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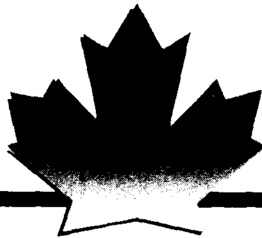
Supplementary Income Tax Guide

Preparing Returns for Deceased Persons

1993

Your Guide



- Final return
- Optional returns
- Answers to common questions

Cette publication existe aussi en français.

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Canada

Before You Start

Is this guide for you?

Use this guide if you are the legal representative who has to file an income tax return for a deceased person. In addition to this guide, use the *General Income Tax Guide* or the *Special Income Tax Guide*, depending on the types of income you have to report, and the deductions and credits you want to claim.

Are you the legal representative?

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

Executor: This is someone a will names to act as the legal representative to handle a deceased person's estate.

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

What are the income tax responsibilities of the legal representative?

As a legal representative, you have a number of responsibilities. This guide deals only with your responsibilities under the *Income Tax Act*. Under the Act it is your responsibility to:

- file all required returns;
- make sure all taxes owing are paid; and
- let beneficiaries know which amounts they receive from the estate are taxable.

Clearance certificate

You should get a clearance certificate before distributing property under your control. To find out what a clearance certificate is, see the definition on page 22.

Do you need information from a deceased person's tax records?

You can contact your Revenue Canada income tax office for information held in a deceased person's tax records. You can find the address and telephone numbers in the General or Special income tax package. When you write for such information, place the words "The Estate of the Late" in front of the deceased person's name. Include your address so we can reply directly to you. Before we give you information from a deceased person's records, we need the following:

- a copy of the deceased person's death certificate;
- the deceased person's social insurance number; and
- a copy of the will or other document that shows you are the legal representative.

If you visit an income tax office to get information from the income tax records of the deceased, you also have to show us one piece of identification with your picture and signature on it, or two pieces with your signature on them.

Forms and publications

Throughout this guide, we refer to various forms and publications. If you need any forms or publications, see the section called "How to order forms and publications" on the last page of this guide.

Proposed changes

This guide includes announced tax changes that were not law at the time of printing. However, we are getting ready to apply these proposed changes. The changes are highlighted in yellow.

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

You can get this publication in braille, large print, audio cassette, and computer diskette. For details, please call 1-800-267-1267 weekdays between 8:15 a.m. and 5:00 p.m. (Eastern Time).

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Common Questions and Answers

Q. *What income tax return do I use for a deceased person?*

A. Use either a General or a Special return to cover the period in the year of death from January 1 to the date of death. If the will creates a trust, you might also have to file a return for trust income. Use Form T3, *Trust Income Tax and Information Return.*

Q. *Can I deduct funeral expenses?*

A. No. These expenses are not deductible.

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. Use last year's return, and change the year in the top right corner of page one. We will assess the return based on the legislation in effect for the year of death.

Q. *Who reports a death benefit that an employer pays?*

A. A death benefit is income of the estate or beneficiary that receives it. Up to $10,000 of the total of all death benefits paid is not taxable. For details, see line 130 in the *General Income Tax Guide*.

Q. *Who reports amounts an employer pays for vacation and unused sick leave?*

A. Vacation pay is income of the deceased person. Payment for unused sick leave is often income of the estate or beneficiary that receives it. In some cases, sick leave payments can be a death benefit. For details, see line 130 in the *General Income Tax Guide*.

Q. *On what return do I report Canada or Quebec Pension Plan benefits for the deceased?*

A. A Canada or Quebec Pension Plan (CPP or QPP) death benefit shown in box 18 of Form T4A(P), *Statement of Canada Pension Plan Benefits*, has to be reported on the tax return of the beneficiary or trust that receives it. Do not report the amount on the deceased's return. This benefit is not eligible for the $10,000 death benefit exemption. It is not like a death benefit that an employer pays. All other CPP or QPP benefits paid have to be reported on the deceased's return.

Q. *If the deceased person was paying tax by instalments, do I have to continue making those instalment payments?*

A. No. The only instalment payments we require are those that were due before the date of death.

Chapter 1
Filing Income Tax Returns

For years before the year of death

As the legal representative, you are responsible for filing any returns for previous years that the deceased person did not file. If the person did not leave records about these returns, or if you cannot tell from existing records whether or not the returns were filed, you can contact one of our income tax offices for information. If you have to file a return for a year before the year of death, use either a General return or a Special return.

If the person dies after December 31, 1993, but before May 1, 1994, and he or she has not filed a return for 1993, the deadline for that return is six months after the date of death. For more details about this filing date, see "What is the filing due date?" in the *General Income Tax Guide*.

We charge interest on outstanding taxes from the date a return is due. In addition, there is a late-filing penalty for returns that are filed late.

In some cases, you can ask us to adjust returns filed for years back to 1985 for a refund, or to reduce tax owing. For more details, contact one of our income tax offices.

For the year of death

Final return

The legal representative has to file a return for the deceased person for the year of death. This return is called the final return. See Chapter 2 for more information.

Optional returns

In addition to the final return, you can choose to file up to three optional returns for the year of death. Information about the deceased's income sources will help you determine if you can file any of these optional returns.

As their name indicates, you do not have to file any of the optional returns. However, by choosing to file one or more of the returns, you may reduce or eliminate tax that otherwise would have to be paid for the deceased.

Here is a brief description of the optional returns and the types of income that you can report on them:

Return for rights or things
You can choose to file an optional return for rights or things. Rights or things are amounts that were not paid at the time of death and that, had the person not died, would have been included in his or her income when received. Examples of this are salary, accrued vacation pay, and Unemployment Insurance benefits. For more details and examples, see page 12.

Return for a partner or proprietor
You can choose to file an optional return for business income if the deceased person was a partner in a business, or was the proprietor of a business. For more details and examples, see page 13.

Return for income from a testamentary trust
You can choose to file an optional return to report certain income the deceased person received from a testamentary trust. For more details and examples, see page 13.

Note

You do not report the same income on both the final and an optional return. However, you can claim certain credits and deductions on more than one return. For more information and examples, see page 14.

Use a General or Special return

Use either a General or a Special return, whichever applies. If you cannot get a return for the year of death, use one from the previous year, and indicate the year for which you are filing on the top right corner of page 1.

The *General Income Tax Guide* and the *Special Income Tax Guide* state that certain documents are not required to be filed with an income tax return, although the documents have to be kept in case we want to see them later. However, for a deceased person's return, there are exceptions to this rule. The exceptions are for the following items:

- Moving expenses — Complete and attach a Form T1-M, *Claim for Moving Expenses*.
- Alimony or maintenance paid — Provide the name and address of the person who received the payments.
- Tuition fees — Attach an official tax receipt or Form T2202A if the institution is in Canada. If it is outside of Canada, attach either Form TL11A or Form TL11C. If you are claiming tuition fees paid to a flying school or club located in Canada, attach Form TL11B.
- Education amount — Attach Form T2202 or Form T2202A, completed by the educational institution.
- Tuition fees and education amount transferred from a child to the deceased — Have the student use Form T2202 or the back of Form T2202A to calculate the transfer amount and to designate the deceased person as the transferee. Attach the form to the return. If the tuition fees that are being transferred are not on either the Form T2202 or Form T2202A, attach a copy of the student's official tuition fees receipt.

Chapter 2
Final Return

This chapter explains the requirements related to filing the final return, as well as how to complete it.

We define some of the terms we use in this chapter on pages 22 and 23. These include a definition of the term "spouse."

Filing the final return

You have to file a return for a deceased person for the year the person dies. This return is called the final return. On the return, report all of the deceased's income from January 1 of the year of death, up to and including the date of death.

Report, on Form T3, *Trust Income Tax and Information Return*, any income earned after the date of death. For details, see the *T3 Guide and Trust Return*.

There are two differences between the way you file the final return and the way an individual files returns for any other year:

- The due date for the final return depends on the date of death. See the next section, "Due date for the final return," for more information.
- You can claim certain amounts on both the final return and any optional returns.

Tax tip

Usually there is a tax advantage if you can file one or more of the optional returns in addition to the final return. See Chapter 3 for information on optional returns.

Due date for the final return

The due date for the final return depends upon the date of death:

Period when death occurred	Final return due date
January 1 to October 31	April 30 of the following year
November 1 to December 31	within 6 months of the date of death

The deceased's will or a court order may set up a **spousal trust**. When certain debts of the deceased or the estate are being handled through a spousal trust, the due date for the final return is extended to 18 months after the date of death. However, any taxes owing have to be paid by the return's original due date shown in the chart above. We will charge interest on any amount owing after this date. For more details about spousal trusts, see the *T3 Guide and Trust Return* and Interpretation Bulletin IT-207, *"Tainted" Spouse Trusts*.

Interest and penalties

If the final return shows an amount owing, 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 do not pay. We start to charge interest on any outstanding amounts, as soon as the due date has passed.

If you file the return late, there is a late-filing penalty. The penalty is 5% of any amount owing. To this 5%, we add 1% for each complete 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 an amount owing.

Example

Suppose a person died on May 11, 1993. The final return was due by April 30, 1994, but the legal representative did not file it until March 21, 1995. Because the representative filed the return 10 months late, the late-filing penalty would be 15% (5% + 10%) of the amount owing.

How to complete the final return

Use either a General or a Special return when you complete the final return. If you cannot get a return for the year you need, use one from the previous year, and indicate the year for which you are filing on the top right corner of page 1.

In this section we cover the most common lines on a return that apply to a deceased person. For more details on these and any other lines on a return, see the *General Income Tax Guide*.

Step 1
Identification

In this area of the return:

- Write "The Estate of the Late" before the name of the deceased.
- Give your address as the return address.
- Ensure the province or territory of residence on December 31 is the one where the deceased was living when he or she died.
- Enter 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.

Step 2
Goods and services tax (GST) credit application

Since there is no GST credit for the year of death, you do not complete Step 2 when you file the final return.

It is possible that the deceased was receiving GST credit payments, based on his or her claim from the previous year. If this is the case, read the following paragraphs to find out what to do.

We may send out GST credit payments after a person dies because we do not know about his or her death. If this happens, you have to return the payments to the taxation centre where you file the deceased's return. Also, please give us the date of death so we can update our records.

Persons receiving the GST credit for self and for spouse

A person may die after claiming the GST credit for himself or herself, and for a spouse. If this happens, the spouse can receive the rest of the payments. To do this, the spouse has to send us a copy of the deceased's death certificate and a letter claiming the payments. The letter and the copy of the death certificate should be sent to the taxation centre where the deceased filed his or her return claiming the GST credit. In addition, the spouse should file his or her own return for the previous year, if this has not been done.

Persons receiving the GST credit for self but not for spouse

A person's claim for the GST credit may not have included his or her spouse, or the person may not have had a spouse. In either case, if the person dies before a month in which we send out a payment, nobody can receive the credit. We cannot make any more payments in that person's name, or to the estate.

If the person dies during or after the month in which we send out a payment, send the cheque back to the taxation centre where the person filed his or her return. We will then send the payment to the person's estate.

Step 3
Calculation of total income

To complete the income part of the return, you need to determine the deceased person's income from all sources. The person's return for the previous year may help you.

Also, find out anything that may be owing to the estate of the deceased because of his or her death. You will get this information from payers. They include employers, banks, trust companies, stock brokers, and pension plan managers. A safety deposit box may contain details about sources of income and benefits.

When you file a return, you may need to contact payers to get information slips such as:

- 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*

You have to report all income and deductions even if you cannot get any slips. If a slip is not available, ask the payer to give you a note that states 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:

- amounts receivable by the deceased, but not payable to the deceased on or before the date of death; and
- amounts from some annuity contracts that under the *Income Tax Act* are considered as having been disposed of on death.

For more details about amounts receivable on or before the date of death, see "Return for rights or things" on page 12. You can also read Interpretation Bulletin IT-210, *Income of Deceased Persons — Periodic Payments*.

Amounts an employer pays to the deceased person's estate

There may be amounts that an employer will pay to a deceased employee's estate. For these amounts, an employer will usually complete a T4 or T4A slip.

Some of the amounts an employer pays will be part of the deceased's employment income for the year of death, and you should report these amounts on the final return. The amounts are employment income even if they are received in a year after the year of death. Box 14 of the T4 slip should include the following amounts:

- salary or wages (including overtime) from the end of the last pay period to the date of death;
- salary or wages (including overtime) for a pay period finished before the date of death, but paid after death; and
- payment for vacation leave that was earned but not taken.

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 additional amounts on the final return. However, if the document was signed after the date of death, the additional amounts are not taxable.

Some amounts may be "rights or things," and you may be able to report them on an optional return. See the heading "Return for rights or things" on page 12 for details on rights or things.

Some of the amounts an employer pays are income for the estate. Do not report these amounts on the final return. Instead, report them on Form T3, *Trust Income Tax and Information Return*. Look for estate income amounts in boxes 18 or 28 of the T4A slip. These amounts include:

- salary or wages, and any adjustments the employer pays for the period after the death;

- a payment for the full month in which the employee died, if he or she was not getting paid but was on authorized leave;
- severance pay received because of the death (as this is a death benefit, an amount up to $10,000 may be tax free);
- future changes to severance pay, no matter when the collective agreement was signed;
- a refund of pension contributions that is payable because of the death;
- a guaranteed minimum pension payment that is not a death benefit; and
- a payment from a deferred profit-sharing plan.

Lines 101 to 104 — Employment income

Report all salary or wages received from January 1 to the date of death. Also include amounts that accrue from the start of the pay period in which the employee died to the date of death.

Example

Suppose a woman earned $1,200 every 10 working days, and she died 4 working days after her last payday. In her income you would include $480 [($1,200 ÷ 10) × 4)].

Lines 113 to 115 — Pension income

Report all pension income received for the period from January 1 to the date of death. Do not include on line 113 the "Net federal supplements paid" from box 21 of the T4A(OAS) slip. For more information, see "Line 146 — Net federal supplements" in the *General Income Tax Guide.*

When a person dies, a pension plan or fund may pay a lump sum to the spouse, a child, or the estate. An example of a lump sum is the death benefit from the Canada or Quebec Pension Plan. Include any such lump sum in the income of whoever receives it.

For more details on how to report lump-sum payments, see lines 114 and 130 in the *General Income Tax Guide*. You may also want to read Interpretation Bulletins IT-301, *Death Benefits — Qualifying Payments*, and IT-508, *Death Benefits — Calculation*.

Line 119 — Unemployment Insurance benefits

Report any Unemployment Insurance benefits the deceased received before death.

Note

Some of the income reported at lines 113 and 119 may have to be repaid. For details, see line 235 in the *General Income Tax Guide*.

Lines 120 and 121 — Investment income

Report investment income received from January 1 to the date of death. This type of income includes dividends and interest. Also include the following amounts:

- amounts earned from January 1 to the date of death that have not been paid;
- bond interest earned from the last time it was paid to the date of death, if the deceased did not report it in a previous year; and
- compound bond interest accrued to the date of death, if the deceased did not report it in a previous year.

You can report some types of investment income as rights or things. See the "Return for rights or things" section on page 12 for details on rights or things.

Line 127 — Taxable capital gains

See Chapter 4 for details about this type of income.

Line 129 — Registered retirement savings plan (RRSP) income

When a person dies, he or she may have an RRSP. At the time of death, the RRSP may or may not be matured. Depending on the situation, the amount you include in the deceased's income can vary.

A **matured RRSP** is one that pays retirement income. It usually pays monthly annuity payments.

For a matured RRSP, report on line 129, the RRSP payments the RRSP annuitant received from January 1 to the date of death. If, because of the annuitant's death, his or her spouse begins receiving the remaining annuity payments from the plan, the spouse has to report these payments as income.

The spouse may be a beneficiary of the estate instead of a beneficiary of the deceased's RRSP. If this is the case, you and the spouse can jointly send us a written election, to treat the amounts paid from the RRSP to the estate as being paid from the RRSP to the spouse.

If the amounts from the RRSP are paid to a beneficiary other than the deceased's spouse, see the income tax guide called *RRSPs and Other Registered Plans for Retirement* for more information.

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

Under proposed law, for deaths occurring after 1992, a deceased RRSP annuitant is considered to have received, immediately before death, an amount equal to the fair market value of all the property of the plan at the time of death. Generally, you have to include this amount in the deceased's income for the year of death. However, you have a number of options to reduce that income inclusion. These options apply if the deceased's spouse or financially dependent child or grandchild (where the deceased has no spouse at the time of death) receives an RRSP refund of premiums. These options also apply when the estate receives the RRSP proceeds, but an election is made to treat some or all of that amount as a refund of premiums received by the deceased's spouse, or financially dependent child or grandchild.

For details, see Form T2019, *Registered Retirement Savings Plan (RRSP) Refund of Premiums Designation — Spouse*.

For more information on RRSP income upon the death of the annuitant, see the income tax guide called *RRSPs and Other Registered Plans for Retirement.*

Home Buyers' Plan

The deceased may have participated in the Home Buyers' Plan. If so, you have to include, on line 129 of the final return, the total of all withdrawals that remain to be repaid to the deceased's RRSPs at the time of death.

However, you and the surviving spouse (if he or she was a resident of Canada at the time of the deceased's death) jointly can choose instead to have the spouse continue making the required repayments. In that case, attach a note to the final return indicating this choice. Do not include the total referred to in the previous paragraph on line 129 of the deceased's return. The spouse then will have to take over the responsibility for the repayments. For information, see the pamphlet called *Home Buyers' Plan*.

Lines 130 to 146 — Other types of income

Use these lines to report other types of income. If you need more information about other types of income, see the *General Income Tax Guide*.

Reserves in year of death

Sometimes, when a person sells property, some of the proceeds are not due until after the year he or she sells it. Similarly, if a person is self-employed, he or she may have amounts to be received in a later year for his or her work this year. An example of this is for work in progress.

Usually a person can calculate a deduction from his or her income from these sources for amounts that are not due until a later year. This deduction is called a reserve.

In most cases, you cannot deduct a reserve for the year of death. However, there may be a transfer, to a spouse or spousal trust, of the right to receive the proceeds of disposal or income that is due. When this happens, the legal representative and the beneficiary can choose to claim a reserve on the deceased's return. To do this, complete Form T2069, *Election in Respect of Amounts Not Deductible as Reserves for the Year of Death*, and attach a copy to the deceased's return.

This choice will be available only if the deceased was resident in Canada right before death. In the case of a transfer to a spouse, the spouse also has to have been resident in Canada right before the deceased's death. In the case of a transfer to a spousal trust, the trust has to have been resident in Canada right after the proceeds or income become "locked in" for the trust. For the meaning of "locked in," see page 22.

The spouse or spousal trust includes in income an amount equal to the reserve that is on the T2069 form. The spouse or spousal trust has to include this income on the income tax return for the first tax year after death. A copy of the T2069 form has to be attached to that return. When the reserve is from a capital gain, it may qualify for a capital gains deduction. For information about this deduction, see the income tax guide called *Capital Gains*.

Step 4
Calculation of taxable income

Line 208 — Registered retirement savings plan (RRSP) contributions

Use this line to deduct the RRSP contributions the deceased made before his or her death. These include contributions to both the deceased's own RRSPs and RRSPs belonging to the deceased's spouse. Note that when a person dies, no one can contribute to the deceased's RRSPs.

Under proposed law, you also can deduct amounts you contribute after the date of death for the deceased to an RRSP of the deceased's spouse. You have up to 60 days after the end of the year in which the death occurred to make these RRSP contributions.

The maximum RRSP deduction on the deceased's return is limited to the deceased person's RRSP deduction limit for the year.

In addition, under proposed law you can make a transfer to the surviving spouse's RRSP of up to $6,000 of periodic payments received in the year of death from the deceased's registered pension plan or deferred profit-sharing plan. You can do this only to the extent that the deceased had not already made this transfer before he or she died. This transfer has to be made within the time frames mentioned above. You can claim an RRSP deduction for this transfer on the deceased's return.

If you need more details about RRSPs, see the income tax guide called *RRSPs and Other Registered Plans for Retirement*.

Line 237 — Accumulated forward-averaging amount withdrawal

There may be an accumulated forward-averaging amount. As the legal representative, you have three choices:

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

You can get the T581 and T541 forms at your income tax office. Send us the completed 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.

Step 5
Calculation of non-refundable tax credits

Personal amounts

For the year a person dies, if the deceased lived in Canada from January 1 to the date of death, claim the full personal amounts. Do not prorate the personal amounts.

The deceased may have lived outside Canada for part of the time between January 1 and the date of death. If so, you may have to prorate the personal amounts. If the deceased immigrated to Canada in the year of death, see the income tax guide called *New Canadians*. If the deceased emigrated from Canada in the year of death, see the income tax guide called *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 — Spousal amount

Depending on the spouse's income for the year, you may be able to claim a full or partial spousal amount. Use the spouse's income for the whole year, not just up to the deceased's date of death.

Line 305 — Equivalent-to-spouse amount

If the deceased is entitled to claim the equivalent-to-spouse amount, use the dependant's net income for the entire year in the calculation.

Line 306 — Additional personal amounts

If the deceased is entitled to claim the additional personal amounts, use the dependant's net income for the entire year in the calculation.

Line 314 — Pension income amount

The deceased may have received eligible pension income before the date of death. If this is the case, you may be able to claim the pension income amount of up to $1,000. See line 314 in the *General Income Tax Guide* for details.

Lines 316 and 318 — Disability amount

You can claim this amount if both of the following conditions are met:

- The deceased had a severe mental or physical impairment in the year. A severe impairment is one that markedly restricts the activities of daily living. It has to last, or be expected to last, for a continuous period of at least 12 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 the disability amount, **or** you can claim the medical expenses for a full-time attendant or full-time care in a nursing home. However, you cannot claim both.

Under certain conditions, you can claim both the disability amount **and** either expenses for attendant care that allowed the deceased to earn income (line 215) or medical expenses for a part-time attendant (line 330). If you need more details on these expenses, see lines 215 and 330 in the *General Income Tax Guide*.

For more details on the disability credit, see our *Tax Information for People with Disabilities* pamphlet, and Interpretation Bulletin IT-519, *Medical Expense and Disability Tax Credits*.

Line 326 — Amounts transferred from your spouse

Sometimes there are amounts that a 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's return.

Also, the deceased may have amounts that are not needed to reduce his or her tax to nil. If this is the case, you can transfer the amounts the deceased does not need to the spouse's return. However, before you can do this, you have to reduce the tax to nil for the final and optional returns you file for the deceased.

For either situation, you can transfer the:

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

To transfer these amounts, complete Schedule 2, *Amounts Transferred from Your Spouse*. This schedule is included in the *General Income Tax Guide* and returns package.

Line 330 — Medical expenses

You can claim medical expenses that are more than whichever of the following two amounts is lower:

- $1,614; or
- 3% of the deceased's total net income from line 236 of all returns for the year of death.

The expenses can be for any 24-month period that includes the date of death, as long as no one has claimed them on any other return.

To claim these expenses, complete Schedule 4, *Medical Expenses*. Attach this schedule and the receipts for medical expenses to the return. This schedule is included in the *General Income Tax Guide* and returns package.

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

Line 331 — Medical expenses adjustment

If you deduct medical expenses for a dependant (other than the spouse) whose net income is more than $6,456, you have to adjust the amount of medical expenses you claim. See line 331 in the *General Income Tax Guide* for more information.

Line 340 — Charitable donations

Use this line to claim charitable donations the deceased made before the date of death. Support these claims with official receipts issued by the registered charity or other qualified donee.

In addition, you can claim charitable donations made through the will, as long as you support the donations. The type of support you have to provide depends on when the registered charity or other qualified donee will receive the gift:

- For gifts that will be received right away, provide an official receipt.
- For gifts that will be received at some later time, provide a copy of each of the following:
  - the will;
  - a letter on behalf of the estate to the charitable organization that will receive the gift, advising of the gift and its value; and
  - a letter from the charitable organization acknowledging the gift and stating that the gift will be accepted.

The deceased may have donated amounts in the five years before the year of death. As long as the deceased did not claim the amounts before, you can claim them in the year of death. Put a note on the return to tell us about any amounts, and the year or years the deceased made the donations.

The most you can claim on line 340 of the final return is whichever of the following two amounts is lower:

- amounts donated in the year of death, plus any amounts donated in the five years before the year of death, if the deceased did not claim them before; or
- 20% of the deceased's net income (line 236) on that return.

On the return(s) for the year of death, you might not claim all of the gifts given in the year of death. In that case, you can ask us to adjust the deceased's return for the preceding year to include the unused part of these gifts on that return.

Sometimes, a gift can be capital property. At the time the deceased gives the property, its fair market value may be more than its adjusted cost base. We define fair market value and adjusted cost base on page 22.

When the fair market value is more than the adjusted cost base, you can choose, as the amount of the gift, an amount that is not more than the fair market value but not less than its adjusted cost base. The amount you choose is the deceased's proceeds of disposal for the gift. You use this amount to determine the credit for the gift. This also may result in a capital gain.

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

Step 6
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 Income Tax Guide*.

Minimum tax does not apply to a person for the year of death. However, the deceased may have paid this tax in one or more of the seven years before the year of death. If this is the case, you may be able to deduct part or all of the minimum tax paid in those years from the tax that is owing for the year of death. To do this, complete Part VIII of Form T691, *Calculating Minimum Tax*. Include the T691 form with the return.

Provincial and territorial tax credits

Both territories and some provinces have tax credits that are available through the federal tax system. To determine if you can claim such credits, use the provincial or territorial form in your *General Income Tax Guide* and returns package.

Chapter 3
Optional Returns

Read this chapter to find out if you can file one or more of the three optional returns.

What are optional returns?

Optional returns are returns on which you report some of the income that otherwise you would report on the final return. You can choose to file up to three optional returns, (also known as "elective" returns). Use a General or Special return. The optional returns are for income from:

- rights or things;
- activity as a partner or proprietor; and
- a testamentary trust.

Note

Do not confuse the optional return for income from a testamentary trust with Form T3, *Trust Income Tax and Information Return*. After someone dies, a will may create a trust. You report income earned after the date of death on a T3 form. For more information, see the *T3 Guide and Trust Return* which you can get at one of our income tax offices.

Why file an optional return?

By filing one or more of the optional returns, you may reduce or eliminate tax that otherwise would have to be paid for the deceased. This is possible because of amounts that you can:

- claim more than once;
- split between returns; and
- claim against specific kinds of income.

The three optional returns

1. Return for rights or things

Rights or things are amounts that were not paid at the time of death and that, had the person not died, would have been included in his or her income when received.

There are rights or things from employment and other sources. You can file a return for rights or things to report the value of any rights or things at the time of death. If you file a return for rights or things, do not report these rights or things on the final return.

Employment rights or things

Employment rights or things are salary, commissions, and vacation pay, as long as both of these conditions are met:

- The employer owes them to the deceased on the date of death.
- They are for a pay period that ended before the date of death.

Example

An employer owes a person vacation pay of $1,400 for the first four months of 1993. However, the person dies in the fifth month of that year, before the employer pays the money. You have two choices when you report the person's income for 1993:

- One choice is to report all income, including the vacation pay, on the final return.
- The other choice is to report the vacation pay, and any other rights or things, on a return for rights or things. Report the rest of the income on the final return.

Other rights or things

- uncashed matured bond coupons;
- bond interest earned to a payment date before death, but not paid, and not reported in previous years;
- unpaid dividends declared before the day the person died;
- supplies on hand, inventory, and accounts receivable if the deceased's business used the cash method;
- harvested farm crops; and
- livestock that is not part of the basic herd.

Items that are not rights or things

- amounts that accrue periodically, such as interest from a bank account;
- bond interest accrued between the last interest payment date before the person died and the date of death;
- resource properties;
- land in the deceased's business inventory; and
- income from an income-averaging annuity contract.

The following is a list of publications that will give you more information about rights or things:

- 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*
- Information Circular 86-6, *Basic Herds*

Filing a return for rights or things

If you decide to file a return for rights or things, follow these steps:

- Get a General or Special return.
- Write "70(2)" on the return at the top of page 1.
- Follow the instructions for completing a return in this guide and the *General* or *Special Income Tax Guide*.

You have to file this return by whichever date is later:

- 90 days after we mail any *Notice of Assessment* or *Notice of Reassessment* for the final return; or
- one year after the date of death.

Paying taxes

In most cases you have to pay any amount owing on a return when the return is due. Remember that we charge interest on any unpaid amount, from the due date to the date you pay the amount in full.

In some cases, you can delay paying part of the amount due. For instance, you can delay paying part of the amount owing from rights or things, and the deemed disposal of capital property. For more information on deemed disposals of capital property, see Chapter 4.

The maximum amount you can delay paying is:

- the amount owing from the final and any optional return(s);

  minus
- the amount that would be owing if you did not include the income from rights or things, and the deemed disposals of capital property.

You can pay the amount owing in any number of equal amounts, as long as you do not have more than 10 payments. The first payment is due on the same date as the return you are filing. You have to make the rest of the 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.

If you want to delay payment, you have to give us security in place of the amount owing. For more details, contact the Revenue Collections Division of the district taxation office that serves you.

You also have to complete 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*, and submit it to the district taxation office that served the deceased by the due date for the first payment.

Cancelling a return for rights or things

You may file a return for rights or things before the due date, but later wish to cancel it. We will cancel the return if you send us a note asking us to do this. You have to send the note by the due date for the return.

Transferring rights or things to a beneficiary

You can transfer the deceased's rights or things to a beneficiary. However, you have to make this transfer within the time limit for filing a return for rights or things. The income from the rights or things transferred has to be reported on the beneficiary's return. Do not include the income from the rights or things on the deceased's return.

2. Return for a partner or proprietor

A deceased person may have been a partner in, or the sole proprietor of, a business. The business may have a fiscal year that does not begin or end on the same dates as the calendar year. If the person died after the business's fiscal period ended, but before the end of the calendar year in which the fiscal period ended, you can file a return for the deceased as a partner or proprietor.

On the return for a partner or proprietor, report the income for the time from the end of the fiscal period to the date of death. If you choose not to file a return for a partner or proprietor, report all income on the final return.

Example

A person who had a business died on May 28, 1993. The business has a March 31 fiscal year-end. You have two choices when you report the person's 1993 income:

- One choice is to file only a final return. You would include on it the business income from April 1, 1992 to May 28, 1993.
- The other choice is to file a return for a partner or proprietor in addition to the final return. On the final return, include business income from April 1, 1992 to March 31, 1993. On the return for a partner or proprietor, report the business income from April 1, 1993 to May 28, 1993.

Filing a return for a partner or proprietor

If you decide to file a return for a partner or proprietor, follow these steps:

- Get a General return.
- Write "150(4)" on the return at the top of page 1.
- Follow the instructions for completing a return in this guide and the *General Income Tax Guide*.

You have to file this return when the final return is due. The due date depends on the date of death:

Period when death occurred	Due date for the return
January 1 to October 31	April 30 of the following year
November 1 to December 31	6 months after the date of death

If there is an amount owing on a return for a partner or proprietor, pay it by the date this return is due. If you do not pay the amount in full, we will charge interest on the unpaid amount, from the due date to the date you pay the amount owing. If you have questions about paying taxes, call your income tax office.

3. Return for income from a testamentary trust

An optional return can be filed for a deceased person who received income from a testamentary trust. This kind of trust is set up as a result of another person's death. The trust may have a fiscal period that does not begin or end on the same dates as the calendar year.

A person getting income from a testamentary trust may die after the trust's fiscal period ends. If this happens, you can file a return for the deceased's testamentary trust income for the time from the end of the trust's fiscal period to the date of death.

Example

A husband gets income from a testamentary trust. The trust was formed as a result of his wife's death. The fiscal year of the trust is from April 1 to March 31. The husband died on June 11, 1993. You have two choices when you report the husband's income from the trust:

- One choice is to include the trust income from April 1, 1992 to June 11, 1993 on the final return.
- The other choice is to file a return for income from a testamentary trust in addition to the final return. On the final return, include the trust income from April 1, 1992 to March 31, 1993. On the return for income from a testamentary trust, report the trust income from April 1, 1993 to June 11, 1993.

Filing a return for income from a testamentary trust

If you decide to file a return for income from a testamentary trust, follow these steps:

- Get a General or Special return.
- Write "104(23)(d)" on the return at the top of page 1.
- Follow the instructions for completing a return in this guide and the *General* or *Special Income Tax Guide*.

You have to file this return when the final return is due. The due date depends on the date of death:

Period when death occurred	Due date for the return
January 1 to October 31	April 30 of the following year
November 1 to December 31	6 months after the date of death

If there is an amount owing on a return for income from a testamentary trust, pay it by the date this return is due. If you do not pay the amount in full, we will charge interest on the unpaid amount, from the due date to the date you pay the amount owing. If you have questions about paying taxes, call your income tax office.

Amounts for optional returns

There are three groups of amounts you can claim on the optional returns:

- amounts you can claim in full on each return;
- amounts you can split between returns; and
- amounts you can claim only against certain income.

Amounts you can claim in full on each return

On each optional return and on the final return, you can claim:

- the basic personal amount;
- the age amount;
- the spousal amount;
- the equivalent-to-spouse amount; and
- additional personal amounts.

Amounts you can split between returns

There are certain amounts that you cannot claim in full on the final return and optional returns. However, you can split these amounts between the returns.

When you split an amount, the total of the claims cannot be more than what would have been allowed if you were only filing the final return. 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 (which you can split any way you wish between the final return and any optional returns; however, reduce the total expenses by either $1,614, or 3% of the total net income you report on all returns, whichever amount is lower);
- gifts to Canada or a province; and
- gifts to charities. The amount claimed for gifts on a return cannot be more than 20% of the net income you report on that return.

Example

In the year a woman died, her total medical expenses were $4,000. You decide to file a rights or things return in addition to the final return. The total of her net incomes on the two returns is $20,000. Of this, $15,000 is on the final return and $5,000 is on the rights or things return.

You calculate 3% of the total net income ($20,000) as $600. Because this 3% is less than $1,614, you would reduce the medical expenses claim by $600. You could split the expenses to claim $3,000 on the final return, and $1,000 on the rights or things return, and reduce these claims by $450 on the final return, and by $150 on the rights or things return. Therefore, the deductions for medical expenses would be $2,550 ($3,000 − $450) on the final return, and $850 ($1,000 − $150) on the rights or things return.

Amounts you can claim only against certain income

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

- Canada or Quebec Pension Plan (CPP or QPP) contributions;
- Unemployment Insurance premiums;
- pension income amount;
- employee home relocation loan deduction;
- stock option and shares deduction;
- social benefits repayment; and
- vow of perpetual poverty deduction.

Example

Suppose the deceased person's total employment income in the year of death was $30,000, and the person's CPP amount was $650. Of the $30,000, $1,000 is a right or thing. Of the $650, $22 is the CPP contribution the person paid on the $1,000. You decide to file a return for rights or things.

On the final return you report income of $29,000 and claim a CPP amount of $628. On the return for rights or things, you include income of $1,000 and claim a CPP amount of $22.

Amounts you cannot claim on an optional return

The amounts you cannot claim on an optional return include:

- amounts you transfer from a spouse;
- the capital gains deduction;
- child care expenses;
- losses from other years;
- the northern residents deductions;
- withdrawals from the accumulated-averaging amount; and
- refunds of investment tax credits.

You may be able to claim these amounts on the final return. See the *General Income Tax Guide* for details.

Chapter 4
Deemed Disposal of Property

In this chapter, we discuss the tax treatment of capital property the deceased owned at the date of death. We deal with capital property in general, as well as the particular treatment of depreciable and farm property. We discuss only property acquired after December 31, 1971.

There are special rules for property that a deceased person owned on, or before, December 31, 1971. For details about these rules, and for information about other property such as eligible capital property, resource property, or an inventory of land, contact one of our income tax offices.

We define some of the terms we use in this chapter on pages 22 and 23. These include a definition of the term "spouse."

General information

When a person dies, he or she is considered to have disposed of all capital property right before death. This disposal is called a deemed disposal. Even though there was not an actual sale, there can be a capital gain or (other than for depreciable property) a capital loss which you have to report on the final return. For depreciable property, there can also be a terminal loss or a recapture of capital cost allowance.

For depreciable property, when the deemed proceeds are more than the undepreciated capital cost, you will have a "recapture of capital cost allowance." Include the recapture in income on the final return. You can also have a capital gain, which will be treated the same way as a capital gain resulting from the disposal of other capital property.

For depreciable property, when the deemed proceeds are less than the capital cost, you cannot have a capital loss. However, if the deemed proceeds are less than the undepreciated capital cost for the class in which the property belongs, you will have a "terminal loss." When this happens, you can deduct the terminal loss on the final return.

If you need more details on a recapture of capital cost allowance or a terminal loss, see Interpretation Bulletin 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 the chapter called "Capital Cost Allowance (CCA) for Self-Employed Persons (Depreciation)" in the income tax guide called *Business and Professional Income*.

What is a capital gain?

If the deemed proceeds of a capital property are more than its adjusted cost base, the result is a capital gain. Three-quarters of the capital gain is the taxable capital gain. Report the taxable capital gain on the final return. You may be able to claim a capital gains deduction. See the income tax guide called *Capital Gains* for details.

What is a capital loss?

Except for depreciable property, when the deemed proceeds are less than the adjusted cost base of a capital property, the result is a capital loss. Three-quarters 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 the section called "Net capital losses incurred in the year of death" on page 20 of Chapter 5.

Capital property other than depreciable property

This section tells you how to determine the deemed proceeds for capital property, other than depreciable property and some transfers of farm property. If there is a transfer of depreciable property, read the section called "Depreciable property" on page 17. If there is a transfer of farm property to a child, read the section called "Farm property transferred to a child" on page 17.

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

There may be a transfer of capital property (including farm land) to a spouse or a spousal trust.

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

- The spouse was a resident of Canada right before the person's death.
- The property becomes locked in for the spouse within 36 months of the date of death.

For a transfer to a spousal trust, the deemed proceeds are the same as the property's adjusted cost base right before death, if both these conditions are met:

- The spousal trust is resident in Canada right after the property becomes locked in for the spousal trust.
- The property becomes locked in for the spousal trust within 36 months of the date of death.

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

Example

Suppose the will transfers land to the spouse, and both of the conditions for transfer to a spouse are met. Right before death, the adjusted cost base of the property was $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

You can choose not to have the deemed proceeds equal the adjusted cost base. If you make this choice, the deemed proceeds equal the property's fair market value right before death. You have to 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 spousal trust.

Deceased's deemed proceeds — all other transfers

For all other transfers, the deemed proceeds are equal to the property's fair market value right before death.

Depreciable property

In this section, we tell you how to determine the deemed proceeds for depreciable property, except for some transfers of farm property. If there is a transfer of farm property to a child, read the next section called "Farm property transferred to a child."

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

There may be a transfer of depreciable property (including depreciable farm property) to a spouse or a spousal trust. For such 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 capital cost allowance, or a terminal loss. When you do this, you defer any gain, recapture, or terminal loss to the beneficiary when the beneficiary disposes of the property.

In the case of a transfer to a spouse, both of the following conditions have to be met:

- The spouse was a resident of Canada right before the person's death.
- The property has to become locked in for the spouse within 36 months of the date of death.

In the case of a transfer to a spousal trust, both these conditions have to be met:

- The spousal trust is resident in Canada right after the property becomes locked in for the spousal trust.
- The property becomes locked in for the spousal trust within 36 months of the date of death.

Under proposed law, the special amount (deemed proceeds) is whichever of the two following amounts is lower:

- the capital cost of the property for the deceased; or
- the amount you get in the following calculation:

$$\frac{\text{Capital cost of the property}}{\text{Capital cost of all the property in the same class}} \times \text{Undepreciated capital cost of all of the deceased's property in the same class}$$

Example

A person had two trucks that were used in his business. The person died in July 1993, and the will transferred truck "A" to the spouse. Both of the conditions stated above for transfer to a spouse are met. You have the following details about the trucks:

Undepreciated capital cost of the two trucks right before death	$33,500
Capital cost of truck "A"	$22,500
Capital cost of the two trucks	$50,000

The person's deemed proceeds on truck "A" are whichever amount is lower:

$22,500

or

$$\frac{\$22,500}{\$50,000} \times \$33,500 = \$15,075$$

Under proposed law, where there is more than one property in the same class, you can choose the order in which you are deemed to have disposed of the properties.

When you calculate the special amount, adjust the undepreciated capital cost and the total capital cost of the properties in the class to exclude previous deemed dispositions.

Tax tip

You can choose not to use the special amount for the deemed proceeds. If you choose not to use the special amount, the deemed proceeds are equal to the property's fair market value right before death. Make this choice when you file the final return for the deceased.

You may want to make this choice to use the 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 spousal trust.

Deceased's deemed proceeds — all other transfers

For all other transfers, the deemed proceeds are equal to the property's fair market value right before death.

Farm property transferred to a child

This section tells you how to calculate the deemed proceeds when there is a transfer of farm property to a child. For this kind of transfer, you may be able to use a special amount for the deemed proceeds.

In this chapter, when referring to the transfer of farm property, the terms "farm property" and "child" have the following meanings:

"Farm property" includes land and depreciable property used for farming.

A "child" includes:

- the deceased's natural or adopted child;
- the deceased's spouse's child;
- the deceased's grandchild or great-grandchild;
- a person who, while under 19, was in the deceased's custody and control and was wholly dependent on the deceased for support; and
- the spouse of any of the above.

Conditions

To use the special amount for the deemed proceeds, all four of the following conditions have to be met:

- The farm property is in Canada.
- The deceased, spouse, or any child of the deceased was using the farm property mainly for farming, on a regular and ongoing basis, before the person's death.
- The child was a resident of Canada right before the person's death.
- The farm property becomes locked in for the child within 36 months of the date of death.

Deceased's deemed proceeds — transfer of land

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

Tax tip

You can choose not to have the deemed proceeds equal the adjusted cost base. You can transfer the land at any amount between its adjusted cost base and fair market value 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 the 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 a child.

Deceased's deemed proceeds — transfer of depreciable property

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

Under proposed law, the special amount (deemed proceeds) is whichever of the two following amounts is lower:

- the capital cost of the property for the deceased; or
- the amount you get in the following calculation:

$$\frac{\text{Capital cost of the property}}{\text{Capital cost of all the property in the same class}} \times \text{Undepreciated capital cost of all of the deceased's property in the same class}$$

Example

A man who owned three tractors died in May 1993. His will transferred one tractor to his son. The four conditions for transfer of farm property are met. You have the following details about the tractors:

Undepreciated capital cost of the three tractors right before death .... \$ 90,000
Capital cost of the transferred tractor .... \$ 45,000
Capital cost of all three tractors \$100,000

The deceased's deemed proceeds on the transferred tractor are whichever amount is lower:

\$45,000

or

$$\frac{\$45{,}000}{\$100{,}000} \times \$90{,}000 = \$40{,}500$$

Under proposed law, where there is more than one property in the same class, you can choose the order in which you are deemed to have disposed of the properties.

When you calculate the special amount, adjust the undepreciated capital cost and the total capital cost of the properties in the class to exclude previous deemed dispositions.

Usually when you use the special amount, the deceased will not have a capital gain, recapture of capital cost allowance, or a terminal loss. When you do this, you defer any gain, recapture, or terminal loss to the beneficiary when the beneficiary disposes of the property.

Tax tip

You can choose not to use the special amount for the deemed proceeds. Under proposed law, you can transfer the property for any amount between the special amount and its fair market value 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 the 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 a child.

If you need more details on transfers of farm property, read Interpretation Bulletin, IT-349, *Intergenerational Transfers of Farm Property on Death*, and its Special Release. These publications include details on the transfer of shares of a family farm corporation and interests in a family farm partnership. You can also contact one of our income tax offices for information.

Paying taxes

In most cases you have to pay any amount owing on a return when the return is due. Remember that we charge interest on any unpaid amount, from the due date to the date you pay the amount in full.

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

The maximum amount you can delay paying is:

- the amount owing from the final and any optional return(s);

  minus

- the amount that would be owing if you did not include the income from rights or things, and the deemed disposals of capital property.

You can pay the amount owing in any number of equal amounts, as long as you do not have more than 10 payments. The first payment is due on the same date as the return you are filing. You have to make the rest of the 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.

If you want to delay payment, you have to give us security in place of the amount owing. For more details, contact the Revenue Collections Division of the district taxation office that serves you.

You also have to complete 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*, and submit it to the district taxation office that served the deceased by the due date for the first payment.

Chapter 5
Net Capital Losses

In this chapter, you can find out how to apply a net capital loss incurred in the year of death, as calculated on the final return. You can also find out how to apply net capital losses from earlier years to the final return and the return for the year before the year of death.

We define some of the terms we use in this chapter on pages 22 and 23.

What is a net capital loss?

When allowable capital losses are more than taxable capital gains, the difference is a net capital loss. An allowable capital loss is three-quarters of a capital loss. A taxable capital gain is three-quarters of a capital gain.

Net capital losses incurred in the year of death

There are two ways you can use a net capital loss incurred in the year of death.

Method A

You can carry back a net capital loss to reduce any taxable capital gains from 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 be an amount left. If there is, you may be able to use some of it to reduce other income on the final return, the return for the year before the year of death, or both returns. However, before you can do this, you have to calculate the amount you can use.

From the net capital loss you have left, subtract any capital gains deductions the deceased has ever claimed. Use any loss you have left to reduce other income for the year of death, the year before the year of death, or for both years.

To ask for a loss carry-back, complete Form T1A, *Request for Loss Carry-Back*, and send it to us. You can get this form from your income tax office.

Method B

You can choose not to carry back the net capital loss to reduce taxable capital gains from earlier years. You may prefer to reduce other income on the final return, the return for the year before the year of death, or both returns. However, before you can do this, you have to calculate the amount you can use.

From the net capital loss, subtract any capital gains deductions the deceased has ever claimed. Use any loss you have left to reduce other income for the year of death, the year before the year of death, or for both years.

The following example shows how the two methods work.

Example

A man died in 1993. You have the following details about his tax matters:

Net capital loss — 1993	$20,000
Taxable capital gains — 1992	$ 4,000
— 1991	$ 2,000
Total capital gains deductions claimed to date	$ 8,000

No capital gains deductions were claimed for 1991 or 1992.

You can use Method A or Method B.

	Method A	Method B
Net capital loss — 1993	$20,000	$20,000
Subtract:		
Taxable capital gains — 1992	4,000	0
— 1991	2,000	0
Subtotal	$14,000	$20,000
Subtract:		
Capital gains deductions	8,000	8,000
Amount left to subtract from other income	$ 6,000	$12,000

If you use Method A, you can reduce the 1991 and 1992 gains to nil. You still have $6,000 left to reduce the man's other income for 1993 or 1992, or for both years.

If you use Method B, you can use $12,000 to reduce the man's other income for 1993 or 1992, or for both years.

Note

If you apply a 1993 net capital loss to a previous year, any capital gains deductions you have claimed in that year or a following year may be reduced. For more information, see the income tax guide called *Capital Gains*.

Net capital losses incurred before the year of death

The deceased may have had a net capital loss before the year of death but never applied it. If so, you can apply the loss against taxable capital gains on the final return. If there is still an amount left, you may be able to use it to reduce other income on the final return, the return for the year before the year of death, or both returns.

To apply the loss against taxable capital gains on the final return, depending on when the loss happened, you may have to adjust it to bring it up to the rates for 1990 and later years. 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 as follows:

- For a net capital loss from 1987 or a previous year, multiply the net capital loss by 3/2.

- For a net capital loss from 1988 or 1989, multiply the net capital loss by 9/8.

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

Now you can reduce taxable capital gains in the year of death. To do this, use whichever of these two amounts is lower:

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

After you reduce the taxable capital gains, some of the loss may be left. You may be able to use this amount to reduce other income for the year of death, the year before the year of death, or for both years. However, before you can do this, you may have to calculate the amount you can use.

If the amount you have left includes net capital losses from a year before 1990, readjust the amount you have left as follows:

- Multiply the amount of any adjusted net capital losses from 1987 or earlier by 2/3.
- Multiply the amount of any adjusted net capital losses from 1988 or 1989 by 8/9.

The result is your "readjusted balance." From this balance, subtract the total of all capital gains deductions ever claimed (including on the final return). If there is an amount left, you can use it to reduce other income for the year of death, the year before the year of death, or for both years.

The following example shows how you could handle a net capital loss before the year of death.

Example

A woman died in 1993. You have these details about her tax matters:

Net capital loss, never applied — 1989 ....$20,000
Taxable capital gain — 1993 ....$ 4,000
Capital gains deductions claimed to date ......$ 3,000

You decide to use the 1989 loss to reduce the 1993 gain, and to use any amount left to reduce other income for 1993.

You have to adjust the pre-1990 loss before you can apply it. Because the loss happened in 1989, multiply it by 9/8 to get the adjusted net capital loss.

$20,000 × 9/8 = $22,500

To reduce the 1993 gain, use whichever of the following amounts is lower:

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

$4,000 (1993 taxable capital gain).

After you use $4,000 of the loss to reduce the gain to nil, you still have $18,500 ($22,500 − $4,000) left. You can use this amount to reduce the woman's other income for 1993. To determine 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 the readjusted balance.

$18,500 × 8/9 = $16,444

From the readjusted balance, subtract the total of all capital gains deductions ever claimed.

$16,444 − $3,000 = $13,444

You can use the $13,444 to reduce the woman's other income for 1993. If you decide not to use the total of this balance in 1993, you can use the amount that is left to reduce other income for 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 the deduction from the balance of net capital losses you have available to reduce other income in those years. For more details about capital gains and losses, as well as the capital gains deduction, see the income tax guide called *Capital Gains*.

Disposal of estate property by the legal representative

As the legal representative, you may continue looking after the deceased's estate through a trust. In the trust's first tax year, if you dispose of capital property, the result may be a net capital loss. Also in the first year, if you dispose of depreciable property, the result may be a terminal loss.

Usually, you would claim these losses on the trust's return. However, you may be able to claim all or part of these losses on the deceased's final return. For more information, contact your income tax office.

Definitions

Adjusted cost base — In most cases, this is the price paid for a property, plus the expenses incurred to buy it. Expenses include commissions, legal fees, and taxes. You also add the cost of any additions. Subtract from the adjusted cost base, any grant or subsidy the deceased was entitled to receive from a government or government agency when he or she bought the property.

Example

Suppose you buy a building for $50,000, and you pay legal fees of $3,500. The building's adjusted cost base is $53,500. Later you build a $15,000 addition. The adjusted cost base is now $68,500 ($53,500 + $15,000).

Capital cost allowance (CCA) — In the year a depreciable property is bought, its whole cost cannot be deducted. However, because the property will wear out or become obsolete over time, its cost can be deducted over a period of several years. This deduction is called "capital cost allowance." It cannot be claimed for the fiscal period that ends on the date of death.

Capital property — This includes depreciable property, and any property which, if sold, would result in a capital gain or a capital loss. Some of the more common types of capital property are buildings, securities such as stocks and bonds, vehicles, and land.

Clearance certificate — As the legal representative, 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 you receive the *Notice of Assessment* for each of them. Also, you have to pay or secure all amounts owing. Therefore, do not ask for a clearance 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 taxation office. Send Form TX19 to the Business Audit Section of the district taxation office that serves you. Do not send in Form TX19 with a tax return. A return goes to a taxation centre. However, we issue a certificate from a district taxation office. A 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 taxation office. You can also get Information Circular 82-6, *Requesting Clearance Certificates for Estates and Trusts*, and Interpretation Bulletin IT-282, *Estate or Trust Distributions — Clearance Certificates*.

Deemed disposal — This is the term we use when we consider that a person disposes of a property, even though a sale did not take place.

Deemed proceeds of disposal — When we consider that a person disposes of a property, the deemed proceeds are the amount we consider the person to have received for that property, even though the person may not actually have received this amount.

Depreciable property — This is usually capital property used to earn income from a business or property. The cost can be written off as capital cost allowance over a number of years. We define capital cost allowance in this section.

Fair market value — This is the highest dollar value that you can get for your property in an open and unrestricted market, where the parties of the transaction deal at arm's length with each other and are not forced to buy or sell.

Locked in — In this guide, locked in means that the beneficiary who is to receive the property has a right to absolute ownership of it. No future event or development can take this right away. For deaths that occur after December 20, 1991, in order for a property to be locked in for:

- a spousal trust, it has to become locked in before the surviving spouse dies;
- an individual, it has to become locked in before the individual dies.

In legal terms, we say the property becomes "vested indefeasibly." For more details, see Interpretation Bulletin IT-449, *Meaning of "Vested Indefeasibly."*

Spouse — This term used throughout the guide applies to a legally married spouse and, for 1993 and later years, it also applies to a common-law spouse. A common-law spouse is an individual of the opposite sex who, at that particular time:

- was living with the deceased person in a common-law relationship and is the natural or adoptive parent (legal or otherwise) of the deceased person's child; or
- was living with the deceased person in a common-law relationship and had been living with that person for at least 12 continuous months (when you calculate the 12 continuous months, include any period of separation of less than 90 days).

Once either of these two situations applies, we consider the deceased person to have had a common-law spouse, except for any period that they were separated for 90 days or more due to a breakdown in the relationship.

Spousal trust — This is a trust set up under the deceased's will, or a court order, for the surviving spouse. It has to be resident in Canada right after the property becomes locked in for the trust. The surviving spouse is entitled to all the income of the trust that arises before the spouse's death. No one else can receive or use the trust's income or capital before the spouse's death.

Undepreciated capital cost — Generally, it is equal to the total capital cost of all the properties of the class, minus any capital cost allowance that has been claimed in previous years. It is also reduced by the lower of the following two amounts for property of the class that is disposed of:

- the proceeds of disposal of the property (either actual or deemed) less expenses incurred to sell it; or
- the capital cost of the property.

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