

701—89.4(422) Fiduciary returns and payment of the tax.

89.4(1) *Form of return.* The form of the fiduciary return shall be prescribed by the director. It shall conform as nearly as possible to the federal fiduciary return.

89.4(2) *Required federal returns and schedules.* Nonresident estates with Iowa taxable income and trusts with situs outside Iowa with Iowa taxable income must submit a copy of the federal fiduciary return with the Iowa return. Estates of Iowa decedents and trusts with a situs in Iowa must submit copies of the federal schedules that substantiate gross income, deductions and ordinary and throwback distributions to beneficiaries with the Iowa return.

89.4(3) *Same form for nonresident estates and foreign situs trusts.* Nonresident estates and foreign situs trusts shall use the same form for reporting Iowa taxable income as prescribed for resident estates and trusts with a situs in Iowa.

89.4(4) *Accounting period—tax year.* The initial fiduciary return may reflect either a calendar or fiscal year accounting period, without the department's prior approval. If a fiscal year is elected, it may end on the last day of any month, except December, but in no case shall the fiscal year adopted be for a period longer than the last day of the month preceding the decedent's death or the month the trust was created. The accounting period for the purpose of the tax imposed by Iowa Code section 422.6 must be the same accounting period that is adopted for federal income tax purposes. This limitation is equally applicable to estates of resident and nonresident decedents and trusts with a situs within and without Iowa. If the taxpayer has not adopted a taxable year prior to the time the return is due to be filed and the tax paid, the taxable year is a calendar year until authorization is granted to change to a fiscal year. See 26 U.S.C. Sections 441 to 443, federal regulations Sections 1.441 - 1(g)(3) and 1.442.2.

The permissible taxable years are illustrated by the following examples:

EXAMPLE 1. Decedent died July 4, 1990. The taxable year for the estate commences the day after the decedent's death (July 5, 1990) and will end December 31, 1990, if a calendar year is adopted as the taxable year. If a fiscal year is adopted, it can end on July 31, 1990, or the last day of any future month (except December 31, 1990), but no later than June 30, 1991, subject to the condition that it is selected prior to the time the return and payment are originally due.

EXAMPLE 2. Grantor creates an irrevocable trust on July 27, 1989. On July 1, 1990, the trustee filed the initial fiduciary return of income, adopting at that time a taxable year ending November 30, 1989. Since the return was due March 17, 1990 (March 15 was a Saturday) for federal income tax purposes and March 31, 1990, for Iowa income tax purposes, it is delinquent and a fiscal year accounting period is disallowed and the trust taxable year is the calendar year.

89.4(5) *Short year returns.* If an estate or trust is in existence only a portion of the taxable year, a return must be filed for the partial year in accordance with subrule 89.4(6).

89.4(6) *Minimum filing requirements.*

a. General rule. A fiduciary return of income must be filed if the gross income of the estate or trust for the taxable year is \$600 or more, regardless of any tax liability.

b. Exception to the general rule. A final fiduciary return of income must be filed for the taxable year in which an estate or trust is closed, regardless of the amount of gross income, if an income tax certificate of acquittance is requested. The final fiduciary return of income constitutes an application for an income tax certificate of acquittance pursuant to Iowa Code sections 422.27, 633.477 and 633.479. For a certificate of acquittance to be received, the appropriate box on the final fiduciary return must be checked to request the certificate.

89.4(7) *Amended returns.* An amended return must be filed if there is a change in income or deductions that results in a tax or additional tax due, or in a change in income, deductions or credits distributable to a beneficiary. An amended return may be filed in lieu of a claim for refund when a change in reportable income or deductions results in a tax overpayment. See 701—subrules 43.3(8) and 43.3(15) for the period of time for making a claim for a refund of excess tax paid.

89.4(8) *Return due date.* The fiduciary return must be filed with the department and the tax due paid in full on or before the last day of the fourth month following the end of the taxable year. Payment of 90 percent of the tax due with the filing of a return will grant a taxpayer a six-month automatic extension of time to pay the remaining tax due. If the due date falls on a Saturday, Sunday or legal holiday, the due

date is the next day which is not a Saturday, Sunday or legal holiday as defined in Iowa Code section 4.1. Returns not timely filed with 90 percent of the tax timely paid are subject to penalty as provided in rule 89.6(422).

89.4(9) Duties of the taxpayer.

a. Income of the estate or trust. A taxpayer must timely file a fiduciary return if the minimum filing requirements specified in subrule 89.4(6) are met and must pay 90 percent of the tax due. Receipt of the return with 90 percent of the tax due paid will result in an automatic six-month extension of time to pay the remaining tax due. The department is not required to file a claim for taxes in the estate proceedings and have the claim allowed before the tax is paid. *In re Estate of Oelwein*, 217 Iowa 1137, 1141, 251 N.W. 694 (1933); *Findley v. Taylor*, 97 Iowa 420, 66 N.W. 744 (1896). The personal representative of an estate must pay the tax on income from property in the personal representative's possession, prior to applying the income to estate obligations. See Iowa Code section 633.352.

b. Decedent's final individual income tax return. The executor, administrator, or other personal representative of the decedent's estate must file an individual income tax return for the decedent for the year of the decedent's death if the gross income attributable to the decedent for the part of the taxable year ending with death equals or exceeds the minimum filing requirements. See 701—subrules 39.1(1) to 39.1(3) and 39.1(5) for the minimum filing requirements for individual income tax. If the surviving spouse of a decedent has not remarried during the balance of the taxable year and has the same taxable year as the decedent, the personal representative of the decedent's estate may file a joint return with the surviving spouse for the taxable year of death. In the event of such an election, the joint return must include the surviving spouse's income for the entire taxable year and the decedent's income for the portion of the taxable year ending with death. Income attributable to property owned by the decedent and the decedent's rights to income received after the day of the decedent's death are income of the decedent's estate or the persons succeeding to the property or rights to income. See Iowa Code sections 633.350 to 633.353 for the circumstances under which the estate is charged with the income from the decedent's property or the decedent's rights to income. Income from property held by the decedent and others in joint tenancy received after the decedent's death is charged to the surviving joint tenants, not to the decedent's estate.

The final return for a decedent may be filed at any time after the decedent's death, but in no event later than the last day of the fourth month following the end of the decedent's normal taxable year. The final income tax return of the decedent, if the minimum filing requirements are met, must be filed prior to the time an income tax certificate of acquittance is requested, even though this may require the early filing of the return. Therefore, filing a joint return with the surviving spouse is precluded if the decedent's final return is required to be filed prior to the end of the normal taxable year.

c. Decedent's prior year returns. The personal representative of the decedent's estate is not limited to filing the decedent's final return and paying the tax due. In addition, the personal representative has the duty to file a return, if none was filed, and to pay any additional income tax owed by the decedent that may become due by reason of an audit of the decedent's income or prior year returns. The personal representative's duty to pay the tax, or additional tax, is limited to the probate property subject to the jurisdiction of the court. The probate property must be applied to the payment of the decedent's tax liability according to the order for paying debts and charges specified in Iowa Code section 633.425.

d. Withholding agent—general rule. The personal representative of a decedent's estate and the trustee of a trust shall withhold Iowa income tax from a distribution of Iowa taxable income to beneficiaries who are nonresidents of Iowa. This withholding requirement applies to both Iowa and non-Iowa situs estates and trusts. See Iowa Code subsection 422.16(12) and 701—subrule 46.4(2), item "5," for the duty to withhold. The amount of income tax to be withheld shall be computed either based on 5 percent of the taxable Iowa income distributed or according to tax tables provided by the department. See 701—subrule 46.3(3) for the required withholding form and return to be filed with the department.

e. Exception to the general rule. If a nonresident beneficiary of an estate or trust who is to receive a distribution of Iowa taxable income files with the department a nonresident declaration of estimated tax and pays the estimated tax on the income declared in full, 89.4(9) "d" does not apply to the amount of

the income declared. A certificate of release from the duty to withhold will be issued to the withholding agent upon request. See Iowa Code sections 422.16(12) and 422.17 and 701—subrule 46.4(3) relating to the release certificate. In addition, an estimated payment of withholding can occur if a distribution is being made to a taxable beneficiary. An estimated payment of withholding should be based on 5 percent of the taxable Iowa income. It is the department's policy to allow estimated payments of withholding to be paid directly to the department.

f. Withholding not required. Withholding is not required from the distribution made by estates and trusts of Iowa taxable income to beneficiaries who are residents of Iowa.

g. Beneficiary's share of income, deductions and credits. After the final distribution of income for the taxable year, but prior to the date for filing a beneficiary's individual income tax return, the personal representative of an estate and the trustee of a trust shall furnish each beneficiary receiving a distribution from an estate or trust a written statement specifying the amount and types of income subject to Iowa tax and the kinds and amounts of the deductions and credits against the tax. A copy of the federal schedule K-1, Form 1041, adapted to reflect Iowa taxable income, may be substituted in lieu of the statement.

h. Liability of a withholding agent. A withholding agent is personally liable for the amount of the tax required to be withheld under Iowa Code subsection 422.16(12) if the income tax liability of a nonresident beneficiary which is attributable to the distribution is not paid and, in addition, is personally liable for any penalty and interest due if the tax required to be withheld is not paid to the department within the time prescribed by law. See rules 701—44.1(422) to 701—44.4(422) for the application and computation of penalty and interest on income tax required to be withheld.

This rule is intended to implement Iowa Code sections 422.6, 422.8, 422.16, 422.21, 422.23, 422.25, 422.27, 633.352 and 633.425.