(23)(d) return, pay it when you file the return. If you do not pay the amount in full, we will charge interest on the part you did not pay. We start to charge interest on amounts owing right after the due date.

Amounts for elective returns

There are four groups of amounts you should know about. They are:

- Amounts you can claim in full on each return.
- Amounts you can split between the returns.
- Amounts you can claim against certain income only.
- Amounts you cannot claim on any elective return.

Amounts you can claim in full

On each elective return and the final return, you can claim some amounts in full. These amounts are:

- Basic personal amount.
- Age amount.
- Married amount.
- Amounts for dependent children.
- Additional personal amounts.

For instance, you can claim the full basic personal amount on both the 150(4) return and the final return.

Amounts you can split

There are some amounts you cannot claim in full on the elective and final returns. However, you can split these amounts. The total claim for each amount cannot be more than the amount you could claim if you were only filing the final return. The amounts you can split are:

- Disability amount for the deceased.
- Disability amount for a dependant other than a spouse.
- Tuition fees and education amount for the deceased.
- Tuition fees and education amount you transfer from a child.
- Medical expenses. You can claim them on any one of the returns for the year of death. However, reduce them by the lower of $1,614 or 3% of the total net income you report on all returns.
- Gifts to Canada or a province.
- Gifts to charities. The most you can claim is the lower of
  - 20% of the net income you report on that return, or
  - the gifts you claim on any return.

To show you how you can split an amount, suppose the total claim for tuition fees was $1,500. You file both a final return and a 70(2) return. You could claim $1,000 on the final return and $500 on the 70(2) return.

Amounts you can claim against certain income

There are some amounts you can only claim on those returns on which you report the related income. These amounts are:

- Canada or Quebec Pension Plan contributions (CPP or QPP).
- Unemployment Insurance premiums.
- Pension income amount.
- Employee home relocation loan deduction.
- Stock option and shares deduction.
- Social benefits repayment.
- Vow of perpetual poverty deduction.

For instance, suppose the deceased's total employment income was $30,000 and his CPP amount was $650. Of the $30,000, $1,000 is a right or thing. Of the $650, $25 is the CPP he paid on the $1,000. You decide to file a 70(2) return.

On his final return you include income of $29,000 and claim CPP of $625. On his 70(2) return, you include income of $1,000 and claim CPP of $25.

Amounts you cannot claim on any elective return

There are some amounts you cannot claim on any elective return. This is because these amounts do not apply to elective returns. These amounts include:

- Amounts you transfer from the spouse.
- A capital gains deduction.
- Child care expenses.
- Losses from other years.
- Northern residents deductions.
- Withdrawals from the accumulated-averaging amount.
- Child tax credits.
- Refunds of investment tax credits.

Note that you may be able to claim these amounts on the final return. See the general tax guide package for more details.

Chapter 4
Deemed disposal of property

In this chapter, we will tell you what happens when a person who owns property dies. We talk about depreciable, capital and farm property. These are the more common kinds of property.

If the deceased had other property such as eligible capital property, resource property or an inventory of land, contact your district office.

This chapter has five parts. They are, definitions, general information, depreciable, capital and farm property. Read the parts that apply to you.

Definitions

This part defines most of the terms we use in this chapter. These terms are common to all parts of the chapter.

Capital property. This is any property of value. Some examples of capital property are a home, stocks, bonds, land, buildings and vehicles. When you dispose of this type of property, you can have a capital gain or a capital loss.

Adjusted cost base (ACB). In most cases, the ACB of a property is what you pay for it, plus any expenses you had to pay to buy it. These expenses include commissions, legal fees, tax and so on. You also add the cost of additions to the ACB.

For instance, suppose you buy a building for $50,000 plus expenses of $3,500. Your ACB is $53,500. Later you build an addition that cost $15,000. Your ACB is now $68,500 ($53,500 + $15,000).

You subtract from the ACB, any grant or subsidy you get from a government or a government agency to buy the property.

Capital cost allowance (CCA). This is the part of the property's cost that you can claim each year on your tax return. CCA is the tax term for depreciation. You can claim CCA because in the year you buy a property, you cannot deduct its whole cost. You can claim CCA on a property such as a building, equipment or a vehicle. You cannot claim CCA for the fiscal period that ends on the date of death.

Depreciable property. This is any capital property on which you can claim CCA.

Undepreciated capital cost (UCC). This is the balance of the cost left for further CCA. The amount of CCA you claim each year will reduce the UCC of the property.

Deemed acquisition. We use this term when we consider that a person gets a property, even though a purchase did not take place.

Deemed disposal. We use this term when we consider that a person disposes of a property, even though a sale did not take place.

Deemed proceeds of disposal. We use this term when we consider that a person gets an amount for a property, even though the person did not get any money.

Fair market value (FMV). This is the price you would buy or sell a property for in a normal business deal.

General information

This part tells you how the *Income Tax Act* (the Act) treats a person who owns property and dies. It also tells you what income, if any, you have to include on the deceased's final return.

When someone dies, the Act considers that he or she disposes of all capital property right before death. Even though there is not an actual sale, there can be a capital gain or loss. For depreciable property, there can also be a recapture of CCA or a terminal loss.

This chapter covers the deemed disposals of property the deceased acquired after December 31, 1971. There are special rules for property that the deceased owned on or before December 31, 1971. For more details about these rules, contact your district office.

For all property, when the deemed proceeds are more than the ACB of the property, you will have a capital gain. Three-quarters (3/4) of the capital gain is the "taxable capital gain." Report the taxable capital gain on the final return. You may be able to claim the capital gains deduction. See the *Capital Gains Tax Guide* if you want more details.

Except for depreciable property, when the deemed proceeds are less than the ACB of the property, you will have a capital loss. Three-quarters (3/4) of the capital loss is the "allowable capital loss." Report the allowable capital loss on the final return. For details on claiming a capital loss, see Chapter 5 on page 19.

For depreciable property, when the deemed proceeds are more than the UCC, you will have a "recapture of CCA." You can also have a capital gain. You include the recapture in income on the final return.

For depreciable property, when the deemed proceeds are less than the capital cost or the UCC, you will have "a terminal loss." When this happens, you can claim a terminal loss on the final return. You cannot have a capital loss on this kind of property.

In the rest of this chapter, we will help you to find out if there is a capital gain or loss, or a recapture or terminal loss. We split the rest of the chapter into three parts; depreciable property, capital property and farm property.

Note
In the rest of this chapter, we often refer to a spouse. It is proposed that after 1992, a spouse will include a common-law spouse. Contact your district office for details.

Depreciable property

In this part, we tell you how to figure out the deemed proceeds for all depreciable property except some transfers of farm property. If there is a transfer of farm property to a child or a spouse trust, read "Farm Property" on page 17.

Deceased's deemed proceeds — transfer to spouse or spouse trust

There may be a transfer of depreciable property to the spouse or a spouse trust. For these transfers, you may be able to use a special amount for the deemed proceeds. In most cases when you use this special amount, the deceased will not have a capital gain, recapture of CCA or a terminal loss. When you do this, you defer (postpone) any gain, recapture or terminal loss to the beneficiary when they dispose of the property.

In the case of a transfer to a spouse, **both** these conditions must be met:

- The spouse has to be a resident of Canada right before the person's death.
- The property has to vest indefeasibly in the spouse within 36 months of the death.

Vests indefeasibly means the beneficiary has a right to absolute ownership of the property. They get this right in such a way that some future event cannot take it away. If you need more details, see IT-449, *Meaning of "Vested Indefeasibly."*

In the case of a transfer to a spouse trust, **both** these conditions must be met:

- The spouse trust has to be a resident of Canada right after the property vests indefeasibly in the spouse trust.
- The property must vest indefeasibly in the spouse trust within 36 months of the death.

You calculate the deemed proceeds as follows:

$$\frac{\text{FMV of the specific property right before death}}{\text{FMV of all the property in the class right before death}} \times \text{UCC of all of the deceased's property of the class right before death}$$

Example

Norm has two yachts that he rents out. He died in July, 1992 and his will transfers yacht A to his spouse, Janet. Both of the above conditions are met. You have these details.

UCC of the two yachts right before death .. $335,000
FMV of yacht A right before death $225,000
FMV of the two yachts right before death .. $500,000

You calculate Norm's deemed proceeds on yacht A as follows:

$$\frac{\$225{,}000 \text{ (FMV of yacht A)}}{\$500{,}000 \text{ (FMV of all yachts)}} \times \$335{,}000 = \$150{,}750$$

Note

Legislation proposes that a property will not vest indefeasibly in a spouse or a spouse trust unless it does so before the spouse dies. This change will apply for deaths that occur after December 20, 1991. If you need more details, contact your district office.

Tax Tip

As the legal rep, you can choose not to use the special amount for the deemed proceeds. In this case, the deemed proceeds are half-way between the property's FMV and its UCC right before death. You must make this choice when you file the final return for the deceased.

You may want to do this to make use of a capital gains deduction on the final return. It may be best to report a capital gain, recapture or terminal loss on the final return instead of deferring it to the spouse or spouse trust.

Deceased's deemed proceeds — all other transfers

For all other transfers, the deemed proceeds are half-way between the property's FMV and its UCC right before death.

For instance, suppose the will transfers the property to a child of the deceased. Right before death the property's FMV is $42,000 and its UCC is $30,000. The deemed proceeds are $36,000, which is ($42,000 + 30,000) ÷ 2.

To show you what we have just talked about, read the following:

FMV	Varies
UCC	$ 10,000
ACB	$ 20,000
Deemed proceeds ((FMV + UCC) ÷ 2):	
Case 1	$ 40,000
Case 2	$ 5,000
Case 3	$ 15,000
Case 4	$ 20,000

Effect on income for the final return

	Capital gain Pro. - ACB	Terminal loss	CCA Recapture Pro. - UCC
Case 1	Yes, $20,000 (40,000 – 20,000)	No	Yes, $10,000 (20,000 – 10,000)
Case 2	No	Yes, $5,000 (5,000 – 10,000)	No
Case 3	No	No	Yes, $5,000 (15,000 – 10,000)
Case 4	No	No	Yes, $10,000 (20,000 – 10,000)

To figure out the deemed proceeds, you can use Form T2086, *Capital Dispositions Supplementary Schedule Re: Depreciable Property upon the Death of a Taxpayer.* You will find two copies of Form T2086 in this guide.

If you need more details on a recapture of CCA or a terminal loss, see IT-478, *Capital Cost Allowance — Recapture and Terminal Loss.* On some passenger vehicles, you cannot have a recapture or a terminal loss. For more details about these vehicles, see Chapter 5 in the *Business and Professional Income Tax Guide.*

Note

Legislation proposes a change for deemed disposals of depreciable property to someone other than a spouse or spouse trust after 1992. After 1992, the deemed proceeds for depreciable property will be equal to the property's FMV right before death.

Capital property

This part tells you how to figure out the deemed proceeds for capital property except depreciable property and some transfers of farm property. If there is a transfer of farm property to a child or a spouse trust, read the part "Farm property" below.

Deceased's deemed proceeds — transfer to spouse or spouse trust

There may be a transfer of capital property to a spouse or a spouse trust.

For a transfer to a spouse, the deemed proceeds are the same as the property's ACB right before death if **both** these conditions are met:

- The spouse was a resident of Canada right before the person's death.
- The property vests indefeasibly in the spouse within 36 months of the death. We define vest indefeasibly on page 16.

For a transfer to a spouse trust, the deemed proceeds are the same as the property's ACB right before death if **both** these conditions are met:

- The spouse trust is a resident of Canada right after the property vests indefeasibly in the spouse trust.
- The property vests indefeasibly in the spouse trust within 36 months of the death. We define vest indefeasibly on page 16.

In most cases, the deceased will not have a capital gain or loss. This is because the transfer defers any gain or loss to date when the beneficiary disposes of the property.

For instance, suppose the will transfers land to the spouse. Both of the above conditions are met. Right before death, the ACB of the property is $35,000. Therefore, the deemed proceeds are $35,000. You would not report any capital gain or loss on the deceased's final return.

Tax Tip

As the legal rep, you can choose to not have the deemed proceeds equal the ACB. In this case, the deemed proceeds equal the property's FMV right before death. You must make this choice when you file the final return for the deceased.

You may want to do this to make use of a capital gains deduction or a net capital loss on the final return. It may be best to report a capital gain or loss on the final return instead of deferring it to the spouse or spouse trust.

Deceased's deemed proceeds — all other transfers

For all other transfers, the deemed proceeds are equal to the property's FMV right before death. For instance, suppose the will transfers land to the deceased's child. Right before death the land's FMV is $42,000. Therefore, the deemed proceeds are $42,000.

Farm property

This part tells you how to figure out the deemed proceeds when there is a transfer of farm property to a child or a spouse trust. For these transfers, you may be able to use a special amount for the deemed proceeds. To do this, you need to know the meanings of farm property and a child. Certain conditions must also be met.

Meanings

Farm property. Farm property means land and depreciable property that one uses for farming.

A child. A child includes:

- The deceased's child, adopted child or step-child.
- The deceased's grandchild or great-grandchild.
- The deceased's son-in-law or daughter-in-law.
- A person who was less than 19 years old as long as the deceased had custody and control. Also, this person must have been wholly dependent on the deceased for support.

Conditions

To use the special amount for the deemed proceeds, **all** four of these conditions must be met:

- The farm property has to be in Canada.
- The deceased, spouse or any child of the deceased must have used the farm property for farming right before the person's death.
- The child has to be a resident of Canada right before the person's death.
- The farm property has to vest indefeasibly in the child within 36 months of the death. We define vest indefeasibly on page 16.

Note

Legislation proposes a change to the second condition above. This change will apply for transfers that occur after 1992. The condition will be that, the deceased, spouse or any child of the deceased must have used the farm property mainly for farming on a regular and ongoing basis right before the person's death.

Deceased's deemed proceeds — transfer of land

If the above conditions are met, you can have the deemed proceeds equal the ACB of the land right before death. Therefore, the deceased will not have a capital gain or loss.

For instance, suppose the will transfers land to a grandchild. All of the above conditions are met. Right before death the ACB of the property was $135,000. Therefore, the deemed proceeds equal $135,000. You would not report any capital gain or capital loss on the deceased's final return.

Tax Tip

As the legal rep, you can choose not to have the deemed proceeds equal the ACB. You can choose to transfer the land at any amount between its ACB and FMV right before death. For instance, suppose that in our example the FMV was $300,000. You could choose any amount between $135,000 (ACB) and $300,000 (FMV). Make this choice when you file the final return for the deceased.

You may want to do this to make use of a capital gains deduction or a net capital loss on the final return. It may be best to report a capital gain or loss on the final return instead of deferring it to the child or spouse trust.

Deceased's deemed proceeds — transfer of depreciable property

There may be a transfer of depreciable property. If there is, you may be able to use a special amount for the deemed proceeds. To use this special amount, the four conditions we cover above must be met.

You calculate the special amount for the deemed proceeds as follows:

$$\frac{\text{FMV of the specific property right before death}}{\text{FMV of all the property in the class right before death}} \times \text{UCC of all of the deceased's property of the class right before death}$$

Example

Geoff died in May 1992. He has three tractors. His will transfers tractor A to his son, Steven. All four conditions are met. You have these details.

UCC of the three tractors right before death	$ 90,000
FMV of tractor A right before death	$ 45,000
FMV of all the tractors right before death	$100,000

You calculate Geoff's deemed proceeds on tractor A as follows:

$$\frac{\$\ 45{,}000\ \text{(FMV of tractor A)}}{\$100{,}000\ \text{(FMV of all tractors)}} \times \$\ 90{,}000 = \$\ 40{,}500$$

In most cases when you use this special amount, the deceased will not have a capital gain, recapture of CCA or a terminal loss. When you do this, you defer any gain, recapture or terminal loss to the beneficiary when they dispose of the property.

Tax Tip

As the legal rep, you can choose to not use the special amount for the deemed proceeds. You can choose to transfer the property at any amount between its FMV and its UCC right before death. Make this choice when you file the final return for the deceased.

You may want to do this to make use of a capital gains deduction on the final return. It may be best to report a capital gain, recapture or terminal loss on the final return instead of deferring it to the child or spouse trust.

If you need more details on transfers of farm property, read IT-349 and Special Release, *Intergenerational Transfers of Farm Property on Death*. This IT and Special Release also have details on the transfer of shares of a family farm corporation and interests in a family farm partnership. You can also contact your district office.

Chapter 5
Net capital losses

What is a net capital loss?

When allowable capital losses are more than taxable capital gains, the difference is a net capital loss. Note that an allowable capital loss is three-quarters (3/4) of a capital loss. A taxable capital gain is three-quarters (3/4) of a capital gain.

Net capital loss in year of death

There may be a net capital loss in the year of death. If there is, there are two ways you can use this loss.

Method A

You can carry back a net capital loss to reduce taxable capital gains from earlier years. You can carry back the loss to the three years before the year of death. The loss that you carry back cannot be more than the taxable capital gains in those years.

After you carry back the loss, there may still be an amount left. If there is, you may be able to use the rest of the loss to reduce other income. However, before you can do this, there is one step you must do.

From the net capital loss you have left, subtract the amount of the capital gains deduction the deceased has claimed to date. Now you can use any loss you have left to reduce other income in the year of death, the year right before death or in both years.

Method B

You can choose not to carry back the net capital loss to reduce taxable capital gains from earlier years. You may not want to reduce these gains because you may want to reduce other income only. However, before you can do this, there is one step you must do.

From the net capital loss, subtract the amount of the lifetime capital gains deduction the deceased has claimed to date. Now you can use any loss you have left to reduce other income in the year of death, the year right before death or in both years.

To show you how both methods work, read the example below.

Example

Mr. Mawumba died in 1992. You have these details about his tax matters:

Net capital loss — 1992	$ 20,000
Taxable capital gain — 1991	$ 4,000
— 1990	$ 2,000
Capital gains deduction — 1990 & 1991	$ 3,000

As the legal rep, you have two choices. You can use Method A or Method B.

The chart below shows you how both methods work:

	Method A	Method B
Net capital loss — 1992	$20,000	$20,000
Subtract:		
Taxable capital gains — 1991	4,000	0
— 1990	2,000	0
Subtotal	14,000	20,000
Subtract:		
Capital gains deduction	3,000	3,000
Amount left to subtract from other income	$11,000	$17,000

Therefore, if you use Method A you can reduce the 1990 and 1991 gains to nil. You still have $11,000 left to reduce Mr. Mawumba's other income in 1992, 1991 or in both years.

If you use Method B, you can use $17,000 to reduce Mr. Mawumba's other income in 1992, 1991 or in both years.

You may choose to carry back a net capital loss to 1989 to reduce a gain in that year. If you do this, things get more complex. This is because the rates for a capital gain and loss were different in 1989. Therefore, you have to do some adjusting. To carry back a loss to 1989, multiply the amount you carry back by 8/9. The result is the "adjusted net capital loss." Note that the amount you carry back cannot be more than the taxable capital gains in the year.

There may still be an adjusted net capital loss after the carry back. Because you chose to reduce the 1989 gain first, you now want to use any amount left to reduce the gains after 1989. But before you can do this, you must readjust the amount left to bring it back to the rate in effect after 1989. The way you do this is to multiply the amount that you have left by 9/8. Now, you can use the new amount to reduce taxable capital gains after 1989.

If there is still an amount left, you can use it to reduce other income in the year of death, the year right before death or in both years. However before you can do this, you must subtract from the amount that is left, the capital gains deduction the deceased has claimed to date.

To show you how all of this works, please read this example.

Example

Ghislaine ran a moose hunting lodge. She died in 1992. You are the legal rep and you have these details about her tax matters:

Net capital loss — 1992	$ 20,000
Taxable capital gain — 1991	$ 4,000
— 1990	$ 2,000
— 1989	$ 1,500
Capital gains deduction — 1991	$ 3,000

You decide to carry back the net capital loss to reduce the gains in all three years. You want to reduce the 1989 gain first. Therefore, you have to figure out the

adjusted net capital loss so that you can reduce the 1989 gains. Your adjusted net loss is:

$17,778 ($20,000 × 8/9).

Note that the amount you carry back cannot be more than the taxable capital gains in the year. Thus, the amount you use to reduce her taxable capital gains in 1989 is the lower of $17,778 or $1,500.

Now, you figure out that the adjusted net loss you have left is:

$16,278 ($17,778 − $1,500).

Because you want to reduce the gains in 1990 and 1991, you have to readjust the $16,278 to bring it back to the rate in effect after 1989. So your readjusted net capital loss is:

$18,313 ($16,278 × 9/8).

From the $18,313, you subtract the 1990 and 1991 gains. You now find out that you still have an amount left of:

$12,313 ($18,313 − ($4,000 + $2,000)).

Since you still have an amount left, you decide to use it reduce other income. Note that you can reduce other income in the year of death, the year right before the year of death or both. To find out how much of the $12,313 you can use, subtract the capital gains deduction that Ghislaine has claimed to date (1991). The amount that you can use to reduce other income is:

$9,313 ($12,313 − $3,000).

Therefore, you can use $9,313 to reduce other income in 1992, 1991 or in both years.

To ask for a loss carry-back, fill in Form T1A, *Request for Loss Carry-Back*. You can get Form T1A from your district office.

Note

You may want to claim a capital gains deduction for the year of death or the year right before the year of death. In this case, subtract from the deduction, any net capital loss you deduct in those years. If you need more details about capital gains and losses, please read the *Capital Gains Tax Guide*.

Net capital loss before the year of death

The deceased may have had a net capital loss before the year of death but never claimed it. In this case, you can claim the loss in the year of death. Depending on when the loss happened, you may have to adjust it. You do not have to adjust a loss that happened in 1990 or later years. However, you have to adjust a loss that happened before 1990. You adjust a pre-1990 loss to bring it up to the rates for 1990 and later years.

The way you adjust a pre-1990 net capital loss is as follows:

- For a 1987 or prior-year net capital loss, multiply the net capital loss by 3/2.
- For a 1988 or 1989 net capital loss, multiply the net capital loss by 9/8.

When you do the above, you get the "adjusted net capital loss."

Now, you can reduce taxable capital gains in the year of death. To do this, use the lower of the

- adjusted net capital loss, or
- taxable capital gains in the year of death.

After you reduce the taxable capital gains, there may still be an amount left. You may be able to use this amount to reduce other income in the year of death, the year right before death or in both years. However, before you can do this, there may be a few steps you have to do.

If the amount you have left is made up of net capital losses from a year before 1990, adjust the amount as follows:

- For an amount that is a net capital loss from 1987 or before, multiply the amount you have left by 2/3.
- For an amount that is a net capital loss from 1988 or 1989, multiply the amount you have left by 8/9.

The result is your "readjusted balance." From this balance, subtract the total capital gains deductions claimed to date, including the year of death. If there is an amount left, you can use it to reduce other income in the year of death, the year right before death or in both years.

To show you how all of this works, please read this example.

Example

Mrs. Podgorny died in 1992. As her legal rep, you have these details about her tax matters:

Net capital loss, never claimed — 1989	$ 20,000
Taxable capital gain — 1992	$ 4,000
Capital gains deduction — 1992	$ 3,000

You decide to use the 1989 loss to reduce the 1992 gain and if there is any amount left, to reduce other income in 1992. Before you can reduce the gain, you have to adjust the pre-1990 loss. Because the loss happened in 1989, multiply it by 9/8 to get an adjusted net capital loss of:

$22,500 ($20,000 × 9/8).

Now to reduce her 1992 gains, you use the lower of:

$22,500 (adjusted net capital loss), or

$4,000 (1992 taxable capital gain).

Therefore, after you use $4,000 to reduce the gains to nil, you still have an amount left of $18,500 ($22,500 − $4,000). You decide to use this amount to reduce Mrs. Podgorny's other income in 1992. To figure out the amount to use, you have to readjust the $18,500. Because the loss happened in 1989, multiply the amount left by 8/9 to get a readjusted balance of:

$16,444 ($18,500 × 8/9).

Now from your readjusted balance, subtract the total capital gains deductions claimed to date. When you do this, you get:

$13,444 ($16,444 − $3,000).

You can now use $13,444 to reduce Mrs. Podgorny's other income in 1992.

Note
You may want to claim a capital gains deduction for the year of death or the year right before the year of death. In this case, subtract from the deduction, any net capital loss you deduct in those years. If you need more details about capital gains and losses, please read the *Capital Gains Tax Guide*.

Chapter 6
Other information

Disposal of property by the legal rep — subsection 164(6)

As the legal rep, you may have to look after the deceased's trust. In the trust's first tax year, you may dispose of capital property that results in a net capital loss. Also in the first year, you may dispose of depreciable property that results in a terminal loss.

In most cases, these would be losses of the trust. However, you may be able to use all or some of these losses on the deceased's final return. To do this, you can use subsection 164(6) of the *Income Tax Act*. The rules for using 164(6) can be quite complex. If you want details about using 164(6), contact your district office.

Income after death

As the legal rep of the deceased, report on a T3 trust return, any income that is for the time after death. You will find more details in the *T3 Guide and Trust Return*. You can get this guide from any district office.

Paying taxes

In most cases, you must pay any amount owing when the return is due. We will charge interest on any unpaid amount from the due date to the date you pay it.

In some cases, you can defer paying some of the amount owing. For instance, you can defer the amount owing from rights or things, and the deemed disposal of capital property.

To defer the amount, you have to give us security that we will accept. For more details, contact the Collections Section of the district office that serves you.

To figure out how much you can defer, you need to know these **two** amounts:

- Amount A. This is the amount owing from the final and elective return(s).
- Amount B. This is the amount that would be owing if you did not include the income from rights or things, or the deemed disposal of property.

Amount A minus Amount B will give you the most you can defer.

You can pay the amount in any number of equal amounts as long as you do not have more than 10 payments. The first payment is due at the same time that you have to file the return. You must make the next nine (or less) payments at one year intervals from the due date of the first payment. Please note that we will charge interest on the amount that is still owing.

To defer an amount, fill in Form T2075, *Election to Defer Payment of Income Tax, under Subsection 159(5) of the Income Tax Act by a Deceased Taxpayer's Legal Representative or Trustee*. Send in Form T2075 to the district office that served the deceased. Send in Form T2075 by the due date for the first payment.

Clearance certificates

As the legal rep, you may want to get a clearance certificate. If you do not get a certificate, you can be liable for any amount the deceased owes.

We cannot give you a clearance certificate until you file all the required income tax returns and we assess them. Also, you must pay or secure all amounts owing. Therefore, do not ask for a certificate until you have done all of this.

Use Form TX19, *Request for Clearance Certificate* to ask for a certificate. You can get Form TX19 from your district office. Send Form TX19 to the Business Audit section of the district office that serves you. Do not send in Form TX19 with a tax return. The return goes to a tax centre. We issue certificates from a district office. The certificate covers all tax years to the date of death. It is not a clearance for any amounts a trust owes.

If you need more details about clearance certificates, you can contact the Business Audit section of your district office. You can also get IC 82-6, *Requesting Clearance Certificates for Estates and Trusts*, and IT-282, *Estate or Trust Distributions — Clearance Certificates*.

Common questions and answers

Q. Can I deduct funeral expenses?

A. No, you cannot deduct funeral expenses.

Q. What return do I have to fill in and file for a deceased person: a T1 General, a Special or a T3 trust return?

A. For the period from January 1 to the date of death, you have to file a T1 General or a T1 Special return. If there is a trust, you will also have to file a T3 return for the trust.

Q. My father died in March. Do I have to wait until this year's return is printed before I file a return for the three months?

A. No. Just use last year's return and change the year in the top right-hand corner on the first page. When we assess the return, we use the law that is in effect for the year of death.

Q. Who reports amounts the employer pays for vacation and built up sick leave?

A. Vacation pay is income of the deceased person. The payment of built up sick leave is often income of the person who gets it. This is often the estate or a beneficiary. Note that in some cases, some sick leave payments can be a death benefit. For more details, see line 130 in the *General Tax Guide*.

Q. Who reports the death benefit that an employer pays?

A. A death benefit is income of the person who gets it. This is often the estate or a beneficiary. Note that up to $10,000 of a death benefit is not taxable.

Q. I have a T4A(P) that shows a CPP death benefit for the deceased. On what return do I show this amount?

A. Report this amount on the tax return of the person who gets it. For a beneficiary, this would be a T1 return. For a trust, this would be a T3 return. Do not report this amount on the deceased's return. Note that this type of death benefit is taxable in full. It's not like a death benefit that an employer pays.

Index

	Page
Clearance certificates	21
Dealing with Revenue Canada, Taxation	2
Deemed disposal of property	
Capital property	17
Definitions	15
Depreciable property	15 & 16
Farm property	17 & 18
General information	15
Disposal of property by the legal rep — subsection 164(6)	21
Elective returns	
Amounts for elective returns	13 & 14
Return for a partner or proprietor — subsection 150(4)	13
Return for rights or things — subsection 70(2)	12 & 13
Return for trust income — paragraph 104(23)(d)	13
What are elective returns?	12
Filing income tax returns	5
Final returns	
Accumulated forward-averaging amount withdrawal (line 237)	9
Age amount (line 301)	9
Basic personal amount (line 300)	9
Charitable donations (line 340)	10
Dependent children and additional personal amounts (lines 304 and 305)	9
Disability amount (lines 316 and 318)	10
Employment income (lines 101 to 104)	7
Family allowance payments (line 118)	7 & 8
Filing a final return	6
Goods and services tax credit	11
Identification	6
Investment income (lines 120 and 121)	8
Married amount (line 303)	9
Medical expenses (line 330)	10
Net capital losses of other years (line 253)	9
Other types of income (lines 130 to 146)	8 & 9
Pension income (lines 113 to 115)	7
Pension income amount (line 314)	9 & 10
Provincial or territorial tax credits	11
Registered retirement savings plan income (line 129)	8
Registered retirement savings plan contributions (line 208)	9
Taxable capital gains (line 127)	8
Transfer of amounts from your spouse (line 326)	10
Unemployment insurance benefits (line 119)	8
Income after death	21
Legal representative	
Defined	2
Duties	2
Net capital losses	
Before the year of death	20
Defined	19
In the year of death	19
Paying taxes	21

Capital Dispositions Supplementary Schedule

Re: Depreciable Property Upon the Death of a Taxpayer

(This form, when completed, should be retained in your permanent records.)

- Where in a taxation year a taxpayer dies the following rule in subsection 70(5) of the Income Tax Act applies:
  The deceased taxpayer is deemed to have disposed, immediately before his/her death, of all his/her depreciable property of a prescribed class for proceeds of disposition equal to the average (arithmetic mean) of the undepreciated capital cost of the class and the fair market value of the property in the class at that time.
- For depreciable property, such as a building or an asset acquired for the purpose of producing income, a capital gain can *only* arise where the proceeds of disposition exceed the greater of the capital cost and the fair market value on 31st December, 1971

A. Particulars of Deemed Dispositions

Description of Property	(1) Date of Acquisition	(2) Deemed Proceeds	(3) Adjusted Cost Base	(4) Gain only (Col. (2) less (3))

Note: Relate the above dates to Column (1) of the "Summary of Dispositions of Capital Property". Transfer all remaining entries to the relevant columns under "Other Securities and Properties" – "Real Estate".

B. Calculation of Deemed Proceeds

(a) Depreciable Property acquired prior to 1972
In calculating the proceeds relating to the deemed disposition of depreciable property acquired prior to 1972, two separate steps may be required depending on the circumstances.

Step No. 1 – Apply rules contained in subsection 70(5) of the Income Tax Act.

Description of Class of Property	(1) Undepreciated Capital Cost of Class (at date of death)	(2) Fair Market Value of Class (at date of death)	(3) Deemed Proceeds $\left(\frac{\text{Col. (1) plus (2)}}{2}\right)$
			*
			*
			*
			*
			*

* Transfer to A, Col. (2) if Step No. 2 is not applicable.

Step No. 2 – Apply rules contained in ITAR 20(1)

Where the capital cost of depreciable property of a prescribed class acquired before 1972 is less than the fair market value of the property on Valuation Day and less than the deemed proceeds calculated in Step No. 1 above, Step No. 2 is applicable. In such instances, the proceeds of disposition of the property are deemed to be an amount equal to the capital cost plus the amount, if any, by which the deemed proceeds calculated in Step No. 1 exceed the fair market value of the property on Valuation Day.

Description of Class of Property	(1) Capital Cost of Class as at 31st Dec. 1971	(2) Additions and Improvements Since 31st Dec. 1971	(3) Total Capital Cost (Col. (1) plus (2))	(4) Deemed Proceeds (Step No. 1)	(5) Valuation Day Value	(6) Excess Only (Col. (4) less (5))	(7) Deemed Proceeds (Col. (3) plus (6))
							*
							*
							*
							*
							*

* Transfer to A, Col. (2).

Continued on reverse

(b) Depreciable Property acquired after 1971
In calculating the proceeds relating to the deemed disposition of depreciable property acquired after 1971, only one step is required. This step involves the application of rules contained in subsection 70(5) of the Income Tax Act.

Description of Class of Property	(1) Undepreciated Capital Cost of Class (at date of death)	(2) Fair Market Value of Class (at date of death)	(3) Deemed Proceeds $\left(\frac{\text{Col. (1) plus (2)}}{2}\right)$
			*
			*
			*
			*
			*

* Transfer to A, Col. (2).

C. Adjusted Cost Base

The adjusted cost base of any depreciable property is the capital cost of the property as of that time.