

# Section 4: Taxation and Advice

## 4.1 Taxation

1. Alternative Minimum Tax
2. Credit for Prior Year Minimum Year
3. Penalties and Exceptions on Premature Distributions from Qualified Plans and IRAs  
Wednesday
4. Household Employees
5. Underpayment Penalties and Interest
6. Conditions for Filing a Claim for Refund ( e.g., amended returns)
7. Self Employment Tax
8. Excess Social Security Withholding
9. Tax Provisions for Members of the Clergy

# 1. Alternative Minimum Tax

## Individual Alternative Minimum Tax (AMT)

1. Purpose of AMT. The purpose of the AMT is to accomplish a more equitable distribution of the tax burden among taxpayers.
2. Statistical data compiled by the Department of the Treasury revealed that some taxpayers with large economic incomes were able to minimize or even avoid the payment of income tax by taking advantage of the various tax incentives Congress had enacted.
  - a. Many of the favorable treatments allowed for computing the regular income tax liability are disallowed for computing the AMT.

The AMT has been referred to as a “tax on loopholes.”

**Please Refer to the Addendum for this Section**

## 2. Credit for Prior Year Minimum Tax

Reason for the AMT Credit. Timing differences give rise to adjustments to the minimum tax base. Net positive adjustments may cause or increase the AMT.

a. When timing differences reverse, the regular income tax liability may be reduced by a minimum tax credit for prior years' minimum tax liability attributable to timing differences.

b. The AMT credit is applicable only to liabilities that result from timing differences, and is not available in connection with the regular income tax itemized deductions that are disallowed for AMT purposes or with exclusions.

# Credit for Prior Year Minimum Tax

(1) Exclusions include adjustments and preferences arising from the following: the standard deduction, personal and dependency exemptions, medical expenses to the extent deductible for regular income tax purposes but not for AMT purposes, other itemized deductions allowable for regular income tax purposes but not for AMT purposes, excess percentage depletion, and tax-exempt interest on specified private activity bonds.

(2) All other adjustments or preferences are timing, or deferral, adjustments or preferences.

(3) The AMT liability relating to timing preferences is determined on the basis of a “with and without” computation.

### **3. Penalties and Exceptions on Premature Distributions from Qualified Retirement Plans and IRAs**

Most retirement plan distributions are subject to income tax and may be subject to an additional 10% tax.

Generally, the amounts an individual withdraws from an IRA or retirement plan before reaching age 59½ are called "early" or "premature" distributions. Individuals must pay an additional 10% early withdrawal tax unless an exception applies.

**Please see the Addendum for this section**

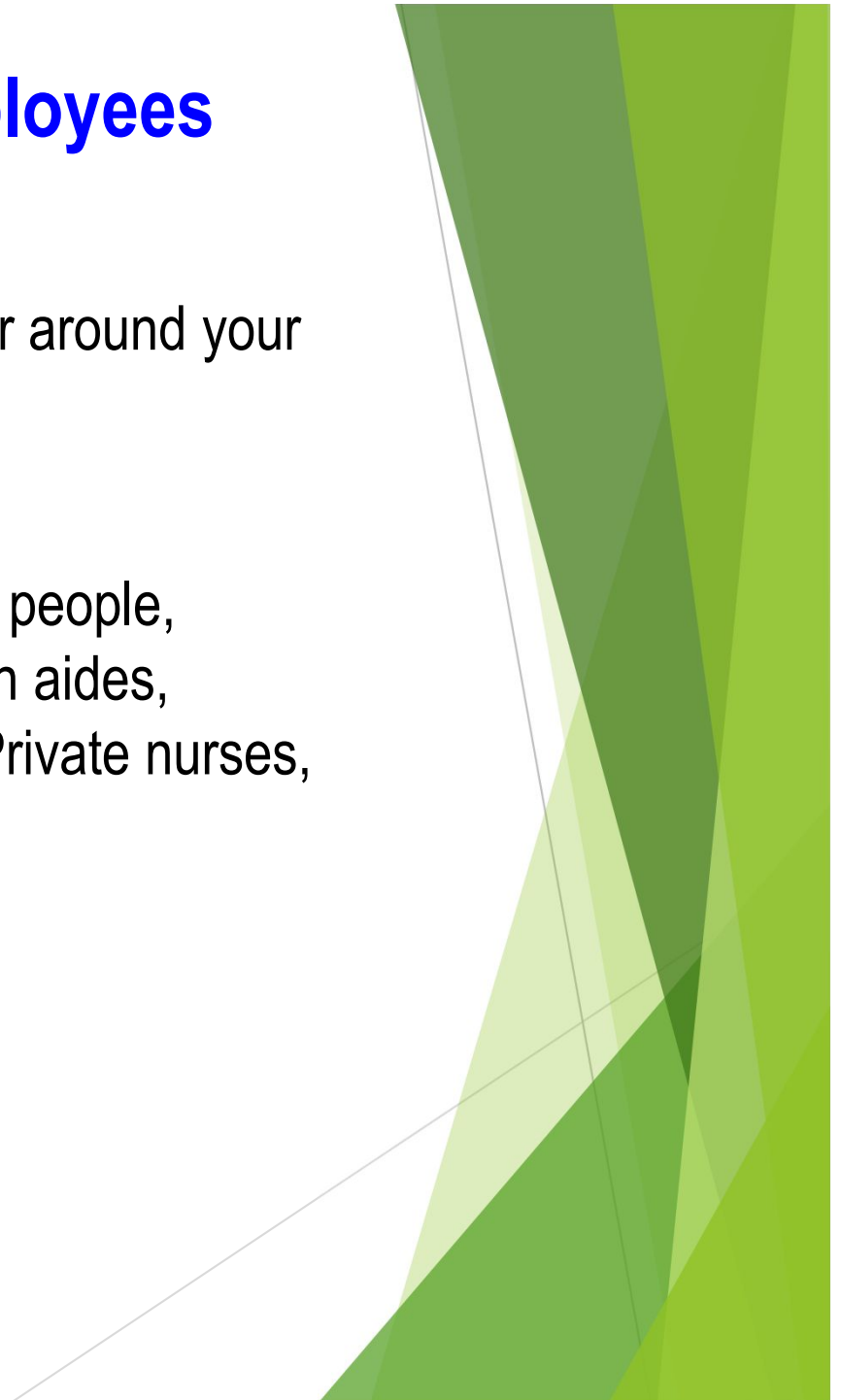
## 4. Household Employees

You have a household employee if you hired someone to do household work and that worker is your employee. The worker is your employee if you can control not only what work is done, but how it is done. If the worker is your employee, it does not matter whether the work is full time or part time or that you hired the worker through an agency or from a list provided by an agency or association. It also does not matter whether you pay the worker on an hourly, daily, or weekly basis, or by the job.

## 4. Household Employees

Household work is work done in or around your home by the following people:

Babysitters, Caretakers, Cleaning people,  
Domestic workers, Drivers, Health aides,  
Housekeepers, Maids, Nannies, Private nurses,  
and Yard workers



# Household Employees

## Workers Who Are Not Your Employees

If only the worker can control how the work is done, the worker is not your employee but is self-employed. A self-employed worker usually provides his or her own tools and offers services to the general public in an independent business.

A worker who performs child care services for you in his or her home generally is not your employee.

If an agency provides the worker and controls what work is done and how it is done, the worker is not your employee.

### Example

You made an agreement with John Peters to care for your lawn. John runs a lawn care business and offers his services to the general public. He provides his own tools and supplies, and he hires and pays any helpers he needs. Neither John nor his helpers are your household employees.



## 5. Underpayment Penalties and Interest

If you did not pay enough tax throughout the year, either through withholding or by making estimated tax payments, you may have to pay a penalty for underpayment of estimated tax. Generally, most taxpayers will avoid this penalty if they owe less than \$1,000 in tax after subtracting their withholdings and credits, or if they paid at least 90% of the tax for the current year, or 100% of the tax shown on the return for the prior year, whichever is smaller. There are special rules for farmers and fishermen. Please refer to [Publication 505, Tax Withholding and Estimated Tax](#), for additional information. However, if your income is received unevenly during the year, you may be able to avoid or lower the penalty by annualizing your income and making unequal payments. Use [Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts](#), to see if you owe a penalty for underpaying your estimated tax. Please refer to the [Form 1040 Instructions](#) or the [Form 1040A Instructions](#) for where to report the estimated tax penalty on your return.

**Please See the Addendum for This Section**

## **6. Conditions for Filing a Claim for Refund ( Amended Returns)**

**Form 843 is used if your claim or request involves:**

a refund of one of the taxes (other than income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding) or a fee, shown on line 3,

an abatement of FUTA tax or certain excise taxes, or

a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

**Do not use Form 843 if your claim or request involves:**

an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),

a refund of excise taxes based on the nontaxable use or sale of fuels, or

an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

**Please Refer to the Addendum for This Section**

## 7. Self-Employment Tax

Estimated Tax for Individuals. Any individual who has estimated tax of \$1,000 or more and whose withholding does not equal or exceed the required annual payment must make quarterly payments.

a. Penalty for underpayment. A penalty for underpayment of estimated taxes may be assessed if the required annual payment is not made.

b. Required annual payment. The required annual payment is the smallest of the following amounts:

(1) Ninety percent of the tax shown on the current year's return.

(2) One hundred percent of the tax shown on the preceding year's return (provided such return covers the full 12 months of the preceding year). If the AGI on the preceding year's return exceeds \$150,000 (\$75,000 if married filing separately), the 100 percent requirement is increased to 110 percent.

c. Installment due dates. Estimated tax installments generally are due on April 15, June 15, and September 15 of the tax year and January 15 of the following tax year.

**Please Refer to the Addendum for This Section**

## 8. Excess Social Security Withholding

Withholding and Estimated Taxes. The pay-as-you-go approach requires employers to withhold tax from employees' earnings and requires taxpayers to make estimated payments on income not subject to withholding.

### Procedures Applicable to Employers

Employer Responsibility. Employers are responsible for withholding the employee's share of FICA and an appropriate amount for income taxes.

a. Payment intervals. The employer must pay the sum of employment taxes and withholdings to the IRS at specified intervals.

b. Covered employees and wages. The employer must determine which employees are subject to withholding, which wages are subject to withholding, and the amount to be withheld.

Coverage Requirements. Circular E—Employer's Tax Guide (Publication 15) contains a discussion of which employees and which wages are subject to withholdings for income and employment taxes.

Please Refer to the Addendum for This Section

## 9. Tax provisions for members of the clergy

To qualify for the special tax provisions available to ministers, an individual must be a “minister” and must perform services “in the exercise of his ministry.” Treas. Reg. § 1.107-1(a) incorporates the rules of Treas. Reg. § 1.1402(c)-5 in determining whether the individual is performing the duties of a “minister of the gospel.” Treas. Reg. § 1.1402(c)-5 requires that an individual be a “duly ordained, commissioned, or licensed minister of a church.” The Tax Court has interpreted this phrase to be disjunctive, finding the purpose is not to limit benefits to the ordained, but is to prevent self appointed ministers from benefiting. *Salkov v. Commissioner*, 46 T.C. 190, 197 (1966). The Tax Court in *Salkov* held that a Jewish cantor was a minister eligible for the IRC § 107 housing allowance. *Id.* at 198-99. It concluded that the petitioner qualified because he was commissioned by, and was a duly qualified member of the Cantors Assembly of America, which functions as the official cantorial body for the Conservative branch of the Jewish religion in America, and because he was selected by a representative Conservative congregation to perform the functions of cantor. *Id.* at 197.

**Please Refer to the Addendum for this Section**