

Instructions for Form 41

Oregon Fiduciary Income Tax Return

1997

General instructions

Oregon forms and circulars mentioned in these instructions may be obtained by writing to:

Forms
Oregon Department of Revenue
PO Box 14999
Salem OR 97309-0990

Who must file

A fiduciary return must be filed for:

1. Resident estates or trusts required to file a federal Form 1041 or 990-T, or with gross income of \$600 or more for the tax year.
2. An ancillary Oregon estate with gross income of \$600 or more for the tax year.
3. Nonresident estates with federal gross income of \$600 or more from Oregon sources for the tax year.
4. All estates that want to establish a fiscal tax year. This is true even though the estate had less than \$600 of gross income for the tax year.
5. All estates and trusts upon termination, to report the final distribution to beneficiaries. (Generally, tax isn't paid by the fiduciary on a final return.)
6. Part-year resident trusts with gross income of \$600 or more from Oregon sources for the tax year.
7. Nonresident trusts with gross income of \$600 or more from Oregon sources for the tax year.

Definitions—Residency

- **Estates.** An **estate** is an Oregon resident if the personal representative is appointed by an Oregon court, or if the estate administration is in Oregon. An estate cannot be a part-year resident. All other estates are nonresidents.
- **Trusts.** A **trust** is a resident if a trustee is an Oregon resident or if the trust administration is in Oregon. If there are several trustees and one is an Oregon resident, the trust is an Oregon resident trust. A trust can be a part-year resident if a trustee moves in or out of Oregon during the tax year. For trusts which are both resident and nonresident during the same year, see part-year resident instructions on page 3

If a trustee is a corporate fiduciary engaged in interstate trust administration, the trust is an Oregon resident only if the trustee conducts the major part of the trust's administration in Oregon.

Name of Fiduciary. Enter the name and address of the personal representative or trustee in the space marked "Name of Fiduciary." If there are co-fiduciaries, enter the name and address of the signer.

Other returns required of fiduciaries. File the applicable Oregon Form 40, 40N, or 40P for a deceased taxpayer's last tax year. If a federal Form 1040NR is required for a nonresident beneficiary, an Oregon return on Form 40N may be required. If a federal return is required for a

minor, incompetent person, missing person, or conservatee, an Oregon return must be filed.

If Form 1041-A or 5227 is required for federal income tax, file a copy of that form with the Oregon Department of Revenue. Mark the copy "Oregon Information Copy." Usually no Oregon report or copy is required if the only federal returns are Form 990 (exempt organizations), 990-PF (private foundations), or 4720 (certain charities).

If a federal Form 990-T is filed, also file Oregon Form 41. Don't complete lines 1, 2, 5, 5a, and 6 of Form 41. From Form 990-T, enter any unrelated business taxable income on line 19, of Form 41 and the fiduciary adjustment on line 5b. Complete Schedule 1, column B.

Period covered by the return. The return must be for the same tax year used for filing the federal return.

When and where to file the return. File by the 15th day of the fourth month following the close of the estate's or trust's tax year. Mail it to:

Oregon Department of Revenue
PO Box 14110
Salem OR 97309-0910

Signature. The fiduciary or officer representing the fiduciary must sign the return.

Payment. Pay the total due with the return. **Estates and trusts are not required to pay estimated tax.** However, voluntary payments should be submitted with an application for extension of time to file the return (see instructions for line 15).

Accounting period. The accounting period must be the same as for federal income tax purposes.

Accounting method. The accounting method must be the same as for federal income tax purposes. If the method is changed, adjustments must be made to avoid duplication or omission of income and deductions.

Unused loss carryovers. IRC sections 172 and 1212 apply to an estate or trust and the beneficiaries. Attach a copy of the federal loss carryover schedule to Form 41.

Income taxable to the grantor or substantial owner. Any part of trust income taxable to the grantor or another person under IRC sections 671 through 678 isn't taxed on a fiduciary return. However, the income information must be shown on a separate statement attached to Form 1041. Attach a copy of that information statement to Form 41. Also attach a supplemental statement to Form 41 showing Oregon additions and subtractions to federal taxable income. If the grantor trust is exempt from filing Form 1041 under IRC regulations 1.671-4, it's also exempt from filing on Form 41 (Oregon Administrative Rule 150-316.382).

On the returns of estates and complex trusts, lines 1 through 7, Form 41, allocate the income and Oregon modifications between the estate or trust and the beneficiary if an authorized distribution was made or required during the tax year. The fiduciary must provide the beneficiary with

income distribution and Oregon fiduciary adjustment information on federal Schedule K-1 (Form 1041). Attach a copy of each K-1 to Form 41. See instructions for line 6.

Transferee. The money and property of a taxpayer who has died passes to a person, estate or trust, called the transferee. The transferee may be liable for the obligations and liabilities of the deceased person. The liability includes tax, interest, and penalty. The transferee's liability is limited to the value of the property acquired from the decedent (ORS 314.310).

Specific instructions— Form 41, page 1

Simple trusts without capital gains or losses, or estates terminating in this tax year, must complete lines 2, 5a, and 6 on page 1 and lines 18 to 38 on page 2.

Instructions for lines not fully explained on Form 41

Line 5a. Enter the fiduciary adjustment allocable to the beneficiary (ORS 316.287 and OAR 150-316.287). If the net is a **subtraction**, the beneficiary's share is limited to an amount equal to the distribution of income taxable on the beneficiary's individual return. A fiduciary adjustment **addition** increases the beneficiary's income. The beneficiary's share of the addition is limited as follows: Subtract the taxable portion of the distribution from the total amount of the distribution. The balance is the beneficiary's share, unless the amount of the addition is smaller.

Any amount of fiduciary adjustment not allocable to a beneficiary is an adjustment to the fiduciary's taxable income.

Line 6. A copy of federal Schedule K-1 (Form 1041) or an acceptable substitute, for each beneficiary, must be filed with Form 41. The total of the income and Oregon fiduciary adjustment reported on all Schedules K-1 must equal the amount entered on this line. Each beneficiary's share of the fiduciary adjustment must either be shown at the bottom of their K-1 on a blank line or on a separate sheet attached to the K-1. Mark it "Oregon fiduciary addition (or subtraction)" and write in the amount the beneficiary is to report. Do not break the fiduciary adjustment down into its separate components.

Example: An Oregon fiduciary adjustment is comprised of a \$750 federal tax subtraction, a \$250 U.S. government interest subtraction, and a \$300 Oregon tax addition. The amount reported to the beneficiary is an Oregon fiduciary adjustment of <\$700>.

Line 8. Tax. Use the rate schedule on page 2, Form 41 to figure the tax. Part-year resident trusts, see instructions on page 3.

Line 9. Tax Credits. Identify the credit claimed in the space provided. The amount claimed cannot be greater than the tax on line 8. Do **not** include prepayments on this line.

Credit for income taxes paid to other states:

Resident estates and trusts. Generally, you can claim this credit if the estate or trust has income that is taxed by both

Oregon and another state. **See exception below.** Attach a copy of the return you filed with the other state and proof of payment of the tax. No credit is allowed if the tax has been claimed as a deduction. If a deduction for the other state's tax was claimed on Form 1041, it must be added to income on line 36, Form 41. See the 1997 individual return instructions for line 38, Form 40 for how to figure the credit.

Exception: The credit must be claimed on the other state's nonresident return if the income is taxed by both Oregon and one of the following states: Arizona, California, Indiana, or Virginia.

Nonresident estates and trusts. Oregon will allow a credit for taxes paid to another state if all of the following conditions are met:

- The estate or trust is a nonresident of Oregon.
- The estate or trust is a resident of Arizona, California, Indiana, or Virginia.
- The estate or trust has income that is taxed by both Oregon and the resident state.

Other credits. You may be entitled to other credits listed below. These credits aren't explained here because they apply only to a few fiduciaries. Call or write the Oregon Department of Revenue for more information.

- Business energy
- Dependent care assistance and health insurance
- Fish gleaning
- Political contributions
- Pollution control facilities
- Reclaimed plastic

Line 15. Penalty and interest.

Penalty. Include a penalty payment if you:

- Mail your tax due after the original due date (even if you have an extension).
- File your return showing tax due, after the due date, (including any extension).

Penalty is 5 percent of the unpaid balance of your tax. If you get an extension, the penalty won't be charged if you:

- Pay at least 90 percent of the tax due on or before the original due date of the return, **and**
- Pay the balance of tax and interest when you file within the extension period, **and**
- Pay any interest due either when the return is filed or within 30 days of billing by the department.

If you file more than three months after the original due date, add an additional penalty of 20 percent.

Interest. If you don't pay the tax by the due date, interest will be charged on the unpaid tax.

The current interest rate is .8333 percent per month (.0274 percent per day). The interest rate may change once a calendar year.

Interest is figured daily for periods of less than a month. A month, for example, is May 16 to June 15. Here's how to figure daily interest:

$$\text{Tax} \times .000274 \times \text{Number of days}$$

Interest accrues during an extension of time to file.

Additional interest on deficiencies and delinquencies.

Interest will increase by one-third of 1 percent per month (4 percent yearly) on deficiencies or delinquencies if the following occur:

- You file a return showing taxes owing (self-assess a tax liability), **or** the Department of Revenue has assessed an existing deficiency, **and**
- The assessment isn't paid within 60 days after the return is filed or the notice of assessment is issued.

**Form 41, page 2
Schedule 1—Oregon changes**

Oregon is now permanently tied to federal law. Most items are treated the same way on your Oregon and federal return. Any future federal law changes will automatically be adopted by Oregon.

Line 20. Changes in depreciation. The 1996 one-time adjustment aligning Oregon basis with federal basis for 1981–1985 ACRS assets is now an election. You may amend your 1996 return to exclude the one-time adjustment. By revoking the 1996 adjustment, a depreciation difference will need to be reported each year. If you do not revoke the adjustment, a depreciation difference should not be claimed on subsequent years..

Line 21. Other changes. Changes include differences in gains or losses from the sale of property. Also use this line to report differences in capital gains from the sale of farm use and forest use lands acquired from a decedent who died before 1987. Enter the amount in column B. Also enter the amount in column A if an authorized distribution was made and the gains qualify for inclusion in distributable net income.

Line 25. Oregon changes distributed. Enter Oregon changes from line 22, column A, that were distributed to the beneficiaries. Enter zero if the amount on line 10 or line 13 of Schedule B, Form 1041, is less than the amount on line 9 of Schedule B.

The total of this line, plus the amounts from lines 14 and 17 of Schedule B, Form 1041, can't exceed the amount on line 10 or 13 of Schedule B.

Schedule 2—Fiduciary adjustment

This schedule is for figuring the net of Oregon modifications to federal taxable income.

Instructions for lines not fully explained on Form 41

Line 27. Federal income tax subtraction. This subtraction can't exceed \$3,000. To figure the subtraction, deduct line 7, Schedule G from line 23 on federal Form 1041. For additional federal tax paid for years prior to 1997, see instructions for line 30.

Line 28. Interest on U.S. obligations. Enter the amount of interest from U.S. government obligations included in federal income and not otherwise deducted. U.S. government interest received from another fiduciary should be subtracted on line 30. Don't subtract that income a second

time on this line. The total of interest or dividends from U.S. obligations included on federal Form 1041 must be reduced by the deductions allocable to such income (see Form 1041 instructions, "Allocation of Deductions for Tax Exempt Income." Use the same formula to allocate deductions to U.S. government interest).

Line 30. Other subtractions. Enter other subtractions required by ORS 316.680 and ORS 316.695 which do not have a specific line. Attach a schedule which details the amount and nature of each subtraction included on this line. Enter this fiduciary's share of the fiduciary adjustment from another estate or trust that is a subtraction on this line. Also, enter any additional federal income tax paid during the tax year for prior years and not deducted on any prior year return. To determine the amount deductible, refer to the 1997 individual return instructions for line 18, Form 40.

Line 33. Interest on obligations of other states. Enter interest income from bonds of a state or political subdivision other than Oregon. (This type of income from another fiduciary is included in that fiduciary's adjustment, and should not be duplicated on this line.)

Line 34. Depletion. If natural resource depletion entered on Form 1041 is in excess of the adjusted basis of the property, enter the excess on this line.

Line 35. Estate tax paid on "income in respect of a decedent" (IRD). To figure the amount of the federal estate tax deduction that must be added to taxable income on the Oregon return, use this formula:

- A = IRD included in federal taxable income
- B = IRD not taxable by Oregon
- C = estate tax deducted on Form 1041

Formula: $\frac{B}{A} \times C = \$\text{_____}$ amount of the addition

Enter on line 35, Form 41.

Line 36. Other additions. Enter other additions required by ORS 316.680 and 316.695 which do not have a specific line. Attach a schedule which details the amount and nature of each addition included on this line. Enter this fiduciary's share of the fiduciary adjustment from another estate or trust that is an addition on this line. Also enter federal tax refunds received during the tax year from prior years, if the federal tax subtraction reduced the Oregon tax in prior years. Enter administration expenses which were deducted on both the federal fiduciary return (Form 1041) and on the Oregon inheritance tax return (Form IT-1).

Part-year resident and nonresident fiduciaries

Part-year resident trusts—use Schedule P (Form 41) to figure the Oregon tax. File with the fiduciary return, Form 41. To obtain Schedule P, call the Oregon Department of Revenue, (503) 378-4988, or write to:

Fiduciary Audit, Business Division
Oregon Department of Revenue
PO Box 14110
Salem OR 97309-0910

Oregon taxes gross income from **all sources** for the portion of the tax year the trust was an Oregon **resident, plus** gross income from **Oregon sources only** while the trust was a **nonresident**.

All federal deductions are allowed for the portion of the year the trust was an Oregon resident. But only deductions directly related to Oregon sources are allowed while the trust was a nonresident.

A part-year resident trust required to file Form 41 must attach a copy of federal Form 1041 as filed. See page 1 of these instructions for filing requirements. Oregon taxes only Oregon source income (see opposite column) for the part of the year the trust was a nonresident, and taxes all income from all sources for the part of the year the trust was a resident. To determine your total Oregon taxable income for the year, you may choose to complete a second federal Form 1041, using only Oregon source income and deductions (called a “pro forma” return), or you may develop a schedule of the amounts of income, gain, loss, and deductions for Oregon. The full federal exemption amount is allowed. If you choose to complete a “pro forma” federal Form 1041, write “Oregon Source Income” at the top of the form to distinguish it from the actual federal Form 1041 you filed for federal tax purposes.

Use the figures from the Oregon source Form 1041 (or Oregon source schedule) you prepared to complete Form 41. Complete lines 1 through 7, and Schedules 1 and 2 as though the Oregon source amounts were the only income and deductions for the tax year. The full federal tax subtraction is allowed on line 27, based on the federal liability from Form 1041, and subject to the \$3,000 limit.

Then complete Schedule P, using the figures from Form 1041, to figure Oregon tax. Write this amount on line 8 of Form 41.

Nonresident estates and trusts—A nonresident estate or trust required to file Form 41 must attach a copy of federal Form 1041 as filed. See page 1 of these instructions for filing requirements. Oregon taxes only Oregon source income (see opposite column) received by the estate or trust. Deductions are allowed if they are directly related to Oregon sources. The only exception is the federal tax subtraction, which must be apportioned as shown below.

To determine your total Oregon taxable income for the year, you may choose to complete a second federal Form 1041, using only Oregon source income and deductions (called a “pro forma” return), or you may develop a schedule of the amounts of income, gain, loss, and deductions for Oregon. The full federal exemption amount is allowed. If you choose to complete a “pro forma” federal Form 1041, write “Oregon Source Income” at the top of the form to distinguish it from the actual federal Form 1041 you filed for federal tax purposes.

Federal tax subtraction—The federal tax subtraction must be apportioned to determine the amount related to Oregon sources. Use this formula:

- A = Line 26, Form 41 (Oregon source items only)
- B = Line 26, Form 41 (all source items)

C = Federal tax (lesser of actual liability or \$3,000)

Formula: $\frac{A}{B} \times C = \$$ _____ amount of the subtraction

Enter on line 27, Form 41.

Oregon source income

Oregon is now permanently tied to the federal definition of gross income as found in the Internal Revenue Code. Examples of Oregon source income are: wages or other compensation for services performed in Oregon; income or loss from business activities in Oregon, including rents, S corporations and partnerships; gain or loss from the sales of real or tangible personal property located in Oregon; income from intangible personal property if it has acquired Oregon business situs.

For more information and examples, see all the Oregon Administrative Rules under 150-316.127 and the 1997 Oregon Nonresident and Part-Year Resident tax booklet.

How to assemble the return

Assemble the Oregon fiduciary return in the following order:

1. Pages 1 and 2 of Form 41. Attach Form W-2 and the payment to the left margin on the front.
2. Schedule P (Form 41), if used.
3. “Proforma” Form 1041 or a schedule of Oregon source income and deductions, if the return is from a part-year resident trust or nonresident estate or trust.
4. A copy of federal Form 1041 and schedules.
5. Copies of federal Schedules K-1 (Form 1041).
6. A copy of any extension forms.

Staple the pages together at the top left corner.

Assistance

For questions about the Oregon Fiduciary Income Tax, write:

Fiduciary Audit, Business Division, Oregon Department of Revenue, PO Box 14110, Salem, OR 97309-0910.

Or call: Salem **(503) 378-4988**

Toll-free within Oregon..... **1-800-356-4222**

The toll-free number is available January through April.

TTY (hearing or speech impaired only): **These numbers are answered by machine only and are not for voice use.** The year-round toll-free number within Oregon is 1-800-886-7204. In Salem, the number is (503) 945-8617.

A message line is available all year for those who need assistance in Spanish. The number in Salem is (503) 945-8618.

Habla Español? Las personas que necesitan asistencia en Español pueden dejar un mensaje. El número disponible todo el año en Salem es (503) 945-8618.

In compliance with the Americans with Disabilities Act (ADA) this information is available in alternative formats upon request by calling (503) 378-4988.