

Selected Sections Federal Income Tax Code and Regulations

Steven A. Bank
Kirk J. Stark

2011-2012 Edition

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SELECTED SECTIONS

2011-2012 EDITION

By

STEVEN A. BANK

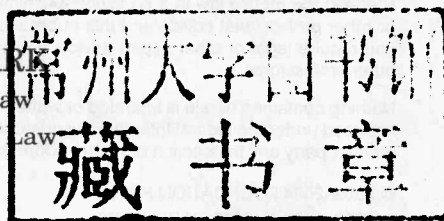
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Preface

As the title suggests, this volume provides the user with certain “Selected Sections” of the Internal Revenue Code. It is designed principally for use in connection with introductory courses covering federal income taxation and is not intended to be a complete reference. It includes the statutory provisions most commonly covered in the introductory tax course, as well as selected Treasury Regulations. In addition, we have included at the end of the volume copies of Rev. Proc. 2011-12 and Rev. Proc. 2010-40, which contain information regarding cost-of-living adjustments for 2011, including tax rate tables for taxable year 2011. The text of this volume is current through May 31, 2011.

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June 2011

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SUBTITLE A — INCOME TAXES

Current through May 31, 2011

Chapter 1 — Normal Taxes or Surtaxes

Subchapter A — Determination of Tax Liability

Part I — Tax on Individuals

§ 1. Tax imposed*

(a) **Married individuals filing joint returns and surviving spouses**—There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

<i>If taxable income is:</i>	<i>The tax is:</i>
Not over \$36,900.....	15% of taxable income.
Over \$36,900 but not over \$89,150	\$5,535, plus 28% of the excess over \$36,900.
Over \$89,150 but not over \$140,000	\$20,165, plus 31% of the excess over \$89,150.
Over \$140,000 but not over \$250,000	\$35,928.50, plus 36% of the excess over \$140,000.
Over \$250,000	\$75,528.50, plus 39.6% of the excess over \$250,000.

(b) **Heads of households**—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

<i>If taxable income is:</i>	<i>The tax is:</i>
Not over \$29,600.....	15% of taxable income.
Over \$29,600 but not over \$76,400	\$4,440, plus 28% of the excess over \$29,600.
Over \$76,400 but not over \$127,500	\$17,544, plus 31% of the excess over \$76,400.
Over \$127,500 but not over \$250,000	\$33,385, plus 36% of the excess over \$127,500.
Over \$250,000.....	\$77,485, plus 39.6% of the excess over \$250,000.

(c) **Unmarried individuals (other than surviving spouses and heads of households)**—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

<i>If taxable income is:</i>	<i>The tax is:</i>
Not over \$22,100.....	15% of taxable income.
Over \$22,100 but not over \$53,500	\$3,315, plus 28% of the excess over \$22,100.
Over \$53,500 but not over \$115,000	\$12,107, plus 31% of the excess over \$53,500.
Over \$115,000 but not over \$250,000	\$31,172, plus 36% of the excess over \$115,000.
Over \$250,000.....	\$79,772, plus 39.6% of the excess over \$250,000.

* For tax tables reflecting the effect of § 1(f) (inflation adjustment) and § 1(i) (10 percent bracket and rate reductions), see the Revenue Procedure at the end of this volume.

(d) **Married individuals filing separate returns**—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

<i>If taxable income is:</i>	<i>The tax is:</i>
Not over \$18,450.....	15% of taxable income.
Over \$18,450 but not over \$44,575	\$2,767.50, plus 28% of the excess over \$18,450.
Over \$44,575 but not over \$70,000	\$10,082.50, plus 31% of the excess over \$44,575.
Over \$70,000 but not over \$125,000	\$17,964.25, plus 36% of the excess over \$70,000.
Over \$125,000	\$37,764.25, plus 39.6% of the excess over \$125,000.

(e) **Estates and trusts**—There is hereby imposed on the taxable income of—

- (1) every estate, and
- (2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

<i>If taxable income is:</i>	<i>The tax is:</i>
Not over \$1,500.....	15% of taxable income.
Over \$1,500 but not over \$3,500	\$225, plus 28% of the excess over \$1,500.
Over \$3,500 but not over \$5,500	\$785, plus 31% of the excess over \$3,500.
Over \$5,500 but not over \$7,500	\$1,405, plus 36% of the excess over \$5,500.
Over \$7,500.....	\$2,125, plus 39.6% of the excess over \$7,500.

(f) **Phaseout of marriage penalty in 15-percent bracket; adjustments in tax tables so that inflation will not result in tax increases**—

(1) **In general**—Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) **Method of prescribing tables**—The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

(A) except as provided in paragraph (8), by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) **Cost-of-living adjustment**—For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1992.

(4) **CPI for any calendar year**—For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) **Consumer price index**—For purposes of paragraph (4), the term “Consumer Price Index” means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) **Rounding**—

(A) **In general**—If any increase determined under paragraph (2)(A), section 63(c)(4), section 68(b)(2) or section 151(d)(4) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

(B) **Table for married individuals filing separately**—In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to sections 63(c)(4) and 51(d)(4)(A)) shall be applied by substituting “\$25” for “\$50” each place it appears.

(7) **Special rule for certain brackets**—

(A) **Calendar year 1994**—In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) **Later calendar years**—In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting “1993” for “1992”.

(8) **Elimination of marriage penalty in 15-percent bracket**—With respect to taxable years beginning after December 31, 2003, in prescribing the tables under paragraph (1)—

(A) the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be 200 percent of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

(B) the comparable taxable income amounts in the table contained in subsection (d) shall be 1/2 of the amounts determined under subparagraph (A).

(g) **Certain unearned income of minor children taxed as if parent’s income**—

(1) **In general**—In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of—

(A) the tax imposed by this section without regard to this subsection, or

(B) the sum of—

(i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii) such child’s share of the allocable parental tax.

(2) **Child to whom subsection applies**—This subsection shall apply to any child for any taxable year if—

- (A) such child—
 - (i) has not attained age 18 before the close of the taxable year, or
 - (ii) (I) has attained age 18 before the close of the taxable year and meets the age requirements of section 152(c)(3) (determined without regard to subparagraph (B) thereof), and
 - (II) whose earned income (as defined in section 911(d)(2)) for such taxable year does not exceed one-half of the amount of the individual's support (within the meaning of section 152(c)(1)(D) after the application of section 152(f)(5) (without regard to subparagraph (A) thereof)) for such taxable year,
 - (B) either parent of such child is alive at the close of the taxable year, and
 - (C) such child does not file a joint return for the taxable year.
- (3) **Allocable parental tax**—For purposes of this subsection—
- (A) **In general**—The term “allocable parental tax” means the excess of—
 - (i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over
 - (ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) **Child's share**—A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) **Special rule where parent has different taxable year**—Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) **Net unearned income**—For purposes of this subsection—

- (A) **In general**—The term “net unearned income” means the excess of—
 - (i) the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over
 - (ii) the sum of—
 - (I) the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus
 - (II) the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) **Limitation based on taxable income**—The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies—For purposes of this subsection, the parent whose taxable income shall be taken into account shall be—

(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

(B) in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN—The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return—

(A) **In general**—If—

(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than [for] purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) **Income included on parent's return**—In the case of a parent making the election under this paragraph—

(i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of—

(I) the amount determined under this section after the application of clause (i), plus

(II) for each such child, 10 percent of the lesser amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) **Regulations**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate—

(1) **In general**—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

(i) taxable income reduced by the net capital gain; or

(ii) the lesser of—

(I) the amount of taxable income taxed at a rate below 25 percent; or

(II) taxable income reduced by the adjusted net capital gain,

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over

(ii) the taxable income reduced by the adjusted net capital gain;

(C) 15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D) 25 percent of the excess (if any) of—

(i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined without regard to paragraph (11))), over

(ii) the excess (if any) of—

(I) the sum of the amount on which tax is determined under subparagraph

(A) plus the net capital gain, over

(II) taxable income; and

(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) **Net capital gain taken into account as investment income**—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

(3) **Adjusted net capital gain**—For purposes of this subsection, the term “adjusted net capital gain” means the sum of—

(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

(B) qualified dividend income (as defined in paragraph (11)).

(4) **28 percent rate gain**—For purposes of this subsection, the term “28-percent rate gain” means the excess (if any) of—

(A) the sum of—

(i) collectibles gain; and

(ii) section 1202 gain, over

(B) the sum of—

(i) collectibles loss;

(ii) the net short-term capital loss; and

(iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

(5) Collectibles gain and loss—For purposes of this subsection—

(A) In general—The terms “collectibles gain” and “collectibles loss” mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.—For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

(6) Unrecaptured section 1250 gain—For purposes of this subsection—

(A) In general—The term “unrecaptured section 1250 gain” means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

(ii) the excess (if any) of—

(I) the amount described in paragraph (4)(B); over

(II) the amount described in paragraph (4)(A).

(B) Limitation with respect to section 1231 property—The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

(7) Section 1202 gain—For purposes of this subsection, the term “section 1202 gain” means the excess of—

(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

(B) the gain excluded from gross income under section 1202.

(8) Coordination with recapture of net ordinary losses under section 1231—If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(9) Regulations—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(10) Pass-thru entity defined—For purposes of this subsection, the term “pass-thru entity” means—

(A) a regulated investment company;

- (B) a real estate investment trust;
- (C) an S corporation;
- (D) a partnership;
- (E) an estate or trust;
- (F) a common trust fund;
- (G) a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and
- (H) a qualified electing fund (as defined in section 1295).

(11) Dividends taxed as net capital gain—

(A) **In general**—For purposes of this subsection, the term ‘net capital gain’ means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

(B) **Qualified dividend income**—For purposes of this paragraph—

(i) **In general**—The term ‘qualified dividend income’ means dividends received during the taxable year from—

(I) domestic corporations, and

(II) qualified foreign corporations.

(ii) **Certain dividends excluded**—Such term shall not include—

(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

(III) any dividend described in section 404(k).

* * *

(C) Qualified foreign corporations—

(i) **In general**—Except as otherwise provided in this paragraph, the term ‘qualified foreign corporation’ means any foreign corporation if—

(I) such corporation is incorporated in a possession of the United States, or

(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

(ii) **Dividends on stock readily tradable on United States securities market**—A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

* * *

(D) Special rules—

(i) **Amounts taken into account as investment income**—Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163(d)(4)(B).

* * *

(i) **Rate reductions after 2000—**

(1) **10-percent rate bracket—**

(A) **In general**—In the case of taxable years beginning after December 31, 2000—

(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

(B) **Initial bracket amount**—For purposes of this paragraph, the initial bracket amount is—

(i) \$14,000 in the case of subsection (a),

(ii) \$10,000 in the case of subsection (b), and

(iii) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

(C) **Inflation adjustment**—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—

(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by substituting “2002” for “1992” in subparagraph (B) thereof, and

(ii) the adjustments under clause (i) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

(D) **Coordination with acceleration of 10 percent rate bracket benefit for 2001—**

This paragraph shall not apply to any taxable year to which section 6428 applies.

(2) **Reductions in rates after June 30, 2001**—In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

<i>In the case of taxable years beginning during calendar year:</i>		<i>The corresponding percentages shall be substituted for the following percentages:</i>			
		28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%	
2002	27.0%	30.0%	35.0%	38.6%	
2003 and thereafter	25.0%	28.0%	33.0%	35.0%	

(3) **Adjustment of tables**—The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

§ 2. Definitions and special rules

(a) Definition of surviving spouse—

(1) **In general**—For purposes of section 1, the term “surviving spouse” means a taxpayer—

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) **Limitations**—Notwithstanding paragraph (1), for purposes of section 1 a taxpayer shall not be considered to be a surviving spouse—

(A) if the taxpayer has remarried at any time before the close of the taxable year, or

(B) unless, for the taxpayer's taxable year during which his spouse died, a joint return could have been made under the provisions of section 6013 (without regard to subsection (a)(3) thereof).

(3) **Special rule where deceased spouse was in missing status**—If an individual was in a missing status (within the meaning of section 6013(f)(3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1)(A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

(A) the date on which the determination is made under section 556 of title 37 of the United States Code or under section 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) except in the case of the combat zone designated for purposes of the Vietnam conflict, the date which is 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone.

(b) Definition of head of household—

(1) **In general**—For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either—

(A) maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of—