

THOUGHT LEADERSHIP

LEGAL UPDATES

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Deadline for 65-Day Rule Quickly Approaching: Capitalize on Tax Advantages Now

How many times have you prepared your income tax returns for the previous year, only wishing you knew then what you know now, so you could go back and make more advantageous tax decisions? Typically, the choices you make before the start of a new tax year cannot be changed later, even though crucial tax details that could help guide those decisions often aren't available until months after the tax year has begun.

Too bad, says the IRS, unless you are an estate or trust.

Under Section 663(b) of the Internal Revenue Code, any distribution by an estate or trust within the first 65 days of the tax year can be treated as having been made on the last day of the preceding tax year. For example, a distribution of \$700 of trust income by the trustee to a beneficiary on January 20, 2026, can be treated as having been made in the 2025 or 2026 tax year. The last day to make a distribution count toward the 2025 tax year is **March 6, 2026**.

The fiduciary must elect to treat the distribution as part of the prior tax year on a timely filed income tax return, including extensions, for that applicable year. A fiduciary may make the election for only a partial amount of the distribution(s) within the 65-day period, but once made, the election is irrevocable.

The main advantage of this tax rule is that it may provide an opportunity for tax savings. Estates and trusts are subject to income taxation at progressive rates comparable to those applied to individuals. For the 2025 tax year, the highest tax rate of 37 percent is imposed on ordinary income exceeding \$15,650. Comparatively, married couples filing jointly pay the top rate when

income exceeds \$751,600 (or \$626,350 for single filers). In certain cases, an additional 3.8 percent Medicare surtax (also known as the Net Investment Income Tax) on the net investment income of the estate or trust may apply, resulting in a total marginal tax of 40.8 percent.

To avoid paying such a high tax rate, income may be distributed to a beneficiary from the estate or trust, and the beneficiary (rather than the estate or trust) will then pay any income taxes associated with the distribution at the beneficiary's individual tax rate. For example, a beneficiary who pays income taxes at a rate of 24 percent would pay less income tax on the distribution amount than a trust already paying at the top rate of 37 or even 40.8 percent. When estates or trusts have high taxable income and beneficiaries in lower tax brackets, substantial tax savings may result.

State income tax consequences may also apply to distributions made from a trust or estate, and there may be limitations on the amounts of distributions a fiduciary can apply using the 65-day rule. You should discuss all possible consequences with your tax advisor before trying to apply the rules discussed above.

Contact us

If you have questions or would like to discuss how these strategies and others can be used to help meet your planning goals, please contact a member of the Husch Blackwell Private Wealth Team or your Husch Blackwell attorney.