

## **26 U.S.C. §1411 (2011 Edition) Imposition of tax**

### **(a) In general**

Except as provided in subsection (e) -

#### **(1) Application to individuals**

In the case of an individual, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax equal to 3.8 percent of the lesser of -

(A) net investment income for such taxable year, or

(B) the excess (if any) of -

(i) the modified adjusted gross income for such taxable year, over

(ii) the threshold amount.

#### **(2) Application to estates and trusts**

In the case of an estate or trust, there is hereby imposed (in addition to any other tax imposed by this subtitle) for each taxable year a tax of 3.8 percent of the lesser of -

(A) the undistributed net investment income for such taxable year, or

(B) the excess (if any) of -

(i) the adjusted gross income (as defined in section 67(e)) for such taxable year, over

(ii) the dollar amount at which the highest tax bracket in section 1(e) begins for such taxable year.

### **(b) Threshold amount**

For purposes of this chapter, the term “threshold amount” means -

(1) in the case of a taxpayer making a joint return under section 6013 or a surviving spouse (as defined in section 2(a)), \$250,000,

(2) in the case of a married taxpayer (as defined in section 7703) filing a separate return,  $\hat{A}$ ½ of the dollar amount determined under paragraph (1), and

(3) in any other case, \$200,000.

### **(c) Net investment income**

For purposes of this chapter -

#### **(1) In general**

The term “net investment income” means the excess (if any) of -

(A) the sum of -

(i) gross income from interest, dividends, annuities, royalties, and rents, other than such income which is derived in the ordinary course of a trade or business not described in paragraph (2),

(ii) other gross income derived from a trade or business described in paragraph (2), and

(iii) net gain (to the extent taken into account in computing taxable income) attributable to the disposition of property other than property held in a trade or business not described in paragraph (2), over

(B) the deductions allowed by this subtitle which are properly allocable to such gross income or net gain.

#### **(2) Trades and businesses to which tax applies**

A trade or business is described in this paragraph if such trade or business is -

(A) a passive activity (within the meaning of section 469) with respect to the taxpayer, or

(B) a trade or business of trading in financial instruments or commodities (as defined in section 475(e)(2)).

#### **(3) Income on investment of working capital subject to tax**

A rule similar to the rule of section 469(e)(1)(B) shall apply for purposes of this subsection.

#### **(4) Exception for certain active interests in partnerships and S corporations**

In the case of a disposition of an interest in a partnership or S corporation -

(A) gain from such disposition shall be taken into account under clause (iii) of paragraph (1)(A) only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest, and

(B) a rule similar to the rule of subparagraph (A) shall apply to a loss from such disposition.

**(5) Exception for distributions from qualified plans**

The term “net investment income” shall not include any distribution from a plan or arrangement described in section 401(a), 403(a), 403(b), 408, 408A, or 457(b).

**(6) Special rule**

Net investment income shall not include any item taken into account in determining self-employment income for such taxable year on which a tax is imposed by section 1401(b).

**(d) Modified adjusted gross income**

For purposes of this chapter, the term “modified adjusted gross income” means adjusted gross income increased by the excess of -

- (1) the amount excluded from gross income under section 911(a)(1), over
- (2) the amount of any deductions (taken into account in computing adjusted gross income) or exclusions disallowed under section 911(d)(6) with respect to the amounts described in paragraph (1).

**(e) Nonapplication of section**

This section shall not apply to -

- (1) a nonresident alien, or
- (2) a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B).