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Consistent Basis Reporting Is Now the Law of the Land

ESTATE PLANNING, TAX
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Please see our recent article for updates regarding Form 8971.

Recent changes to the law have imposed new reporting requirements upon executors of decedents' estates. On July 31, 2015, President Barack Obama signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the "Act"). Contained in the Act are two new provisions of the Internal Revenue Code (the "Code") intended to curb perceived abuses with respect to inconsistent basis reporting by beneficiaries who receive property from a decedent's estate.

Newly enacted Code Section 1014(f) requires estate beneficiaries to use finally determined estate tax values as the basis of assets inherited from a decedent. Beneficiaries are no longer able to take positions on their federal income tax returns that their basis in property received from a decedent is higher than the fair market value of the property as reported on the decedent's federal estate tax return.

If an executor is required to file a federal estate tax return, Code Section 6035 requires such executor to report valuation information to all beneficiaries who inherit assets from the estate and to the Internal Revenue Service (the "IRS"). The statements must be furnished by the earlier of 30 days after the estate tax return was due to be filed, including extensions, or 30 days following the actual filing of the returns.

The reporting requirements are effective for all estates that filed estate tax returns after July 31, 2015. To provide for a transition period, the IRS announced last August that executors required to furnish valuation statements were not required to do so until February 29, 2016, by which time forms or other published guidance on the topic of basis reporting were expected to have been released. On January 28, 2016, the IRS issued the final version of Form 8971, titled "Information Regarding Beneficiaries Acquiring Property From a Decedent," upon which taxpayers will furnish the required information.

IRS FORM 8971 - INFORMATION REGARDING BENEFICIARIES ACQUIRING PROPERTY FROM A DECEDENT

In accordance with the Form 8971 instructions, a completed Form 8971, together with a Schedule A for each beneficiary receiving property from an estate, must be filed with the IRS by the due date as described above. Executors need not distribute

copies of the Forms 8971 to the beneficiaries, but must satisfy their reporting to such beneficiaries by providing each beneficiary with a copy of his or her respective Schedule A. Penalties may be imposed upon executors who fail to furnish the required statements as well as upon beneficiaries who engage in inconsistent basis reporting.

Practitioners have identified several areas of concern with Form 8971. First, the requirement that the form be filed within 30 days of the estate tax return filing may be problematic because it may not be known at this stage of an administration which assets will be distributed to which beneficiaries. In addition, the Form 8971 instructions state that the form is not required if the estate tax return is filed solely to make an allocation of generation-skipping tax. The instructions are silent as to whether a filing will be required if an executor files a federal estate tax return solely to elect portability of the decedent's unused estate tax exclusion amount.

In late January, the American Institute of CPAs sent a letter to the IRS requesting that various changes be made to the form. Two weeks later, the IRS released a notice stating that the due date for Forms 8971 has been postponed until March 31, 2016. The notice recommends that personal representatives who are required to file federal estate tax returns wait for further guidance before filing Forms 8971. As of this date, the IRS has not revealed whether any changes to the form will be forthcoming.

[Contact us with questions regarding IRS Form 8971](#) and visit our [Estate Planning services page](#) to learn about the services that the Schneider Downs Tax Advisors offer.

Sources:

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (P.L. 114-41)

IRC §1014(f)

IRC §6035

IRS Notice 2015-57

IRS Notice 2016-19

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