

passive activity. Generally, a passive activity is any trade or business activity in which you **do not** materially participate and any rental activity. See the separate instructions for federal Form 8582, Passive Activity Loss Limitations, for details.

- Any interest expense that is capitalized, such as construction interest subject to section 263A.
- Interest expense related to tax-exempt interest income under section 265.
- Interest expense, disallowed under section 264, on indebtedness with respect to life insurance, endowment, or annuity contracts issued after June 8, 1997, even if the proceeds were used to purchase any property held for investment.

**Property Held for Investment.** Property held for investment includes property that produces income, **not** derived in the ordinary course of a trade or business, from interest, dividends, annuities, or royalties. It also includes property that produces gain or loss, **not** derived in the ordinary course of a trade or business, from the disposition of property that produces these types of income or is held for investment. However, it does not include an interest in a passive activity.

**Exception.** A working interest in an oil or gas property that you held directly or through an entity that did **not** limit your liability is property held for investment, but only if you did not materially participate in the activity.

## Part II — Net Investment Income

### Line 4a

Gross income from property held for investment includes income, unless derived in the ordinary course of a trade or business, from:

- Interest,
- Ordinary dividends (except Alaska Permanent Fund dividends),
- Annuities, and
- Royalties.

Include investment income reported to you on Schedule K-1 from a partnership or an S corporation. Also include net investment income from an estate or a trust.

Also include on line 4a (or 4b, if applicable) net passive income from a passive activity of a publicly traded partnership (as defined in section 469(k)(2)). See Notice 88-75, 1988-2 C.B. 386, for details.

Net income from certain passive activities, such as rental of substantially nondepreciable property, may have to be recharacterized and included on line 4a. See federal Publication 925, Passive Activity and At-Risk Rules, or Regulations section 1.469-2(f)(10) for details.

If you are filing Form N-814, Parent's Election to Report Child's Interest and Dividends, part or all of your child's income may be included on line 4a. See the instructions for Form N-814 for details.

**Caution:** *Do not include on line 4a any net gain from the disposition of property held for investment. Instead, enter this amount on line 4b.*

### Line 4b

Net gain from the disposition of property held for investment is the excess, if any, of your total gains over your total losses from the disposition of property held for investment. When figuring this amount, include capital gain distributions from mutual funds and capital loss carryovers.

### Line 4c

Net capital gain from the disposition of property held for investment is the excess, if any, of your net long-term capital gain over your net short-term capital loss from the disposition of property held for investment.

Capital gain distributions from mutual funds are treated as long-term capital gains.

### Line 4e

In general, net capital gain from the disposition of property held for investment is excluded from investment income. But you can elect to include part or all of this amount in investment income.

The net capital gain that you elect to include in investment income on line 4e is not eligible to be taxed at the 7.25% maximum capital gains tax rate (Tax on Capital Gains Worksheet in the Form N-11 or Form N-15 Instructions, or Part VI of Schedule D (Form N-40)). You should consider the tax effect of using the capital gains tax rate before making this election.

To make the election, enter on line 4e the amount you elect to include in investment income.

### Line 5

See **Note** on page 1.

Investment expenses are your allowed deductions, other than interest expense, directly connected with the production of investment income. For example, depreciation or depletion allowed on assets that produce investment income is an investment expense.

Include investment expenses reported to you on Schedule K-1 from a partnership or an S corporation.

Investment expenses **do not** include any deductions used in determining your income or loss from a passive activity.

If you have investment expenses that are included as a miscellaneous itemized deduction on line 26 of the Itemized Deductions Worksheet in the Form N-11 Instructions, on line 26 of the Itemized Deductions Worksheet - For Nonresidents in the Form N-15 Instructions, or on line 47 of the Itemized Deductions Worksheet - For Part-Year Residents in the Form N-15 Instructions, the 2% adjusted gross income limitation on line 29 of the Itemized Deductions Worksheet in the Form N-11 Instructions, on line 30 of the Itemized Deductions Worksheet - For Nonresidents in the Form N-15 Instructions, or on line 55 of the Itemized Deductions Worksheet - For Part-Year Residents in the Form N-15 Instructions may reduce the amount you must include on Form N-158, line 5.

Include on Form N-158, line 5, the smaller of:

- The investment expenses included on line 26 of the Itemized Deductions Worksheet in the Form N-11 Instructions, on line 26 of the Itemized Deductions Worksheet - For

Nonresidents in the Form N-15 Instructions, or on line 47 of the Itemized Deductions Worksheet - For Part-Year Residents in the Form N-15 Instructions, or

- The total on line 30 of the Itemized Deductions Worksheet in the Form N-11 Instructions, on line 31 of the Itemized Deductions Worksheet - For Nonresidents in the Form N-15 Instructions, or on line 56 of the Itemized Deductions Worksheet - For Part-Year Residents in the Form N-15 Instructions

**Example.** Assume line 26 of the Itemized Deductions Worksheet in the Form N-11 Instructions includes investment expenses of \$3,000, and line 30 of the Itemized Deductions Worksheet is \$1,300 after the 2% adjusted gross income limitation. Investment expenses from the Itemized Deductions Worksheet of \$1,300 are used to figure the amount of investment expenses for line 5. If investment expenses of \$800 were included on line 26 and line 30 of the Itemized Deductions Worksheet was \$1,300, investment expenses from the Itemized Deductions Worksheet of \$800 would be used.

## Part III — Investment Interest Expense Deduction

### Line 8

You may deduct the amount on line 8 as investment interest expense.

**Individuals.** Generally, enter the amount from line 8 (excluding any amount included on federal Form 6198, line 4 – see below) on line 14 of the Itemized Deductions Worksheet in the Form N-11 Instructions, on line 15 of the Itemized Deductions Worksheet - For Nonresidents in the Form N-15 Instructions, or on line 23 of the Itemized Deductions Worksheet - For Part-Year Residents in the Form N-15 Instructions, even if all or part of it is attributable to a partnership or an S corporation. However, if any part of the interest expense is attributable to royalties, enter that part on federal Schedule E. Also, if any part of the interest is attributable to a trade or business that is not a passive activity, enter that part on the schedule where you report other expenses for that trade or business.

**Estates and Trusts.** Enter the amount from line 8 (excluding any amount included on federal Form 6198, line 4 – see below) on Form N-40, line 10. However, if any part of the interest is attributable to a trade or business that is not a passive activity, enter that part on the schedule where you report other expenses for that trade or business.

**Federal Form 6198.** If any of your deductible investment interest expense is attributable to an activity for which you are not at risk, you must also use federal Form 6198, At-Risk Limitations, to figure your deductible investment interest expense. Include the part attributable to the at-risk activity on federal Form 6198, line 4. See federal Form 6198 and its instructions for details.