

2022 Tax Planning for Investment Income

3.8% Surtax on Net Investment Income

What Will Be Considered Investment Income?

Investment Income

Interest, Dividends, Capital Gains (long and short - including the gain on the sale of investment real estate and second homes)
 Annuities (but not annuities in IRAs or company plans)
 Royalty Income
 Passive Rental Income and Other Passive Activity Income

NOT Investment Income

Wages and Self-Employment Income
Active Trade or Business Income (including interest, dividends, capital gains)
 Distributions from IRAs, Roth IRAs, and Company Plans – Including Net Unrealized Appreciation
 Excluded Gain from the Sale of a Principal Residence
 Municipal Bond Interest
 Proceeds of Life Insurance Policies
 Social Security and Veterans' Benefits
 Gains on the Sale of an Active Interest in a Partnership or S Corporation

Taxable income from items that are **NOT** investment income can push taxpayers over the income threshold and cause investment income to be subject to the 3.8% surtax.

MAGI Thresholds for 3.8% Surtax

Married Filing Joint	\$ 250,000
Individuals	\$ 200,000
Married Filing Separate	\$ 125,000
Trusts and Estates	\$ 13,450*

* Trusts are hit hard – The 3.8% surtax kicks in at much lower income levels for trusts. The threshold for trusts and estates is the amount at which the top trust tax bracket takes effect. This amount is **\$13,450 in 2022**. All other threshold amounts are NOT indexed for inflation.

MAGI (Modified Adjusted Gross Income)

The 3.8% surtax applies to net investment income when MAGI exceeds these threshold amounts.

For this purpose, MAGI is a taxpayer's regular AGI, plus any foreign income excluded from AGI.

The 3.8% Medicare tax is imposed on the lesser of (1) net investment income or (2) the amount of MAGI over the threshold amount.

Taxpayers with income below these MAGI levels will not be subject to the tax.

– Tax Planning Points –

- 1 - The 3.8% tax is **in addition** to the tax rates for high income individuals. Those at the top brackets can have long-term capital gains and dividends taxed at 23.8% and other investment income taxed at 40.8%.
- 2 - There is an additional 0.9% Medicare tax on wages and self-employment income over the threshold amounts.
- 3 - IRA and plan distributions (including sales of employer securities with net unrealized appreciation) are exempt from the 3.8% surtax on net investment income, but taxable distributions from these accounts can push income over the threshold amounts causing other investment income to be subject to the tax.
- 4 - Roth conversions will increase current income, but future tax-free Roth distributions will be more valuable as a means to eliminate taxable income and required minimum distributions from traditional IRAs.
- 5 - The 3.8% surtax is subject to the estimated tax provisions.
- 6 - Taxpayers who have named a discretionary (accumulation) trust as their IRA beneficiary should consider Roth conversions to avoid potential harsh trust tax rates at low trust income levels. After the SECURE Act, the 10-year payout rule will apply to most trusts named as the IRA beneficiary. The inherited IRA funds will have to be paid out to the trust within the 10 years. Any funds retained in the trust will be subject to the high trust tax rates, including the 3.8% tax on trust net investment income that applies above the MAGI threshold (only **\$13,450 for 2022**).
- 7 - Salary deferrals (401(k), 403(b), etc.) can reduce MAGI for the 3.8% surtax but cannot reduce earned income for the 0.9% additional Medicare tax.