We Are Not Done Once We File the Estate Tax Return:

New Reporting Requirements to the IRS and Beneficiaries

IRC §1014(f) and

IRC §6035 / Form 8971

CHICAGO ESTATE PLANNING COUNCIL

March 1, 2016

Gregg M. Simon
Much Shelist, P.C.
191 N. Wacker Dr.
Suite 1800
Chicago, IL 60606
312/521-2605
gsimon@muchshelist.com

This presentation is not legal or tax advice – rather, it is for educational purposes only. The author and Much Shelist, P.C. only render legal advice to, and provide legal representation for, those parties entering into an express client engagement pursuant to the terms of a written agreement. You should consult legal counsel if you have specific questions regarding a matter addressed herein. Additionally, this outline contains the thoughts of Gregg M. Simon and is offered only for education and discussion; it does not represent the position of Much Shelist, P.C. on any of the issues raised.

MUCH SHELIST

Gregg M. Simon
Principal

PRACTICE GROUP
Wealth Transfer & Succession Planning

gsimon@muchshelist.com
T 312.521.2605
F 312.521.2505

WORK

Gregg Simon is a respected authority on estate and trust matters with nearly 30 years of experience in taxation and wealth preservation strategies. Chair of the firm's Wealth Transfer & Succession Planning group, Gregg represents individuals, families and fiduciaries on estate planning, federal estate and gift taxation, generation-skipping transfer taxes, probate and trust administration.

Gregg also advises business owners on effective succession planning and tax structures. He knows that the goals of individual family members are sometimes out of sync, and when family conflicts come into play he applies his negotiating skills and conflict resolution experience to help minimize family disputes, avoid litigation, and protect the interests of beneficiaries and other parties.

For many individuals and families, philanthropy is a top priority. Gregg advises his clients on the formation and management of charities, foundations and other non-profit organizations.

PROFESSION

Gregg is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of the ACTEC Asset Protection and Fiduciary Income Tax Committees. Gregg is also a member of the American, Illinois and Chicago Bar Associations, the Chicago Estate Planning Council, and the Greater North Shore Estate and Financial Planning Council. He is a past chair of the Chicago Bar Association Trust Law Executive Committee, where he was a member from 1999 to 2006. He is also a member of the Chicago Bar Association's Probate Practice and Asset Protection Committees.

Gregg is the chair of the Jewish United Fund/Jewish Federation of Metropolitan Chicago Estate Planning Professional Advisory Committee and is also a member of The Ann & Robert H. Lurie Children's Hospital of Chicago Foundation Legacy Partners Professional Advisory Group.

Author of "Handling Closely Held Business Interests and Other Special Assets" for the Illinois Institute for Continuing Legal Education publication Estate Planning for Illinois Attorneys: The Basics and Beyond, Gregg is a frequent speaker on estate planning, and estate and trust administration.

A registered certified public accountant, Gregg has been named an Illinois Super Lawyer each year since 2007 and was included on "The Top 100" list in 2009 and 2010. He has also been recognized by the Leading Lawyers Network as a top Illinois lawyer in the area of trust, will and estate planning law since 2006.

COMMUNITY

Gregg is a member of the board and past president of the International Music Foundation, which sponsors classical music education in inner-city schools, the Dame Myra Hess Memorial concerts and the annual Do-It-Yourself Messiah.

An avid marathon runner, Gregg has run in the Boston and Chicago marathons on behalf of the American Cancer Society, the American Liver Foundation, Children's Memorial Hospital and Memorial Sloan-Kettering Cancer Center.

BACKGROUND

Loyola University Chicago School of Law
J.D., 1987

University of Illinois at Urbana-Champaign
B.S., Accounting, 1984

Gregg is admitted to practice in Illinois, in the U.S. District Court for the Northern District of Illinois and in the U.S. Tax Court.

IRC §1014(f) and

IRC §6035 / Form 8971

On July 31, 2015, the President of the United States signed H.R. 3236, *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), into law. Section 2004 of H.R. 3236 enacted new §1014(f) and §6035 of the Internal Revenue Code ("IRC").

IRC §1014(f) provides rules requiring that the basis of certain property acquired from a decedent, as determined under IRC §1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on a statement made under IRC §6035.

IRC §6035 imposes new reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes. IRC §6035(a)(1) provides that the executor of any estate required to file a return under IRC §6018(a) must furnish, to both the Secretary and the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe. In addition, IRC §6035(a)(2) provides that each person required to file a return under IRC §6018(b) must furnish, both to the Secretary and each other person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the information described in IRC §6035(a)(1).

IRC §6035(a)(3)(A) provides that each statement required to be furnished under IRC §6035(a)(1) or (a)(2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under IRC §6018 was required to be filed (including extensions, if any) or (ii) the date which is 30 days after the date such return is filed. Failure to furnish these statements may result in penalties under IRC §§6721 and 6722.

In January 2016, the Treasury Department released Form 8971, "Information Regarding Beneficiaries Acquiring Property from a Decedent" and accompanying Schedule A to fulfill the IRC §6035 reporting obligations to the IRS and the beneficiaries of estates. The Treasury Department also released Instructions for Form 8971 and Schedule A (hereinafter referred to as the "Instructions").

On August 21, 2015 the IRS issued Notice 2015-57, which announced that the due date for any Form 8971 and Schedule A required to be filed with the IRS or furnished to a beneficiary before February 29, 2016 is extended to February 29, 2016 "in order to allow the Treasury Department and IRS to issue guidance implementing the

reporting requirements of section 6035." Notice 2015-57 further announced that the Treasury Department and the IRS expect to issue additional guidance to assist taxpayers in complying with IRC §1014(f) and IRC §6035.

On February 11, 2016 the IRS issued Notice 2016-19, which announced that the due date for any Form 8971 and Schedule A required to be filed with the IRS or furnished to a beneficiary before March 31, 0216 is extended to March 31, 2016 "in order to provide executors and such other persons the opportunity to review the proposed regulations to e issued under sections 1014(f) and 6035 before preparing a From 8971 and any Schedule A." This Notice further provided that the "Treasury Department and IRS recommend that executors and other persons required to file a return under section 6018 wait to prepare the statements required by section 6035(a)(1) and (a)(2) until the issuance of proposed regulations by the Treasury Department and the IRS addressing the requirements of section 6035. The Treasury Department and the IRS expect to issue proposed regulations under sections 1014(f) and 6035 very shortly."

Exhibits

Exhibit 1 - IRC §1014(f)

Exhibit 2 – IRC §6035

Exhibit 3 – IRS Notice 2015-57

Exhibit 4 – IRS Notice 2016-19

Exhibit 5 – Proposed Regulations [If published before presentation]

Exhibit 6 - Form 8971

Exhibit 7 – Instructions to Form 8971

Exhibit 8 – ACTEC Comments submitted to the Treasury Department and IRS on January 19, 2016 regarding to IRC §6035, §1014(f) and Form 8971 and instructions thereto

Exhibit 1

IRC §1014(f)

26 U.S. Code § 1014 - Basis of property acquired from a decedent

(a)IN GENERAL Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

(1)

the fair market value of the property at the date of the decedent's death,

(2)

in the case of an election under section 2032, its value at the applicable valuation date prescribed by such section,

(3)

in the case of an election under section 2032A, its value determined under such section, or

(4)

to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.

(b)PROPERTY ACQUIRED FROM THE DECEDENT For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1)

Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2)

Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3)

In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4)

Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5)

In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be

the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6)

In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

[(7)

, (8) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(74), Dec. 19, 2014, 128 Stat. 4049]

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A)

annuities described in section 72;

(B)

property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C)

property described in any other paragraph of this subsection.

(10)

Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

(c)PROPERTY REPRESENTING INCOME IN RESPECT OF A DECEDENT

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d)SPECIAL RULE WITH RESPECT TO DISC STOCK

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of

this subsection) shall be reduced by the amount (if any) which would have been included in gross income under section 995(c) as a dividend if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(e)(2) (relating to reductions of basis of DISC stock). For purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

(e)APPRECIATED PROPERTY ACQUIRED BY DECEDENT BY GIFT WITHIN 1 YEAR OF DEATH

(1)IN GENERAL In the case of a decedent dying after December 31, 1981, if—

(A)

appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

(B)

such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),

the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

(2)DEFINITIONS For purposes of paragraph (1)—

(A)Appreciated property

The term "appreciated property" means any property if the fair market value of such property on the day it was transferred to the decedent by gift exceeds its adjusted basis.

(B)Treatment of certain property sold by estate

In the case of any appreciated property described in subparagraph (A) of paragraph (1) sold by the estate of the decedent or by a trust of which the decedent was the grantor, rules similar to the rules of paragraph (1) shall apply to the extent the donor of such property (or the spouse of such donor) is entitled to the proceeds from such sale.

(f)BASIS MUST BE CONSISTENT WITH ESTATE TAX RETURN For purposes of this section—

(1)IN GENERAL The basis of any property to which subsection (a) applies shall not exceed—

(A)

in the case of property the final value of which has been determined for purposes of the tax imposed by chapter 11 on the estate of such decedent, such value, and

(B)

in the case of property not described in subparagraph (A) and with respect to which a statement has been furnished under section 6035(a) identifying the value of such property, such value.

(2)EXCEPTION

Paragraph (1) shall only apply to any property whose inclusion in the decedent's estate increased the liability for the tax imposed by chapter 11 (reduced by credits allowable against such tax) on such estate.

(3)DETERMINATION For purposes of paragraph (1), the basis of property has been determined for purposes of the tax imposed by chapter 11 if—

(A)

the value of such property is shown on a return under section 6018 and such value is not contested by the Secretary before the expiration of the time for assessing a tax under chapter 11,

(B)

in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the executor of the estate, or

(C)

the value is determined by a court or pursuant to a settlement agreement with the Secretary.

(4)REGULATIONS

The Secretary may by regulations provide exceptions to the application of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 85–320, § 2, Feb. 11, 1958, 72 Stat. 5; Pub. L. 92–178, title V, § 502(f), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title XIX, § 1901(c)(8), title XX, § 2005(a)(1), Oct. 4, 1976, 90 Stat. 1803, 1872; Pub. L. 95–600, title V, § 515(1), title VII, § 702(c)(1)(A), Nov. 6, 1978, 92 Stat. 2884, 2926; Pub. L. 96–222, title I, § 107(a)(2)(A), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title IV, § 425(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97–448, title I, § 104(a)(1)(A), Jan. 12, 1983, 96 Stat. 2379; Pub. L. 105–34, title V, § 508(b), Aug. 5, 1997, 111 Stat. 860; Pub. L. 107–16, title V, § 541,June 7, 2001, 115 Stat. 76; Pub. L. 108–357, title IV, § 413(c)(18), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 113–295, div. A, title II, § 221(a)(74), Dec. 19, 2014, 128 Stat. 4049; Pub. L. 114–41, title II, § 2004(a), July 31, 2015, 129 Stat. 454.)

Exhibit 2

IRC §6035

26 U.S. Code § 6035 - Basis information to persons acquiring property from decedent

(a)INFORMATION WITH RESPECT TO PROPERTY ACQUIRED FROM DECEDENTS

(1)IN GENERAL

The executor of any estate required to file a return under section 6018(a) shall furnish to the Secretary and to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

(2)STATEMENTS BY BENEFICIARIES

Each person required to file a return under section 6018(b) shall furnish to the Secretary and to each other person who holds a legal or beneficial interest in the property to which such return relates a statement identifying the information described in paragraph (1).

(3)TIME FOR FURNISHING STATEMENT

(A)In general Each statement required to be furnished under paragraph (1) or (2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of—

(i)

the date which is 30 days after the date on which the return under section 6018 was required to be filed (including extensions, if any), or

(ii)

the date which is 30 days after the date such return is filed.

(B)Adjustments

In any case in which there is an adjustment to the information required to be included on a statement filed under paragraph (1) or (2) after such statement has been filed, a supplemental statement under such paragraph shall be filed not later than the date which is 30 days after such adjustment is made.

(b)REGULATIONS The Secretary shall prescribe such regulations as necessary to carry out this section, including regulations relating to—

(1)

the application of this section to property with regard to which no estate tax return is required to be filed, and

(2)

situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or fair market value of the property.

(Added Pub. L. 114–41, title II, § 2004(b)(1), July 31, 2015, 129 Stat. 455.)

Exhibit 3

IRS Notice 2015-57

Part III - Administrative, Procedural, and Miscellaneous

Due Dates for Compliance with §2004 of H.R. 3236, Consistent Basis Reporting Between Estate and Person Acquiring Property from Decedent

Notice 2015-57

SECTION 1: PURPOSE

On July 31, 2015, the President of the United States signed H.R. 3236, *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), into law. Section 2004 of H.R. 3236 enacted sections 1014(f) and 6035. For each statement required by section 6035 to be filed with the Internal Revenue Service (IRS) or furnished to a beneficiary before February 29, 2016, this notice delays until February 29, 2016, the due date for filing or furnishing that statement. This notice applies to executors of estates of decedents and to other persons who are required under section 6018(a) or (b) to file a return if that return is filed after July 31, 2015.

SECTION 2: BACKGROUND

Section 1014(f) provides rules requiring that the basis of certain property acquired from a decedent, as determined under section 1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on a statement made under section 6035.

Section 6035 imposes new reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes.

Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must furnish, both to the Secretary and the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

Section 6035(a)(2) provides that each person required to file a return under section 6018(b) must furnish, both to the Secretary and each other person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that each statement required to be furnished under section 6035(a)(1) or (a)(2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under section 6018 was required to be filed (including extensions, if any) or (ii) the date which is 30 days after the date such return is filed.

Section 6035(b) authorizes the Secretary to prescribe such regulations as necessary to carry out section 6035. Section 7805(a) provides generally that the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. Section 7805(b)(2) provides that regulations may apply retroactively if they are issued within 18 months of the date of the enactment of the statutory provision to which they relate.

Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

SECTION 3: GUIDANCE

For statements required under sections 6035(a)(1) and (a)(2) to be filed with the IRS or furnished to a beneficiary before February 29, 2016, the due date under section 6035(a)(3) is delayed to February 29, 2016. This delay is to allow the Treasury Department and IRS to issue guidance implementing the reporting requirements of section 6035. Executors and other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) should not do so until the issuance of forms or further guidance by the Treasury Department and the IRS addressing the requirements of section 6035.

The Treasury Department and the IRS expect to issue additional guidance to assist taxpayers with complying with sections 1014(f) and 6035. The Treasury Department and the IRS invite comments. Submissions should be submitted to: CC:PA:LPD:PR (Notice 2015-57), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2015-57), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: Notice.comments@irscounsel.treas.gov. Please include

"Notice 2015-57" in the subject line of any electronic communication. All comments submitted will be available for public inspection and copying.

SECTION 4: EFFECTIVE DATE

This notice is effective on August 21, 2015. This notice applies to executors of the estates of decedents and to other persons who are required under section 6018(a) or (b) to file a return if that return is filed after July 31, 2015.

DRAFTING INFORMATION

The principal author of this notice is Theresa Melchiorre of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Theresa Melchiorre at (202) 317-6859 (not a toll-free call).

Exhibit 4

IRS Notice 2016-19

Part III - Administrative, Procedural, and Miscellaneous

Date for Compliance with Consistent Basis Reporting Between Estate and Person Acquiring Property from Decedent

Notice 2016-19

SECTION 1: PURPOSE

On July 31, 2015, the President of the United States signed into law the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*, Public Law 114-41, 129 Stat. 443 (Act). Section 2004 of the Act added new sections 1014(f) and 6035. On August 21, 2015, the Treasury Department and the IRS issued Notice 2015-57, 2015-36 IRB 294. That notice delayed until February 29, 2016, the due date for any statements required under section 6035(a)(3)(A) to be provided before February 29, 2016. This notice provides that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016. This notice is being issued in order to provide executors and such other persons the opportunity to review the proposed regulations to be issued under sections 1014(f) and 6035 before preparing a Form 8971 and any Schedule A.

SECTION 2: BACKGROUND

Section 1014(f) provides rules requiring that the basis of certain property acquired from a decedent, as determined under section 1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on a statement made under section 6035.

Section 6035 imposes new reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes.

Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must furnish, both to the Secretary and to the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

Section 6035(a)(2) provides that each person required to file a return under section 6018(b) must furnish, both to the Secretary and to each other person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that each statement required to be furnished under section 6035(a)(1) or (a)(2) is to be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under section 6018 was required to be filed (including extensions, if any) or (ii) the date which is 30 days after the date such return is filed.

Section 6035(b) authorizes the Secretary to prescribe such regulations as necessary to carry out section 6035. Section 7805(a) provides generally that the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. Section 7805(b)(2) provides that regulations may

apply retroactively if they are issued within 18 months of the date of the enactment of the statutory provision to which they relate.

SECTION 3: GUIDANCE

Statements required under sections 6035(a)(1) and (a)(2) to be filed with the IRS or furnished to a beneficiary before March 31, 2016, need not be filed with the IRS and furnished to a beneficiary until March 31, 2016. The Treasury Department and IRS recommend that executors and other persons required to file a return under section 6018 wait to prepare the statements required by section 6035(a)(1) and (a)(2) until the issuance of proposed regulations by the Treasury Department and the IRS addressing the requirements of section 6035. The Treasury Department and the IRS expect to issue proposed regulations under sections 1014(f) and 6035 very shortly.

SECTION 4: EFFECTIVE DATE

This notice is effective on February 11, 2016. This notice applies to executors of the estates of decedents and to other persons who are required under section 6018(a) or (b) to file a return if that return is filed after July 31, 2015.

DRAFTING INFORMATION

The principal author of this notice is Eliezer Mishory of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Theresa Melchiorre at (202) 317-6859 (not a toll-free call).

Exhibit 5

Proposed Regulations [If published before presentation]

Exhibit 6

Form 8971

Form **8971**
(January 2016)
Department of the Treasury
Internal Revenue Service

Information Regarding Beneficiaries Acquiring Property From a Decedent

▶ **Information about Form 8971 and its separate instructions is at *www.irs.gov/form8971*.**

OMB No. 1545-2264

Check box if this is a supplemental filing ☐

Part I Decedent and Executor Information

1 Decedent's name	2 Decedent's date of death	3 Decedent's SSN
4 Executor's name (see instructions)	**5** Executor's phone no.	**6** Executor's TIN

7 Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code)

8 If there are multiple executors, check here ☐ and attach a statement showing the names, addresses, telephone numbers, and TINs of the additional executors.

9 If the estate elected alternate valuation, indicate the alternate valuation date: _____

Part II Beneficiary Information

How many beneficiaries received (or are expected to receive) property from the estate? _____ For each beneficiary, provide the information requested below. If more space is needed, attach a statement showing the requested information for the additional beneficiaries.

A Name of Beneficiary	B TIN	C Address, City, State, ZIP	D Date Provided

Notice to Executors:

Submit Form 8971 with a copy of each completed Schedule A to the IRS. To protect privacy, Form 8971 should not be provided to any beneficiary. Only Schedule A of Form 8971 should be provided to the beneficiary. Retain copies of all forms for the estate's records.

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, all information reported herein is true, correct, and complete.

▶ _____ Signature of executor _____ Date

May the IRS discuss this return with the preparer shown below? See instructions . . . . . ☐ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶			Firm's EIN ▶	
Firm's address ▶			Phone no.	

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SCHEDULE A—Information Regarding Beneficiaries Acquiring Property From a Decedent

► **Information about Form 8971 (including Schedule A) and its separate instructions is at *www.irs.gov/form8971*.**

Check box if this is a supplemental filing ☐

Part 1. General Information

1 Decedent's name	2 Decedent's SSN	3 Beneficiary's name	4 Beneficiary's TIN

5 Executor's name	6 Executor's phone no.

7 Executor's address

Part 2. Information on Property Acquired

A Item No.	B Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here.	C Did this asset increase estate tax liability? *(Y/N)*	D Valuation Date	E Estate Tax Value *(In U.S. dollars)*
1	Form 706, Schedule _____ , Item _____ Description —			

Notice to Beneficiaries:

You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. **Retain this schedule for tax reporting purposes.** If the property increased the estate tax liability, Internal Revenue Code section 1014(f) applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

Form 8971 (1-2016)

SCHEDULE A—Continuation Sheet

Use only if you need additional space to report property acquired (or expected to be acquired) by the beneficiary.

Check box if this is a supplemental filing ☐

Part 1. General Information

1 Decedent's name	2 Decedent's SSN	3 Beneficiary's name	4 Beneficiary's TIN

5 Executor's name	6 Executor's phone no.

7 Executor's address

Part 2. Information on Property Acquired

A Item No. *(continue from previous page)*	B Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here.	C Did this asset increase estate tax liability? *(Y/N)*	D Valuation Date	E Estate Tax Value *(in U.S. dollars)*

Notice to Beneficiaries:

You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. **Retain this schedule for tax reporting purposes.** If the property increased the estate tax liability, Internal Revenue Code section 1014(f) applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

Exhibit 7

Instructions to Form 8971

Instructions for Form 8971 and Schedule A

(January 2016)

Department of the Treasury
Internal Revenue Service

Information Regarding Beneficiaries Acquiring Property From a Decedent

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8971 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8971*.

General Instructions

Purpose of Form

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires executors of an estate and other persons who are required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return; Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States; or Form 706-A, United States Additional Estate Tax Return; to report the final estate tax value of property distributed or to be distributed from the estate, if the estate tax return is filed after July 2015. Form 8971, along with a copy of every Schedule A, is used to report values to the IRS. One Schedule A is provided to each beneficiary receiving property from an estate.

CAUTION *Provide each beneficiary only with a copy of that beneficiary's own Schedule A. Do not provide a copy of the Form 8971 with or without attached Schedule(s) A to any beneficiary.*

Certain property received by a beneficiary may be subject to a consistency requirement, meaning that the beneficiary cannot use a value higher than the value reported on Schedule A as the beneficiary's initial basis in the property.

Who Must File

An executor of an estate or other person(s) required to file Form 706 or Form 706-NA under sections 6018(a) and 6018(b) or a qualified heir required to file Form 706-A under section 2032A, if the return is filed after July 2015, and whether or not that form is filed timely, is required to file Form 8971 with attached Schedule(s) A with the IRS and to provide each beneficiary listed on the Form 8971 with that beneficiary's Schedule A.

The filing requirement for Form 8971 does not apply to an executor of an estate that is not required to file an estate tax return because the gross estate plus adjusted taxable gifts is less than the basic exclusion amount, but who does so for the sole purpose of making an allocation or election respecting the generation-skipping transfer tax. See the Instructions for Form 706, Form 706-NA, or Form 706-A for more information on the filing requirement for those forms.

When To File

Form 8971 (including all attached Schedule(s) A) must be filed with the IRS and only the Schedule A is to be provided to the beneficiary listed on that Schedule A, no later than the earlier of:

- The date that is 30 days after the date on which Form 706, Form 706-NA, or Form 706-A is required to be filed (including extensions) with the IRS; or
- The date that is 30 days after the date Form 706, Form 706-NA, or Form 706-A is filed with the IRS.

If the first Form 706, Form 706-NA, or Form 706-A is filed both after the form's due date (including extensions) and after July 2015, the Form 8971 and Schedule(s) A are due 30 days after the filing date.

Form 8971 is a separate filing requirement from the estate's Form 706, 706-NA, or 706-A, and should not be attached to the respective estate tax return. The 8971 and attached Schedule(s) A must be filed with the IRS, separate from any and all other tax returns filed by the estate.

Note. Notice 2015-57, 2015-36 I.R.B. 294, available at *www.irs.gov/irb/2015-36_IRB/ar12.html*, made February 29, 2016, the due date for:

- All Forms 8971 (including the attached Schedule(s) A) required to be filed with the IRS after July 31, 2015, and before February 29, 2016; and
- All Schedules A required to be provided to beneficiaries after July 31, 2015, and before February 29, 2016.

Where To File

File Form 8971 (including all Schedule(s) A) at the following address.

Department of the Treasury
Internal Revenue Service Center
Mail Stop #824G
Cincinnati, OH 45999

A beneficiary can be provided Schedule A:

- In person to an individual beneficiary, to the trustee(s) of a beneficiary trust, or to the executor(s) of a beneficiary estate;
- By email;
- By U.S. mail to the beneficiary's last known address; or
- By private delivery service to the beneficiary's last known address (see below).

The executor of the estate (or other person required to file) must certify on Form 8971, Part II, Column D, the date on which Schedule A was provided to each beneficiary and should keep proof of mailing, proof of delivery, acknowledgment of receipt, or other information relevant for the estate's records. In cases where a trust or another estate is a beneficiary and has multiple trustees or executors, providing Schedule A to one trustee or executor is enough to meet the requirement.

Private delivery services. Certain private delivery services designated by the IRS may be used to meet the "timely mailing as timely filing" rule for tax returns. These private delivery services include only the following.

- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, FedEx International First, FedEx First Overnight, FedEx International Next Flight Out, and FedEx International Economy.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, UPS Worldwide Express, and UPS Next Day Air Early AM.

The private delivery service can tell you how to get written proof of the mailing date.

Supplemental Forms 8971 and Schedules A

The value of the property to be reported on the initial Form 8971 and the attached Schedules A is the fair market value of the asset as reported on the estate tax return. However, the final value for purposes of the federal estate tax may differ from that reported on the estate tax return. A value is considered "final" when:

- The value of the property shown on an estate tax return filed with the IRS is not contested by the IRS before the period of assessment expires;
- The value of the property is specified by the IRS and is not timely contested by the estate (or other person required to file under section 6018(b)); or
- The value of the property is determined by a court or pursuant to a settlement agreement with the IRS, including the resolution of a claim for abatement or refund.

If information reported on Form 8971 and the Schedule(s) A filed with the IRS or provided to a beneficiary differs from the final value (as the result of the resolution of a valuation dispute or otherwise), the executor or other person required to make this filing must file a supplemental Form 8971 and affected Schedule(s) A with the IRS and provide an updated supplemental Schedule A to each affected beneficiary no later than 30 days after the adjustment. See *Where To File*, earlier. On both the supplemental Form 8971 and each supplemental Schedule A, the "Supplemental Filing" box should be checked and only the information that has changed should be reported.

If the executor or other person required to file Form 8971 has been notified that a Form 706, Form 706-NA, or Form 706-A related to the Form 8971 and Schedule(s) A has been selected for examination, a copy of the supplemental Form 8971 with attached supplemental Schedule(s) A should be provided to the office conducting the examination.

Rounding Off to Whole Dollars

The value of property should be reported in U.S. dollars and rounded to whole-dollar amounts. To round, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. For example, $1.39 becomes $1 and $2.55 becomes $3. If you add two or more amounts to figure an item's value, include the cents when adding the amounts and round off only the total.

Penalties

Failure to file correct Forms 8971 by the due date (section 6721). If the executor of an estate or other person required to file Form 8971 fails to file a correct Form 8971 and/or Schedule A with the IRS by the due date and reasonable cause is not shown, a penalty may be imposed. The penalty applies if there is a failure to file timely, a failure to include all information required to be shown on the form or schedule, a failure to include correct information on the form or schedule, or a failure to file a correct supplemental Form 8971 and/or Schedule A by the due date. A complete Form 8971 includes all Schedule(s) A.

Only one penalty will apply for all failures relating to a single filing of a single Form 8971 and the Schedule(s) A required to be filed along with it. Each filing of a Form 8971 with Schedule(s) A is a separate filing, regardless as to whether the filing is of the initial Form 8971 and Schedule(s) A or a supplemental Form 8971 and Schedule(s) A.

The amount of the penalty depends on when the correct Form 8971 with Schedule(s) A is filed.

The penalty is as follows.

- $50 per Form 8971 (including all Schedule(s) A) if it is filed within 30 days after the due date. The maximum penalty is $532,000 per year (or $186,000 if the taxpayer qualifies for lower maximum penalties, as described below).
- $260 per Form 8971 (including all Schedule(s) A) if it is filed more than 30 days after the due date or if it is not filed. The maximum penalty is $3,193,000 per year ($1,064,000 if the taxpayer qualifies for lower maximum penalties, as described below).

All penalty amounts shown are subject to adjustment for inflation.

Lower maximum penalties. You qualify for lower maximum penalties if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are $5 million or less.

Intentional disregard of filing requirements. If any failure to file a correct Form 8971 or Schedule A is due to intentional disregard of the requirements to file a correct Form 8971 and Schedule(s) A, the minimum penalty is at least $530 per Form 8971 and the Schedule(s) A required to be filed with it, with no maximum penalty.

Inconsequential error or omission. An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission does not prevent or hinder the IRS from processing the Form 8971 and the Schedule(s) A required to be filed along with it. Errors and omissions that are **never** inconsequential are those related to a TIN, a beneficiary's surname, and the value of the asset the beneficiary is receiving from the estate.

Note. A TIN is a Social Security Number (SSN), an Employer Identification Number (EIN), an Individual Taxpayer Identification Number (ITIN), or any other number used by the IRS in the administration of tax laws.

Failure to furnish correct Schedules A to beneficiaries by the due date (section 6722). If the executor of an estate or other person required to file Form 8971 fails to provide a correct Schedule A to a beneficiary and does not show reasonable cause, a penalty may be imposed. The penalty applies if there is a failure to provide the Schedule A by the due date, a failure to include all information required to be shown on the schedule, a failure to include correct information on the schedule, or a failure to provide a correct supplemental Schedule A by the due date. The penalty applies for each Schedule A required to be provided.

The amount of the penalty depends on when a correct Schedule A is provided.

The penalty is as follows.

- $50 per Schedule A if it is provided within 30 days after the due date. The maximum penalty is $532,000 per year (or $186,000 if the taxpayer qualifies for lower maximum penalties, as described below).
- $260 per Schedule A if it is provided more than 30 days after the due date or if it is not provided. The maximum penalty is $3,193,000 per year ($1,064,000 if the taxpayer qualifies for lower maximum penalties, as described below).

All penalty amounts shown are subject to adjustment for inflation.

Lower maximum penalties. You qualify for lower maximum penalties if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are $5 million or less.

Intentional disregard of filing requirements. If any failure to provide a correct Schedule A is due to intentional disregard of the requirements to provide correct Schedules A, the penalty is at least $530 per Schedule A with no maximum penalty.

Inconsequential error or omission. An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission cannot reasonably be expected to prevent or hinder the beneficiary from timely receiving correct information and using the information to report basis on the beneficiary's own return. Errors and omissions that are **never** inconsequential are those related to (a) the value of the

asset the beneficiary is receiving from the estate, and (b) a significant item in a beneficiary's address.

Reasonable cause exception to the penalties for failing to file Forms 8971 and Schedules A and for failing to provide Schedules A to beneficiaries. The penalties for failing to file correct Form 8971 and Schedules A with the IRS and for failing to provide correct Schedules A to beneficiaries will not apply to any failure that is shown to be due to reasonable cause and not to willful neglect. In general, it must be shown that the failure was due to an event beyond the taxpayer's control or due to significant mitigating factors. It must also be shown that the executor or other person required to file acted in a responsible manner and took steps to avoid the failure.

Penalties for Inconsistent Filing

Beneficiaries who report basis in property that is inconsistent with the amount on the Schedule A may be liable for a 20% accuracy-related penalty under section 6662.

Obtaining Forms and Publications To File or Use

You can access the IRS website 24 hours a day, 7 days a week, at IRS.gov to:

- Download forms, instructions, and publications;
- Order IRS products;
- Research tax questions;
- Search publications by topic or keyword; and
- Sign up to receive local and national tax news by email.

Specific Instructions

Complete Form 8971 and each attached Schedule A in its entirety. A form or schedule filed with the IRS without entries in each field will not be processed. A form with an answer of "unknown" will not be considered a complete return.

Part I — Decedent and Executor Information

Line 3. Enter the SSN of the decedent. If the decedent did not have an SSN, the executor (or other person required to file Form 706) should obtain one for the decedent by filing Form SS-5, Application for a Social Security Card. You can get Form SS-5 online at www.socialsecurity.gov or by calling the SSA at 1-800-772-1213.

Line 4. If there is more than one executor, enter the name of one executor and see the instructions for line 8.

Line 6. Provide only the TIN of the executor listed on line 4 and see the instructions for line 8.

Line 7. Provide only the address of the executor listed on line 4. Use Form 8822, Change of Address, to report a change of the executor's address. Also, see the instructions for line 8.

Line 8. On an attached statement, provide the name, address, telephone number, and TIN of each executor (if any) other than the one named on line 4.

Line 9. If the executor made an election on the estate tax return to use alternate valuation under section 2032, provide the alternate valuation date.

Part II — Beneficiary Information

A beneficiary is an individual, trust, or other estate who has acquired (or is expected to acquire) property from the estate. If the executor is also a beneficiary who has acquired (or is expected to acquire) property from the estate, the executor is a beneficiary for purposes of the Form 8971 and Schedule A.

Column A. Enter the name of each individual, trust, or other estate that acquired (or is expected to acquire) property from the estate. Retain a copy of the Form 8971 (including all attached Schedule(s) A) for the estate's records.

Column B. Enter the TIN of each beneficiary listed. Entering "none," "unknown," or similar language, or otherwise failing to enter a TIN, will cause the form to be considered incomplete and may subject the estate to penalties.

Column D. For each beneficiary, enter the date on which the executor gave Schedule A to the beneficiary. See *Where To File*, earlier.

Return preparer. Permission to discuss the Form 8971 is limited to the information reported on (or required to be reported on) the Form 8971 and attached Schedule(s) A and does not authorize the return preparer to represent the estate before the IRS or to enter into any agreements with the IRS respecting the Form 8971 and attached Schedule(s) A.

Complete and attach Form 2848, Power of Attorney and Declaration of Representative, if the executor would like the return preparer to represent the estate before the IRS with respect to the Form 8971 and Schedule(s) A or any other matter related to the estate. Completing Form 2848 may authorize the person designated on that form to sign agreements, consents, waivers, or other documents.

Anyone who is paid to prepare the Form 8971 and/or any Schedule A must sign the form as a paid preparer and give a copy of the completed Form 8971 and/or Schedule(s) A to the executor required to file Form 706, Form 706-NA, or Form 706-A.

Note. A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

Signature and Verification

All executors shown on Form 8971 and listed on any attached statement are responsible for the reporting requirements related to Form 8971 and Schedule(s) A. However, it is enough for only one of the executors to sign Form 8971.

Form 8971 is signed under penalties of perjury and all executors are responsible for the information included on Form 8971 and Schedule(s) A as filed with the IRS and Schedules A provided to beneficiaries. All executors are also liable for all applicable penalties.

Schedule A — Information Regarding Beneficiaries Acquiring Property From a Decedent

Executors of estates filing Form 8971 are required to complete a Schedule A for each beneficiary that acquired (or is expected to acquire) property from the estate. You will need a copy of the Form 706, Form 706-NA, or Form 706-A filed by the estate of the decedent to complete this schedule. All property acquired (or expected to be acquired) by a beneficiary must be listed on that beneficiary's Schedule A. If the executor has not determined which beneficiary is to receive an item of property as of the due date of the Form 8971 and Schedule(s) A, the executor must list all items of property that could be used, in whole or in part, to fund the beneficiary's distribution on that beneficiary's Schedule A. (This means that the same property may be reflected on more than one Schedule A.) A supplemental Form 8971 and corresponding Schedule(s) A should be filed once the distribution to each such beneficiary has been made.

Use and duplicate page A-2 (Schedule A—Continuation Sheet) if additional space is needed to list the property acquired (or expected to be acquired) by a beneficiary. Attach a copy of each completed Schedule A to Form 8971 and submit to the IRS. Provide a copy of each Schedule A only to the beneficiary named on that Schedule A. Do not provide a copy of the Form 8971 to a beneficiary. See the instructions under *Where To File*, earlier.

Column A. Number the items received by the beneficiary. Continue this numbering on page A-2 of the Schedule A—Continuation Sheet (if necessary).

Column B. Use the same description in column B that the executor used for the property on the Form 706, Form 706-NA, or Form 706-A. Include in column B the schedule and item number where the property was reported on Form 706, Form 706-NA, or Form 706-A, as applicable.

For more information on details to be included by asset type or schedule, see the Instructions for Form 706, Form 706-NA, or Form 706-A. If the beneficiary acquired (or is expected to acquire) a joint interest, a fractional interest, or any other interest in property which is less than 100%, indicate the interest in the property the beneficiary will acquire.

Column C. An entry (Y or N) is required in this column for each asset. Indicate "Y" if the property contributed to the amount of the federal estate tax payable by the estate.

Generally, any property that qualifies for a marital deduction under section 2056 or 2056A or a charitable deduction under section 2055 will not generate estate tax and "N" should be indicated.

Column D. Generally, the valuation date of property will be the decedent's date of death. If the estate elected to use an alternate valuation date, list the value of the property on the alternate valuation date. See section 2032 for additional guidance.

Column E. List the value reported on Form 706, Form 706-NA, or Form 706-A. If the value reported on a Schedule A that has already been filed with the IRS or provided to a beneficiary changes (as a result of the resolution of a valuation issue or otherwise), you must file a supplemental Form 8971 and associated Schedule(s) A with the IRS and provide an updated Schedule A to each affected beneficiary no later than 30 days after the adjustment.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. Sections 6035 and 6109, and the regulations require you to provide this information.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose information from this form in certain circumstances. For example, we may disclose information to the Department of Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal non-tax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information, or providing false information, may subject you to penalties.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	3hr., 49 min.
Learning about the law or the form	42 min.
Preparing, copying, assembling, and sending the form to the IRS	47 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from *www.irs.gov/formspubs/*. Click on "More Information" and then on "Give us feedback." You can also send your comments to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File*, earlier.

Exhibit 8

ACTEC Comments submitted to the Treasury Department and IRS on January 19, 2016 regarding to IRC §6035, §1014(f) and Form 8971 and instructions thereto

AGTEC
THE AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL

McPherson Building
901 15th Street, NW, Suite 525
Washington, DC 20005
(202) 684-8460 Fax (202) 684-8459
www.actec.org

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Executive Director
DEBORAH O. MCKINNON

January 19, 2016

Office of Chief Counsel (Passthroughs and Special Industries)
CC:PA:LPD:PR (Notice 2015-57) Room 5203
Internal Revenue Service
PO Box 7604 Ben Franklin Station
Washington, DC 20044

Via Electronic Mail: Notice.comments@irscounsel.treas.gov

Dear Ladies and Gentlemen:

The American College of Trust and Estate Counsel ("ACTEC") is pleased to submit the enclosed comments on new sections 6035 and 1014(f) of the Internal Revenue Code of 1986, as amended (the "Code"). Sections 6035 and 1014(f) were enacted as part of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, (P.L. 114-41) signed into law on July 31, 2015. Notice 2015-57 delayed reporting under section 6035 until February 29, 2016 to allow time for guidance to be issued and invited comments. On December 18, 2015, a draft Form 8971, "Information Regarding Beneficiaries Acquiring Property from a Decedent" was released for reporting under section 6035. On January 6, 2016, the Treasury released Instructions for Form 8971 and Schedule A.

ACTEC is a professional organization of approximately 2,600 lawyers from throughout the United States. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of federal taxes, with a focus on estate, gift, and GST tax planning, fiduciary income tax planning, and compliance. ACTEC offers technical comments about the law and its effective administration, but does not take positions on matters of policy or political objectives.

If you or your staff would like to discuss ACTEC's recommendations, please contact Ellen Harrison, Chair of the Washington Affairs Committee at (202) 756-8635 or by email at eharrison@mwe.com, or Leah Weatherspoon, ACTEC Communications Director, at (202) 688-0271, or by email at lweatherspoon@actec.org.

Respectfully submitted,

Bruce Stone

Bruce Stone, President

Enclosure: ACTEC Comments on Notice 2015-57/IRC §6035 and 1014(f)

CC: Catherine V. Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, U.S. Department of the Treasury

NOTICE 2015-57 / IRC §6035 AND 1014(f)

ACTEC COMMENTS

Background. On July 31, 2015, the President of the United States signed H.R. 3236, *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), into law. Section 2004 of H.R. 3236 enacted new §1014(f) and §6035 of the Internal Revenue Code ("IRC").

IRC §1014(f) provides rules requiring that the basis of certain property acquired from a decedent, as determined under IRC §1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on a statement made under IRC §6035.

IRC §6035 imposes new reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes. IRC §6035(a)(1) provides that the executor of any estate required to file a return under IRC §6018(a) must furnish, to both the Secretary and the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe. In addition, IRC §6035(a)(2) provides that each person required to file a return under IRC §6018(b) must furnish, both to the Secretary and each other person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the information described in IRC §6035(a)(1).

IRC §6035(a)(3)(A) provides that each statement required to be furnished under IRC §6035(a)(1) or (a)(2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under IRC §6018 was required to be filed (including extensions, if any) or (ii) the date which is 30 days after the date such return is filed. Failure to furnish these statements may result in penalties under IRC §§6721 and 6722. On December 18, 2015, the Treasury Department released a draft Form 8971, "Information Regarding Beneficiaries Acquiring Property from a Decedent" and accompanying Schedule A (hereinafter referred to as "Form 8971" or "Schedule A", as appropriate) to fulfill the IRC §6035 reporting obligations to the IRS and the beneficiaries of estates. On January 6, 2016, the Treasury Department released Instructions for Form 8971 and Schedule A (hereinafter referred to as the "Instructions").

On August 21, 2015 the IRS issued Notice 2015-57, which announced that the due date for any Form 8971 and Schedule A required to be filed with the IRS or furnished to a beneficiary before February 29, 2016 is extended to February 29, 2016 "in order to allow the Treasury Department and IRS to issue guidance implementing the reporting requirements of section 6035." Notice 2015-57 further announced that the Treasury Department and the IRS expect to issue additional guidance to assist taxpayers in complying with IRC §1014(f) and IRC §6035. The Treasury Department and the IRS invited comments to IRC §1014(f), IRC §6035, and the draft Form 8971, Schedule A, and Instructions.

ACTEC hereby submits the following comments and suggestions to clarify various areas of uncertainty and to suggest guidance in connection with Form 8971 and Schedule A. ACTEC believes that the Treasury Department and the IRS should adopt rules to make the

new information reporting obligations imposed on fiduciaries administrable, understandable, and as consistent as possible with other fiduciary obligations.

Proposed Limits on Scope of Form 8971 and Schedule A. IRC §6035(a) requires that the executor or other person required to furnish the statement provide "to the Secretary and to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe." Guidance is needed to determine the scope of the information required to be identified on Form 8971 and Schedule A.

In the situation in which a specific asset has been distributed to a beneficiary from the decedent's estate prior to furnishing Form 8971 and Schedule A, the value of that asset as reported on the decedent's estate tax return will be easily determined in most cases and can be identified as such. However, the "value" as reported on the decedent's estate tax return will not necessarily be the basis of the asset in the hands of the beneficiary. Adjustments are made to basis following death but prior to distribution to a beneficiary for a variety of reasons (such as, for example, depreciation with respect to the property and estate funding decisions). We believe that to be in compliance with the provisions of IRC §6035, the executor[1] or other person required to furnish Schedule A must identify only the value of the asset as reported on the estate tax return for purposes of IRC §6035. IRC §6034A(a) currently requires the fiduciary of an estate or trust required to file an income tax return for any taxable year to furnish each beneficiary who receives a distribution from the estate or trust, or to whom income is allocated, a statement containing such information as the Secretary may prescribe. IRC §6034A(c) requires any beneficiary who reports items in a manner inconsistent with the treatment on the estate or trust's return to notify the Secretary of any inconsistent treatment. IRC §6034A provides ample authority for the reporting of basis or other relevant tax information. In addition, the executor may provide additional information to the beneficiary with respect to any items that affect basis subsequent to the decedent's date of death to fulfill certain fiduciary duties or for other reasons. Therefore, we do not believe that reporting basis or post-death basis adjustments is or should be a requirement under IRC §6035. We respectfully request confirmation that only the value as reported on the estate tax return is required to be identified on Schedule A. However, as discussed below in the section "**Treatment of Basis Adjustment Events**," to facilitate reporting by fiduciaries to beneficiaries, we request that Schedule A include a section in which the executor may, but is not required to, report any post-death basis adjustments that have occurred as of the time Schedule A is furnished to a beneficiary.

In all other situations in which a beneficiary has not yet received a specific asset in satisfaction of the beneficiary's interest in the decedent's estate prior to furnishing Form 8971 and Schedule A, it may be impossible to know with certainty which assets will be distributed to such beneficiary. This situation commonly occurs with formula bequests, residuary gifts, and pecuniary gifts that can be satisfied with cash or property at the discretion of the executor.

[1] The person required to file Form 8971 and Schedule A may be an executor, a trustee, or any other person in possession of assets included in the taxable estate of the decedent. For purposes of these comments, "executor" will be deemed to include any person required to file Form 8971 and Schedule A unless specifically indicated to the contrary.

The Instructions to Form 8971 and Schedule A provide "All property acquired (or expected to be acquired) by a beneficiary must be listed on that beneficiary's Schedule A. If the executor has not determined which beneficiary is to receive an item of property as of the due date of the Form 8971 and Schedule(s) A, the executor must list all items of property that could be used, in whole or in part, to fund the beneficiary's distribution on that beneficiary's Schedule A. (This means that the same property may be reflected on more than one Schedule A.)" We believe that in some circumstances this approach may cause confusion and would result in significant additional administrative time and expense being incurred. Accordingly, we believe the executor should be given an option to utilize the method set forth in the Instructions or the alternative method discussed below.

Providing Schedule A to a beneficiary listing all items of property that could be used to fund the beneficiary's distribution, when the beneficiary will not, in fact, receive all of such assets (even when the listing states that the beneficiary's distribution will be funded in whole or in part with the listed assets), can result in a beneficiary believing he or she will be entitled to all of such assets. Schedule A does not provide a place for the executor to notify such a beneficiary that the assets reported on the Schedule as property in which the beneficiary has acquired an interest includes assets (and potentially a significant number of assets) that the beneficiary will not receive. Moreover, we believe that the confusion will be increased by the portion of Schedule A titled "Notice to Beneficiaries" which states "[y]ou have received this schedule to inform you of the value of property you received from the estate of the decedent named above" (emphasis added). (See further discussion below in the section entitled "'**Notice to Beneficiaries' on Schedule A**.")

If no assets are distributed in satisfaction of a beneficiary's interest in the decedent's estate prior to furnishing Form 8971 and Schedule A, then the specific interest in the property of the decedent's estate acquired at that point in time is a general claim equal to the value of the assets allocable to the beneficiary. It may be many months or years before the executor determines with certainty the specific assets that will be distributed to specific beneficiaries, or before there is an actual distribution of assets to a beneficiary in satisfaction of his, her or its interest in the estate. We believe that to be in compliance with the provisions of IRC §6035, in these situations, the executor should be permitted to identify on a Schedule A to be provided to a beneficiary only the value as reported on the estate tax return without providing asset information at the time Schedule A is furnished. The executor should only be required to furnish to each beneficiary a Schedule A showing the dollar amount of that beneficiary's interest in the property of the estate as one item, rather than an asset-by-asset listing of the property of the estate that may or may not be received by that beneficiary (referred to as the "alternative method"). In connection with this alternative method, we request that Schedule A include a section for the executor to indicate that the specific items of property in which the beneficiary has acquired an interest have not been determined as of the due date of Form 8971 and Schedule A. Furthermore, we recommend that if the alternative method is selected, when the executor later distributes assets to the beneficiary, for any assets distributed to a beneficiary that were listed on the estate tax return, the executor would be required within 30 days of making the distribution to file a supplemental Form 8971 and Schedule A providing the asset information and value of the property as shown on the return.

Following is an example of the application of the initial reporting by the executor if the alternative method is chosen:

Decedent's Estate with a value of $10 million is allocated under her will as follows: outright devise of House (reported with a value of $2 million on the estate tax return) to Beneficiary H, formula bequest of $5 million to Trust A, and residuary bequest of $3 million to Trust B. As of the date of the filing of the estate tax return, House has been distributed to Beneficiary H, but no other distributions have been made. Schedule A to Beneficiary H would include the $2 million value of House as reported on the estate tax return. Schedule A to Trustee of Trust A would include a description of the property of the estate in which it has acquired an interest as "$5 million in cash or property (unfunded)." Schedule A to Trustee of Trust B would include a description of the property of the estate in which it has acquired an interest as "$3 million in cash or property (unfunded)." Within 30 days after assets are distributed to Trust A and Trust B, the executor would be required to file a supplemental Form 8971 and Schedules A with the IRS and provide a supplemental Schedule A to the trustees of Trust A and Trust B.

If the executor chooses to use the method provided for in the Instructions, the executor would not be required to later file a supplemental Form 8971 and Schedule A. Rather, as the Instructions state, if the executor has not determined which beneficiary is to receive an item of property at the due date of Form 8971 and Schedule A, "[a] supplemental Form 8971 and corresponding Schedule(s) A should be filed once the distribution to each such beneficiary has been made." We respectfully request confirmation that an executor who chooses to report assets not yet distributed in accordance with the method provided for in the Instructions will have no further reporting obligations.

Treatment of Basis Adjustment Events.

Basis Adjustment Events Subsequent to Decedent's Date of Death. IRC §1014(f)(1) provides that the basis of certain property acquired from a decedent, as determined under IRC §1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on Schedule A. However, the basis of an asset is often adjusted during an owner's holding period for a variety of reasons (*e.g.*, partnership distributions that decrease basis and capital improvements that increase basis). Clarification is needed in the regulations or in the Instructions to confirm that although the value reported on a federal estate tax return and then subsequently on Schedule A sets a limit on the basis a beneficiary can use for an inherited asset as of the date of death of the decedent, any and all adjustments subsequent to the date of death of the decedent can and will adjust the basis in the inherited asset subsequent to such date, as permitted or required under other provisions of the IRC. In order to avoid confusion to any beneficiary, we also request that Schedule A advise the beneficiary that adjustments may have been made to the basis of the property the beneficiary has received and that the value reported on Schedule A is the value of the property as reported on the decedent's estate tax return and does not include any post-death adjustments that may affect basis in the hands of the beneficiary, except as discussed below with respect to an executor's discretionary funding decisions.

Basis Adjustments Due to Discretionary Funding. In certain circumstances the executor of an estate may be given the discretion to fund a specific gift with cash or other property or may be given the discretion to fund a cash gift with property. In those situations, the funding determination made by the executor could result in recognition of gain or loss by the estate due to the nature of the funding. For example, an executor may satisfy a bequest of $10,000 in cash with shares of publicly traded stock equal in value to $10,000 that have a

basis in the estate of $7,000. In that case, the estate would be required to report a gain of $3,000 on the funding for income tax purposes and the basis in those shares that the beneficiary receives would be $10,000. See Rev. Rul. 74-178, C.B. 196; Treas. Reg. §1.1014-4(a)(3). If the executor reports the "value" of those shares as reported on the estate tax return on Schedule A as $7,000, this may create confusion for the beneficiary with respect to his, her, or its basis for income tax purposes. To avoid confusion in these types of discretionary funding situations, we respectfully request that Schedule A include a section in which the executor may, but is not required to, report any post-death basis adjustments that have occurred as of the time Schedule A is furnished to the beneficiary.

Circumstances in Which No Reporting Requirement Exists.

Clarification of Returns "Required" to be Filed. IRC §6035 applies to "[t]he executor of any estate required to file a return under section §6018(a)." The Treasury Department and the IRS should clarify that the term "any estate required to file a return under section 6018(a)" applies only to estates where the gross estate of the decedent exceeds the basic exclusion amount in effect under IRC §2010(c) (adjusted for prior taxable gifts as provided in IRC §6018(a)(3)). It should not apply when an estate tax return is filed solely at the discretion of the executor, including situations in which a return is filed in order to elect portability. Without this guidance, confusion may arise for executors filing returns solely to make a portability election because the "portability regulations" under IRC §2010 (Treas. Reg. §20.2010-2(a)(1)) provide a due date for an estate tax return to elect portability for a return that is not otherwise required to be filed pursuant to IRC §6018 (nine months after death). These regulations provide that an estate that elects portability will be considered to be required to file a return under IRC §6018(a). In addition, for an estate where the value of the gross estate is less than the basic exclusion amount, an executor might file an estate tax return in order to begin the statute of limitations period under IRC §6501 (*e.g.*, the value of the gross estate may be near but not more than the basic exclusion amount and the executor elects to file the return as a precautionary measure). The Instructions provide that if an executor is not required to file an estate tax return but does so for the "sole purpose of making an allocation or election respecting the generation-skipping transfer tax" that there is no Form 8971 or Schedule A filing requirement. Likewise, we believe that the Treasury Department and the IRS should specifically provide that IRC §6035 does not apply when an executor who is not otherwise required to file an estate tax return pursuant to IRC §6018 files an estate tax return for the purpose of making the IRC §2010 portability election or for the purpose of starting the statute of limitations period under IRC §6501(a).

Application of IRC §6035 to Property with Regard to which No Estate Tax Return Is Required To Be Filed. IRC §6035(b)(1) provides that the Secretary may issue regulations: "as necessary to carry out this section, including regulations relating to—(1) the application of this section to property with regard to which no estate tax return is required to be filed."

Clarification is needed as to what "property with regard to which no estate tax return is required to be filed" means. Although the statutory language appears to give the Secretary broad authority to require executors of estates in which no estate tax return is required to be filed to furnish a Form 8971 and Schedule A, we do not believe that this regulatory authority was meant to expand the express language of IRC §6035 to require executors of estates that are not required to file an estate tax return pursuant to IRC §6018 to furnish Form 8971 and Schedule A. We request clarification that not every decedent's estate (whether or not an estate tax return is required to be filed pursuant to IRC §6018) needs to furnish Form 8971 and Schedule A.

Property for which There is no Basis Adjustment upon a Decedent's Date of Death. Pursuant to IRC §1014(a), the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent is, unless otherwise provided in IRC §1014, the fair market value of the property at the date of the decedent's death. (In the case of an election under IRC §2032, the beneficiary's basis is its value at the applicable valuation date prescribed by those sections; in the case of an election under IRC §2032A, the beneficiary's basis is its value determined under such section; and to the extent of the applicability of the exclusion described in IRC §2031(c), the beneficiary's basis is the basis in the hands of the decedent.)

IRC §1014(c) provides that the basis adjustment provisions of IRC §1014 do not apply to items of income in respect of a decedent ("IRD") under IRC §691.

IRC §6035 regulations, or other guidance including the Instructions, should provide that Form 8971 and Schedule A is required to be furnished only to beneficiaries who receive assets that have a basis determined pursuant to IRC §1014(a). No Form 8971 and Schedule A should be required with regard to assets includible in a decedent's gross estate for estate tax purposes if the assets a beneficiary receives do not receive a basis adjustment under IRC §1014(a). Such assets include cash, any income in respect of a decedent under IRC §691, proceeds of life insurance includible in the decedent's gross estate, and similar items. Providing a Form 8971 and Schedule A with respect to assets that do not receive a basis adjustment pursuant to IRC §1014(a) would be of no use to the IRS or to the beneficiary receiving such assets. Doing so would be burdensome to the estate, resulting in additional unnecessary expense to the estate, and would create unnecessary work for the IRS and the Treasury Department. Moreover, providing a Form 8971 and Schedule A to such beneficiaries could be confusing to the beneficiaries, who may assume, incorrectly, that the Schedule A that reports the value of the assets for estate tax purposes also establishes a basis in the assets received by the beneficiaries.

If the IRS and the Treasury Department determine that Schedule A should nonetheless be required for items of cash, IRD, and similar items, Schedule A or the Instructions thereto should specifically include a provision that explains to the beneficiary receiving the Schedule A that an IRD asset received is reported at its value for estate tax purposes but that the value so reported does not establish the beneficiary's basis in the asset for income tax purposes.

Non-Resident Alien Estate Tax Returns. Guidance is needed to determine the extent to which an estate tax return filed by a non-resident alien is subject to IRC §6035. When a United States estate tax return is filed by a non-resident alien, non-US situs assets are often listed on the estate tax return, as may be required for treaty reasons or to claim deductions. We respectfully request a clarification that in these circumstances the executor is required to furnish the Form 8971 and Schedule A solely with respect to property subject to United States estate tax as that is the only property included in the decedent's gross estate for federal estate tax purposes.

Guidance on Who Must Furnish the Form 8971 and Schedule A.

The IRS and the Treasury Department should include in any guidance a definition of "executor." We recommend that the term be defined to be consistent with IRC §2203 whereby if there is a court-appointed executor or administrator, then that person is the

executor. However, if there is no court-appointed executor, then the "executor" is the person in actual or constructive possession of any property of the decedent, and thus there can be multiple "executors" required to furnish Form 8971 and Schedule(s) A if multiple persons are in possession of a decedent's property. If there are multiple executors, then each executor should only be responsible to provide a Form 8971 and Schedule A for property under his, her, or its control.

If an executor is unable to make a complete Form 8971 because the executor knows there is property that the executor is unable to specifically identify for purposes of completing Schedule(s) A (and for which a return under IRC §6018(b) will be required), such executor should include in the Form 8971 and Schedule(s) A a notification that the Schedule(s) A do not include all property of the estate. In addition, if property is to be reported on a Schedule A but such property is not within the control of an executor, that executor should be required to disclose that property (so far as known by the executor) on an attachment to its Form 8971. Unfortunately, the Instructions do not address these concerns. Instead, the Instructions state that a form with an answer of "unknown" or similar language will not be a complete return. Clarification should be provided for situations in which the executor cannot obtain such information. In such situations, the reasonable cause exception discussed in the Instructions should apply to the executor so that no penalties will be incurred.

If the executor is unable to file a complete Form 8971 and Schedule A as to a person acquiring an interest in property of the estate, such executor should include on the Schedule A furnished to that person and to the IRS a statement that the Schedule A does not include all required information and indicate who has the relevant information (so far as is known to the executor).

The Instructions provide that all executors are liable for the information on Form 8971 and Schedule(s) A and are liable for all applicable penalties. If there are multiple executors that require multiple Forms 8971 and accompanying Schedule(s) A to be filed, such as in the case of a return required under IRC §6018(a) and §6018(b), each executor is responsible for only the return he, she, or it is required to file and should not be subject to penalties for mistakes in or failure to file a Form 8971 and Schedule(s) A that are the responsibility of any other executor. We respectfully request clarification in the final instructions for Form 8971 and the regulations to this effect.

Guidance on to Whom the Form 8971 and Schedule A Must be Furnished.

Background. IRC §6035(a)(1) references IRC §6018(a) and states that the executor must furnish Form 8971 and Schedule A to "the Secretary and to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes...." IRC §6035(a)(2) references IRC §6018(b) and states that each person required to file a return under IRC §6018(b) is required to furnish Form 8971 and Schedule A to the Secretary and "each other person who holds a legal or beneficial interest in the property to which such return relates...."

Guidance is needed with respect to the meaning of "each person acquiring any interest in property included in the decedent's gross estate" and "each other person who holds a legal or beneficial interest in the property to which such return relates." Specifically, as noted below, the terms "any interest" and "a legal or beneficial interest" should be narrowly construed in the cases where the interest acquired is acquired by a trust, or the interest is a life estate or term-of-years.

Trusts. The statutory language is potentially ambiguous with regard to bequests or devises to a trustee of a trust for the benefit of other persons. Whether the trust is created *inter vivos* or under the decedent's Will, the trustee of the trust holds the legal ownership of the trust assets, but the trust's beneficiaries hold a beneficial interest in the trust property.

IRC §6035(a)(1) refers to "each person acquiring any interest in property" and IRC §6035(a)(2) refers to "persons who hold a legal or beneficial interest in the property." Neither provision, however, clearly identifies what is meant by "the property." A beneficiary of a testamentary or *inter vivos* trust has a beneficial interest only in what the trustee holds. Arguably, the beneficiaries of the trust do not have an interest or a beneficial interest "in the property" of the decedent's estate. The most logical and practical approach is to treat the trustee as the only person to whom Schedule A must be furnished. We believe that this approach is best for several reasons.

First, the trustee will be the person required to file a federal income tax return reporting any gain on the sale or exchange of the assets that were includible in the decedent's gross estate. The beneficiaries of the trust (unless the trust is taxable under IRC §678) do not usually report these gains on their personal income tax returns. If gain on the sale of trust property is included in the trust's distributable net income as provided in IRC §643 and reportable by the beneficiary pursuant to IRC §652 or §662 (and deductible by the trust pursuant to the IRC §651 or §661 income distribution deduction), the trustee is still the person who reports the sale on the trust's income tax return, with the beneficiary receiving a Schedule K-1 showing any capital gain the beneficiary must report pursuant to IRC §652 or §662. Thus, basis is important to the trustee, rather than to the beneficiaries. A reasonable exception could be made when the executor knows that the trust is deemed owned by a beneficiary under IRC §678.

Second, the executor often does not possess and cannot obtain information regarding the identity of the beneficiaries of an *inter vivos* trust to which some portion of the decedent's estate may be added. It would be unreasonable to hold the executor responsible for identifying these persons, when doing so may be beyond the executor's powers.

Third, the interests of trust beneficiaries are often difficult to ascertain, and giving Schedule A to all possible beneficiaries may create confusion and involve an unnecessary expenditure of an executor's time and of estate resources.

Fourth, it is often impossible to identify all of the members of a class of beneficiaries of a trust, either because the trustee has broad discretion to select the actual recipients of trust distributions (as where the trustee is authorized to make distributions to "any charity that is exempt from federal income taxes and to which deductible distributions may be made for federal income tax purposes"), or because a beneficiary holds a broad power of appointment over the trust assets. In such situations, requiring the executor to identify all of the persons who hold a beneficial interest in a trust would be unreasonable.

If an executor is required to give notice to the beneficiaries of a recipient trust, guidance is requested as to whom Schedule A should be provided for these purposes. For example, if there are any unborn or unascertainable beneficiaries who may later become beneficiaries of the trust (*e.g.,* a trust for all of the settlor's descendants, or a trust to child 1 for life and then upon child 1's death to the child's then living descendants), guidance is needed to identify all of the required recipients of Schedule A.

Subtrusts. If an estate consists of assets that pass ("pour over") to a trust, or an existing trust has assets on the date of the decedent's death that are includible in the decedent's gross estate for federal estate tax purposes and those assets pass to a subtrust created thereunder (*e.g.*, a Family Trust or Marital Trust), guidance is requested as to whether Schedule A should be furnished by the executor to only the trustee of the "master" trust or must it be furnished to the trustee of the subtrust(s). We recommend that executors of estates that pour over to one master trust that will later be distributed to one or more subtrusts be required to provide Schedule A only to the trustee of the master trust. Similarly, when assets of an existing trust are includible in a decedent's gross estate for federal estate tax purposes by reason of IRC §2036, §2038 or §2044, we recommend that the executor of such estates be required to provide Schedule A only to the trustee of the existing trust. Furthermore, where the trustee of an existing trust includible in a decedent's gross estate under IRC §2036, §2038 or §2044 is the person required to file a return under IRC §6018(b), we recommend that Schedule A be furnished only to the beneficiaries of the existing trust if the existing trust makes outright distributions to the beneficiaries. If the existing trust makes distributions to a subtrust, then Schedule A should be furnished to the trustee of the subtrust.

Confirmation is needed that if Schedule A is required to be provided to the trustee of the "master trust," then no supplemental Form 8971 and Schedule A needs to be filed with the IRS or provided to the beneficiaries of the master trust when the subtrusts are funded. This burden should not be on the executor as the executor may be different than the trustee and may not know or even be entitled to know when the funding of the subtrusts occurs.

Term Interest and Remainder Interests. Assets may be left to one person for life or for a term of years, with the remainder then passing to another person. It is unclear to whom IRC §6035(a) requires the executor to give information in such cases.

The most logical approach would be to require the executor to give Schedule A to the life tenant (or other term interest holder), because he or she will be required to file an income tax return reporting any gain or loss on a sale of the property. In Rev. Rul. 61-102, 1961-1 CB 245, the IRS stated that a taxpayer who has the power to sell property in which he or she has a life interest, but who is required under the terms of the Will creating the life interest, to reinvest and conserve the proceeds of such a sale for future distribution to the remainderpersons, is considered, for federal income tax purposes, as acting in a fiduciary capacity with respect to the proceeds of any such sale. A taxpayer who sells property under such circumstances must report any gain from the sale on a U.S. Income Tax Return for Estates and Trusts (IRS Form 1041), and pay the tax due thereon. See also *United States v. DeBonchamps*, 278 F.2d 127 (9th Cir. 1960); *Robinson v. United States*, 192 F.Supp. 253 (N.D. Ga. 1961).

Some courts have held that gain on the sale of property held in a life estate with remainder to another person is the personal obligation of the life tenant, reportable on his or her personal federal income tax return (IRS Form 1040). This result appears to arise only if the life tenant has an unrestricted power to consume the sales proceeds. See *Hirschmann v. United States,* 309 F.2d 104 (2d Cir. 1962); *West v. United States*, 310 F. Supp. 1289 (N.D. Ga. 1970); but cf. *Gaskill v. United States*, 188 F.Supp. 507 (N.D. Tex. 1960) (gain taxable to bank that was, as part of the overall transaction, named to hold and invest the sales proceeds that the life tenant turned over). Even in those situations, however, the life tenant is still required to file the income tax return reporting the sale, and so he or she

remains the person most interested in the basis of the property. For these reasons, we respectfully request that the Treasury Department and the IRS provide that the executor is only required to give Schedule A to the life tenant (or other term interest holder) in these circumstances.

Alternatively, if the IRS requires that Schedule A be furnished to both the life tenant (or other term interest holder) and the remainderpersons, we request clarification that the executor need only give Schedule A to those persons who would be the remainderpersons if the life tenant (or other term interest holder) died immediately after the decedent (the "presumptive remainder beneficiaries"). Any other requirement could result in the executor being required to furnish Schedule A to a very large class of potential remainderpersons, in many cases, many of whom likely will never receive any interest in the property itself.

Whether or Not Subject to the Basis Consistency Rules of IRC §1014(f). IRC §1014(f)(2) provides that the basis consistency provisions of IRC §1014(f)(1) only apply to property whose inclusion in the decedent's estate increased the estate tax liability for the estate. However, IRC §6035 has no such restriction, and Form 8971 and Schedule(s) A are to be furnished to the IRS and Schedule A is to be furnished to each beneficiary acquiring an interest in property included in the decedent's gross estate for federal estate tax purposes. We note that Schedule A of draft Form 8971 includes a column to indicate if an asset increased estate tax liability, which appears to be included to indicate whether an asset is subject to the basis consistency rules of IRC §1014(f). Guidance is needed with respect to the meaning of "property whose inclusion in the decedent's estate increased the estate tax liability for the estate", which is not defined in the statute, Form 8971 (Schedule A, column c) or the Instructions. It appears that every asset includible in an estate subject to the IRC §6018 filing requirement where any estate tax is due, unless specifically passing in a manner qualifying for the marital deduction pursuant to IRC §2056 or charitable deduction pursuant to IRC §2055, would increase the estate tax liability for the estate, including assets passing in a manner shielded from estate tax by the decedent's applicable exclusion amount. We also respectfully request that the Treasury Department and the IRS consider providing that because assets passing in a manner qualifying for the estate tax marital deduction pursuant to IRC §2056 and the charitable deduction pursuant to IRC §2055 are not subject to the IRC §1014(f) basis consistency provisions, no Form 8971 and Schedule(s) A need to be furnished by the executor to the IRS and no Schedule A needs to be furnished to such beneficiaries with respect to such assets. We believe that this is consistent with the intent of IRC §1014. Requiring the executor to provide such information when the beneficiary will not be subject to the provisions of IRC §1014 will unnecessarily involve a substantial expenditure of an executor's time and of estate resources. Should the Treasury Department and the IRS determine that reporting of each asset distributed to a beneficiary is required, whether or not the asset increased estate tax liability, then we respectfully request that additional guidance be given in connection with Form 8971 as to the types of items that do not increase estate tax liability and the effect of this designation pursuant to IRC §1014(f) on the recipient of the Schedule A.

Survivorship Requirements. The executor must furnish Schedule A to the person(s) acquiring an interest in specifically bequeathed or devised property. Often, however, a will or trust requires that an individual survive the decedent by a stated period in order to receive a bequest or devise (the "Determination Period"). Where this period is relatively long, the executor may not be able to identify the person who is acquiring an interest in the specific property on the date that Schedule A is to be furnished.

If the Determination Period extends beyond the due date of the federal estate tax return, the executor should be permitted to give the Schedule A to whomever would be entitled to receive the property on the date that the federal estate tax return is filed, without regard to whether that person is also alive on the expiration of the survivorship period. Requiring that notice be given to both the current and the contingent alternate beneficiaries would lead to confusion on the part of individuals who are receiving information regarding the value of property that they may never receive.

Death of Beneficiary. If a person acquiring an interest in a decedent's property dies after the decedent but before the furnishing of the Schedule A, guidance is needed to determine to whom the Schedule A is to be furnished. If there is a probate proceeding then pending for the deceased beneficiary, we recommend that the proper party should be the deceased beneficiary's court-appointed executor or personal representative. However, if no probate proceeding is then pending for the deceased beneficiary and if the executor of the decedent's estate in question does not know who will be acquiring an interest in the property, we respectfully request that the executor be required only to provide Schedule A to the IRS under these circumstances, or, alternatively that the executor be permitted to furnish Schedule A to the deceased beneficiary at his or her last known address (but if the executor after due diligence cannot ascertain any last known address for the deceased beneficiary, then the executor should only be required to file Form 8971 and Schedule A with the IRS). As noted above, the Instructions state that if either Form 8971 or Schedule A state that the address of the beneficiary is "unknown," the return will not be a complete return and penalties may be incurred. We respectfully request additional guidance to address situations in which the executor acted in a responsible manner and took steps to obtain the missing information but was unable to do so.

Missing Beneficiaries/Uncooperative Beneficiaries. In certain circumstances, the executor may not be able to obtain information from a beneficiary. For example, a beneficiary may be uncooperative and refuse to provide his, her, or its taxpayer identification number ("TIN") prior to the due date of Form 8971 and Schedule A, and the executor has no authority to compel the disclosure. In addition, if the beneficiary is a trust and the trustee of such trust has not yet obtained a TIN (as when a trust has not been funded and has no income or deductions to report for federal income tax purposes), or if the beneficiary does not have a TIN (because he or she is not a U.S. citizen), there may not be a TIN at the due date of Form 8971 and Schedule A. The Instructions state that a form with an answer of "unknown" or similar language will not be a complete return. In the case of a TIN, the Instructions provide that a TIN (or presumably the lack thereof) is an error or omission that is never inconsequential. The Instructions impose an impossible burden on the executor in these circumstances and are unreasonable. We believe that if an executor, after reasonable due diligence, cannot obtain the address or taxpayer identification number for a beneficiary that the executor should be allowed to answer "unknown", similar to how the Form 706 instructions for Part 4, Line 5 provide "[e]nter the SSN of each individual beneficiary listed. If the number is unknown, or the individual has no number, please indicate 'unknown' or 'none.' Guidance is needed to determine how Form 8971 and Schedule A can be completed in these circumstances. We respectfully request that the executor be required only to provide Form 8971 and Schedule A to the IRS under these circumstances. Form 8971 and Schedule A could include a section for the executor to indicate that some or all of the information is unavailable, and to provide all of the information then available to the executor that may be helpful to identify the beneficiary for whom such information is unavailable or nonexistent. We respectfully request that guidance be given that confirms that providing information in this manner will satisfy the

reporting requirements applicable to the executor under IRC §6035 and will fall under the reasonable cause exception to the penalties imposed for failure to file Form 8971 and Schedule(s) A and for failing to provide Schedules A to beneficiaries.

If the decedent's testamentary document is being contested and it is unknown as of the due date of the filing of Form 8971 and Schedule A who is entitled to acquire an interest in the decedent's property, guidance is needed to determine who should receive Schedule(s) A. Similarly, if the decedent died intestate and there is pending litigation over who the decedent's heirs are as of the due date of the filing of the Form 8971 and Schedule A, guidance is needed to determine who should receive Schedule(s) A. We respectfully request that the executor be required only to provide Form 8971 and Schedule A to the IRS under these circumstances. Form 8971 and Schedule A could include a section for the executor to indicate that the identity of the persons acquiring an interest in the decedent's property are unknown due to pending litigation. Once the identities of the actual recipients are determined, the executor would then furnish Schedule A to those recipients within the time period required for adjustments under IRC §6035(a)(3)(B). Similarly, if the decedent's ownership of property is the subject of dispute, guidance is needed to determine how to indicate that the executor is unable to ascertain the precise nature of the decedent's property interests. Form 8971 and Schedule A could include a section for the executor to indicate that the decedent's interest in the property is subject to dispute. We respectfully request that guidance be given that confirms that providing information in this manner will satisfy the reporting requirements applicable to the executor under IRC §6035 and will fall under the reasonable cause exception to the penalties imposed for failure to file Form 8971 and Schedule(s) A and for failing to provide Schedules A to beneficiaries.

Supplemental Forms 8971 and Schedule(s) A. IRC §6035(a)(3)(B) provides that "in any case in which there is an adjustment to the information required to be included on a statement filed under paragraph (1) or (2) after such statement has been filed, a supplemental statement under such paragraph shall be filed not later than the date which is 30 days after such adjustment is made."

"Adjustment." Clarification is needed as to the meaning of the term "adjustment." The term should generally be limited to adjustments to the value of property as reported on the federal estate tax return, and adjustments arising from the inclusion of interests in property in the decedent's gross estate that were not reported on the federal estate tax return.

The phrase "an adjustment to the information required to be included on a statement..." should be clarified to include an adjustment to the value of an asset reported on the estate tax return which is agreed to by the executor and the IRS (*i.e.*, changed by audit of the estate tax return) and an adjustment of the value of an asset reported on the estate tax return by court order. In addition, if the executor files a supplemental estate tax return valuing an asset at a value different than the value reported on the estate tax return, then the change should be included within the definition of "adjustment." Similarly, if the executor files a supplemental estate tax return that includes assets that were not reported on the estate tax return, the addition of such assets should be included within the definition of "adjustment."

As previously discussed, other than elections that affect the estate tax return value of an asset (*e.g.*, the alternate valuation election pursuant to IRC §2032, the special use election pursuant to IRC §2032A, and similar elections), we do not believe that actions taken by the executor or others during the administration of the estate that affect the basis of an asset,

(including, but not limited to an estate electing to realize gain under IRC §643(e)) should be "adjustments," nor should other matters that affect basis that occur during administration (*i.e.,* depreciation, partnership income/loss that affects basis, additions or improvements made to rental, investment or other property, stock splits or spin-offs that require a basis allocation different from the value originally reported on the estate tax return, and other similar items) be considered an "adjustment." Similarly, we do not believe that a basis adjustment made pursuant to IRC §469(j)(12) (providing that when a passive activity is distributed out of an estate any suspended passive losses are added to increase the basis of the interest) should be considered an "adjustment" for purposes of IRC §6035.

Furthermore, for basis adjustments due to discretionary funding decisions by the executor *(e.g.,* when an executor funds a bequest by distributing appreciated assets in-kind to a beneficiary that increase basis from the date-of-death value to include the gain recognized by the estate on funding such bequest), such increase should not be considered an "adjustment" for purposes of IRC §6035. Instead, Schedule A should include a section where the executor reports the estate tax return value and also permits, but does not require, the executor to report any post-death basis adjustments due to the executor's discretionary funding decisions that have occurred by the time Form 8971, Schedule A is furnished.

When a Supplemental Form 8971 and Schedule A is Due. IRC §6035(a)(3)(B) provides that a supplemental Form 8971 and Schedule A is required to be filed not later than the date which is 30 days after an adjustment is made. Clarification of when an "adjustment" occurs for purposes of §6035(a)(3)(B) is needed, as that will affect the due date of the supplemental Form 8971 and Schedule A. In the case of an agreement between the executor and the IRS, it is not clear if the adjustment occurs on the date the closing agreement is signed or on the date the IRS issues a closing letter for purposes of IRC §6035. We recommend that the date on which the closing agreement is signed be considered the date of the adjustment. Guidance is also needed when there is litigation over whether an asset is includible in an estate or with regard to the valuation of an asset. We respectfully request that the date of an adjustment resulting from litigation be the date on which the order of the court or an agreement between the parties becomes final and binding on the parties and is no longer subject to appeal by any party to the litigation.

Treatment of Special Property.

Community Property.

Pursuant to IRC §1014(a) and §1014(b)(6), upon the death of a married decedent, a basis adjustment is made to both the decedent's one-half share of community property and the surviving spouse's one-half share of community property if at least one-half of the entire community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (IRC §2001 et. seq.).

In preparing the decedent's estate tax return, the executor may report only the decedent's one-half interest in the community property, or may report all of the community property and then subtract the value of the surviving spouse's interest in such property. The decedent's gross estate for federal estate tax purposes, however, only includes the decedent's one-half interest in community property.

The plain language of IRC §6035 provides that the property to which Form 8971 and Schedule A applies is the property included in the decedent's gross estate for federal estate tax purposes. In addition, Schedule A is to be furnished to each person acquiring any interest in such property. Upon the decedent's death, the surviving spouse does not acquire any interest in the surviving spouse's share of community property; the surviving spouse already owns his or her interest. Therefore, clarification is needed to confirm that when a decedent owns an interest in community property, regardless of whether the decedent's estate tax return reports all of the community property, the only interest subject to the reporting requirements of IRC §6035 is the decedent's interest in the community property. Clarification is further needed to confirm that if the decedent transfers at death his or her interest in community property to a beneficiary other than the surviving spouse, the executor is not required to provide Schedule A to the surviving spouse with regard to the surviving spouse's retained interest in the community property because it was not included in the decedent's estate for estate tax purposes.

Additional guidance is needed with respect to funding following the closing of an estate that included community property as part of the gross estate. Situations may arise where the surviving spouse who owns an interest in community property receives other assets in lieu of his or her interest in the community property.

For example, the laws of the state in which the decedent resided or the decedent's testamentary documents may authorize a non pro rata division of the community property. In those circumstances, the executor may divide the property so that the surviving spouse receives all of one community property asset and a beneficiary (*e.g.*, a trust for the surviving spouse) receives all of another community property asset of equivalent value. As another example, community property may be titled in the name of one spouse or in the name of both spouses. If a community property asset is titled solely in the name of the decedent who purports to transfer the entire asset to a beneficiary other than the surviving spouse, the surviving spouse's community property interest in the transferred property may be satisfied with other assets of the decedent's estate.

In both of these examples, although the surviving spouse is entitled to his or her interest in the community property, he or she receives other assets in satisfaction of this interest. If the distributions of specific community property assets is determined before Form 8971 and Schedule A is required to be furnished, the executor should be required to identify the value of only the decedent's interest in the community property, and the person to whom that interest has been distributed. As further example, if the estate included the decedent's community one-half interest in stock and a residence, and if before Form 8971 and Schedule A is furnished, the executor determines to distribute both halves of the community property interest in the stock to the trustee of a bypass trust and both halves of the community property interest in the residence to the surviving spouse, then the executor should furnish a Schedule A to the trustee of the bypass trust identifying the value of the decedent's one-half interest in the stock and should furnish a Schedule A to the surviving spouse identifying the value of the decedent's one-half interest in the residence. However, if at the time that the Form 8971 and Schedule A is required to be furnished, no assets have been distributed in satisfaction of a beneficiary's interest in the decedent's interest in community property, then the specific interest in the property of the decedent's estate acquired at that point in time is a general claim equal to the value of the assets allocable to the beneficiary as reported on the estate tax return. In this latter situation, we believe that the duty of the executor or other person required to furnish Form 8971 and Schedule A is limited to identifying the value of the property as shown on the estate tax return, which will

be an amount equal to the beneficiary's interest in the estate property rather than an asset-by-asset listing. In addition, if the decedent's surviving spouse is not a beneficiary of the decedent's estate and does not acquire any interest in the decedent's property, the executor should not be required to provide Schedule A to the surviving spouse.

Tangible Personal Property.

If assets are valued on the estate tax return as a group (*e.g.*, personal effects or an art collection) rather than as individual items (*e.g.*, piano), and if the grouped items pass to more than one person (and not necessarily equally), clarification is needed as to how to identify and allocate the value of the property among the persons acquiring an interest in the property. As of the time for filing the estate tax return, the executor may not know what items of personal effects are passing to what particular beneficiaries when the personal effects pass to a group of beneficiaries (*e.g.*, personal effects "to be divided among them as they agree"). In *Janis v. Commissioner*, T.C. Memo 2004-117, *aff'd*, 461 F.3rd 1080 (9th Cir. 2006), the Court held that the discounted estate tax value of an art gallery (group) set the aggregate basis of the art works, which aggregate basis was then to be spread among the individual items. As beneficiaries may disagree as to the value of their share of tangible personal property, the executor should have the obligation to inform each beneficiary of that beneficiary's aggregate share of a "group value."

Where tangible personal property is identified and valued on an estate tax return as one or more "groups of items," we respectfully request that the executor be given the authority to allocate the value reported on the estate tax return among the group of items, on any reasonable basis, and if a beneficiary receives a group of items that the beneficiary be given the authority to further allocate the value so allocated by the executor to such items on any reasonable basis. In addition, we request that the Treasury Department and the IRS include in the section of Schedule A entitled "Notice to Beneficiaries" an instruction that the beneficiary may allocate the group value among the assets included in the group reported on Schedule A on any reasonable basis.

Any items of tangible personal property individually listed and valued on the estate tax return should also be individually listed on Schedule A. We respectfully request that the IRS adopt a *de minimis* rule providing that items of tangible personal property (excluding items individually listed on the estate tax return) aggregating $50,000 or less (which represents less than 1% of the basic exclusion amount) do not need to be included on Schedule A.

Penalties. Guidance should clarify that penalties for failure to file the Form 8971 and Schedule A with the IRS and the persons acquiring an interest in a decedent's property will only be assessed when the Form 8971 and Schedule A is not filed as required. The Treasury Department and the IRS should confirm that Form 8971 and Schedule A is per beneficiary and not per asset (as reflected in the draft Form 8971 and the Instructions), and that any penalty assessed is per beneficiary and not per asset. Guidance should provide how the executor can substantiate, consistent with the "reasonable cause" exception included in the Instructions, that penalties will not be assessed when an executor makes reasonable efforts to substantially comply with the requirements of IRC §6035 (*e.g.*, when the executor is unable to obtain information needed to specifically identify property, the executor is unable to obtain required information from a beneficiary, pending litigation prevents the executor from identifying the persons entitled to the decedent's property, and similar issues).

Overstatement Penalties for Beneficiary. IRC §1014(f) provides that the basis of any property to which IRC §1014(a) applies shall not exceed (A) in the case of property the final value of which has been determined for purposes of the tax imposed by chapter 11 on the estate of such decedent, such value, and (B) in the case of property not described in subparagraph (A) and with respect to which a statement has been furnished under IRC §6035(a) identifying the value of such property, such value. We believe Schedule A should inform the person receiving Schedule A that the basis in the asset received may not be "the value" of such property as reported on the Schedule A (or as finally determined), but that the basis of such property may be adjusted by reason of post-death adjustments as discussed above. Thus, if a beneficiary believes that an asset received was incorrectly overvalued on the estate tax return, the beneficiary still must determine the appropriate basis to claim. Pursuant to IRC §1014(f), that basis is limited to the value reported on Schedule A, as adjusted by reason of any post-death adjustments. The requirements under IRC §6034A(c) with regard to beneficiaries disclosing inconsistent positions are independent of, and in addition to, the requirements of IRC §1014(f) and IRC §6035.

Other Comments to Form 8971, Schedule A, and the Instructions.

Due Date for Furnishing Schedule A. Form 8971 provides that the executor must indicate the date of service of Schedule A. In addition, the Instructions provide that "[t]he executor of the estate . . . must certify on Form 8971 the date on which the Schedule A was provided to each [of the][2] beneficiaries." We believe that the terminology used in Form 8971 and the Instructions is unclear. Accordingly, we request that the Instructions be revised to clarify that date of mailing (or the date of sending by one of the other listed means), rather than the date of receipt, is the date to be used in determining if the executor timely provided Schedule A to the beneficiary. Likewise, we request that Form 8971 be revised so that Part II, Column D be revised to read "Date Provided to Beneficiary" rather than "Date of Service."

"Notice to Beneficiaries" on Schedule A. The "Notice to Beneficiaries" at the bottom of Schedule A provides that Schedule A is being provided to inform the beneficiary of "the value of property you received from the estate. . . ." This statement may not be accurate in every case and thus, may be misleading to the beneficiary. Pursuant to IRC §6035, Schedule A is to be provided to each person acquiring an interest in property of the estate and to identify the value of that interest as reported on the estate tax return. At the time of furnishing Schedule A to a beneficiary, no property may have been distributed to that beneficiary, and when property is distributed to a beneficiary, it may not be the property listed on Schedule A. We respectfully request that any notice to beneficiaries included on Schedule A be revised to reflect the nature of the information to be reported pursuant to IRC §6035. Accordingly, we request that the first sentence of the Notice to Beneficiaries on Schedule A be revised to read: "You have received this schedule to inform you of the value of the property described above, as reported on the estate tax return (or in the case of a supplemental schedule, as adjusted)."

Purpose of Form Statement. The Instructions provide that "[s]ome property received by a beneficiary may have a consistency requirement, meaning that the beneficiary must use the

[2] Bracketed language is missing in Schedule A.

value reported on Schedule A as the beneficiary's initial basis [of][3] the property." This statement is not consistent with IRC §1014 or IRC §6035. IRC §1014(f)(1)(B) provides that the basis of property shall not exceed the value of any property reported to a beneficiary on Schedule A. IRC §6035 is a value-reporting requirement, not a basis-reporting requirement. We respectfully request clarification in the final instructions for Form 8971 to accurately describe the scope of IRC §1014 and IRC §6035.

Respectfully Submitted,

Gregg M. Simon, Chair of the ACTEC Task Force
on comments to Notice 2015-57 / IRC §6035 and 1014(f)

[3] Bracketed language is missing in Instructions.