

The New Consistent Basis and Value Reporting Rules

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**INTRODUCTION**

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

- § 1014(f) (“basis consistency” requirement)
- § 6035 (reporting requirement)
- Failure-to-file penalties
- 20% underpayment penalty

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**WHY THE NEW RULE?**

**Congress’ Concern**

- Beneficiaries reporting inconsistent basis

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## WHY THE NEW RULE?

### EXAMPLE

- Mom dies and her executor reports Blackacre with a FMV of \$500,000 on her estate tax return.
- Daughter later sells Blackacre and reports that the basis to her, as provided by § 1014(a), is \$550,000.
- The IRS cannot increase Mom's estate tax because the statute of limitations is closed.

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## WHY THE NEW RULE?

### Congress' Concern

- Beneficiaries reporting inconsistent basis
- Require reporting of the basis of assets received by beneficiaries to the IRS
- Enactment of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015
- The Act added § 1014(f) and § 6035

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## WHY THE NEW RULE?

### Treasury's Response

- Notice 2015-57
- Preliminary draft of Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent
- Draft Instructions to Form 8971
- Notice 2016-19
- Proposed regulations
- Notice 2016-27

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**BASIS CONSISTENCY REQUIREMENTS UNDER § 1014(f)**

Section 1014(f) provides that the basis of property received from a decedent may not exceed the fair market value of the property as reported on the estate tax return if such value is "final," or, if such value is not final, then as reported on Form 8971.

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**BASIS CONSISTENCY REQUIREMENTS UNDER § 1014(f)**

- Only applies to assets that increased the estate tax owed by the estate
- Assets that qualify for the marital and charitable deduction are not subject to the basis consistency rules of § 1014(f)

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**BASIS CONSISTENCY REQUIREMENTS UNDER § 1014(f)**

- Before the enactment of § 1014(f), values reported on an estate tax return created only a rebuttable presumption for income tax basis
- Now, if § 1014(f) applies, the transferee of estate assets must accept the date-of-death fair market value reported by the executor for estate tax purposes

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**REPORTING REQUIREMENTS UNDER § 6035**

**General Rule**

- Section 6035 sets forth the reporting requirements
- In general, the executor of any estate that is required to file an estate tax return must prepare and file with the IRS a Form 8971 and a Schedule A for each beneficiary of the estate within 30 days following the due date of the estate tax return

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who Must File?**

- An executor of an estate (or any other person) that is required to file an estate tax return under § 6018 after July 31, 2015, must file the return and furnish the statements

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who Must File?**

- There is no requirement to file Form 8971 if the estate tax return is not required to be filed under § 6018 but is filed

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who Must File?**

- Examples in the regulations include:
  - Filing a return for a nontaxable estate to make a portability election;
  - Filing a return for a nontaxable estate to make a generation-skipping transfer tax election or exemption allocation; or
  - Filing a return for a nontaxable estate to avoid a potential penalty in cases where an increase in an asset value would result in a filing requirement.

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**REPORTING REQUIREMENTS UNDER § 6035**

**When to File?**

- The deadline for filing Form 8971 with the IRS and for furnishing its Schedule(s) A to the beneficiaries is the earlier of
  - 30 days after the due date (with extensions) of the estate tax return, or
  - 30 days after the return is actually filed

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**REPORTING REQUIREMENTS UNDER § 6035**

**When to File?**

- A supplemental report is generally due 30 days after the date on which the reason for the supplemental return is identified
- If a supplemental report is required with respect to an asset that has not yet been distributed to a beneficiary from the probate estate or revocable trust, that supplemental Form 8971 and Schedule A will not be due until 30 days after the assets is distributed to the beneficiary

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who to Furnish Statements To?**

- Each beneficiary who receives property that is included (or required to be included) on an estate tax return that is required to be filed is required to receive a Schedule A

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who to Furnish Statements To?**

- Even though the basis consistency rules do not apply to surviving spouses who receive property that qualifies for the marital deduction and to charitable organizations that receive property that qualifies for the charitable deduction, those individuals and organizations are not exempt from the reporting rules under § 6035

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who to Furnish Statements To?**

- If the executor is also a beneficiary of the estate, he or she is explicitly required to furnish Schedule A to himself or herself

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who to Furnish Statements To?**

- In cases of a life estate created under the estate, both the life tenant and the remainder beneficiaries must receive a Schedule A as to each of their respective interests

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**REPORTING REQUIREMENTS UNDER § 6035**

**Who to Furnish Statements To?**

- If the beneficiary is a trust, estate or entity, the executor must furnish the statement to the trustee and executor or entity, respectively

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**REPORTING REQUIREMENTS UNDER § 6035**

- What if the executor cannot locate the beneficiary? Or cannot determine the identity of the beneficiary?
- “[A]n executor must use reasonable due diligence to identify and locate all beneficiaries.”
- If unable to locate a beneficiary, the executor must provide all relevant details on Form 8971 and provide an explanation of the steps taken to locate the beneficiary.

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**REPORTING REQUIREMENTS UNDER § 6035**

**What is Reported?**

- For Schedules A, generally only the value of assets that
  - are reported on an estate tax return or are assets with a basis that is determined by reference to an asset reported on the estate tax return in whole or in part AND
  - are distributed (or are anticipated to be distributed) to a beneficiary are reported.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Exemptions from the Reporting Requirement:**

- Cash (other than a coin collection or other coins or bills with a numismatic value)

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**REPORTING REQUIREMENTS UNDER § 6035**

**What counts as cash?**

- Cash in decedent's wallet
- Bank accounts
- CDs
- Life insurance proceeds?
- Notes receivable?
- Accounts receivable?
- Tax refunds?

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**REPORTING REQUIREMENTS UNDER § 6035**

**Exemptions from the Reporting Requirement:**

- Cash (other than a coin collection or other coins or bills with a numismatic value)
- Income in Respect of Decedent

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**REPORTING REQUIREMENTS UNDER § 6035**

**Income in Respect of a Decedent:**

- Common examples:
  - IRAs
  - 401(k)s

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**REPORTING REQUIREMENTS UNDER § 6035**

**Income in Respect of a Decedent:**

- But what about:
  - IRAs and 401(k) accounts established with after-tax contributions?
  - Certain Roth IRAs and Roth 401(k) accounts?
  - Nonqualified annuities?
  - Installment notes with basis and unrecognized gain?
  - Interests in pass-through entities that hold inventory or unrealized receivables?

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**REPORTING REQUIREMENTS UNDER § 6035**

**Exemptions from the Reporting Requirement:**

- Cash (other than a coin collection or other coins or bills with a numismatic value)
- Income in Respect of Decedent
- Tangible Personal Property

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**REPORTING REQUIREMENTS UNDER § 6035**

**Tangible Personal Property**

Reg. § 20.2031-6(a) provides:  
...if there are included among the household and personal effects articles having marked artistic or intrinsic value of a total value in excess of **\$3,000** (e.g., jewelry, furs, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, coin or stamp collections), the appraisal of an expert or experts, under oath, shall be filed with the return...

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**REPORTING REQUIREMENTS UNDER § 6035**

**Tangible Personal Property**

**Prop. Reg. § 1.6035-1(b)(2), Example 1.**

- Included in D's gross estate are the contents of his residence.
- Pursuant to § 20.2031-6(a), the executor attaches to the return required by § 6018 filed for D's estate a room by room itemization of household and personal effects.
- All articles are named specifically.
- In each room a number of articles, none of which has a value in excess of \$100, are grouped.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Tangible Personal Property**

- A value is provided for each named article.
- Included in the household and personal effects are a painting, a rug, and a clock, each of which has a value in excess of \$3,000.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Tangible Personal Property**

- Pursuant to § 20.2031-6(b), the executor obtains an appraisal from a disinterested, competent appraiser(s) of recognized standing and ability, or a disinterested dealer(s) in the class of personalty involved for the painting, rug, and clock.
- The executor attaches these appraisals to the estate tax return for D's estate.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Tangible Personal Property**

- Pursuant to paragraph (b)(1)(iii) of this section, the reporting requirements of paragraph (a)(1) of this section apply only to the painting, rug, and clock.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Exemptions from the Reporting Requirement:**

- Cash (other than a coin collection or other coins or bills with a numismatic value)
- Income in Respect of Decedent
- Tangible Personal Property
- Property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized

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**REPORTING REQUIREMENTS UNDER § 6035**

**“Sale” Exception**

- Is this exception really only applicable if capital gain or loss is recognized by the estate?

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule**

- Additional property is often discovered or otherwise omitted after the estate tax return is filed
- If the property is discovered and reported before the end of the assessment period, the beneficiary’s basis equals the final estate tax value

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule**

- If no supplemental return is filed to report the asset, the basis of the unreported asset will be zero in the hands of the recipient-beneficiary

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule: Example**

- Rancher Bill dies with land, buildings, feed and cattle valued at \$5,300,000, below the exemption amount of \$5,450,000. His executor does not file a 706. All his property passes to his only child, Billy Jr. Life is good and Billy Jr. manages the ranch for 25 years until he sells the ranch.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule: Example**

- His CPA files his income tax return reporting a basis of \$4,900,000, the exact amount used in the probate filing. Billy Jr. is audited by a friendly but aggressive and learned IRS agent.
- The agent looks at comparables and determines the fair market value at Billy Sr.'s death was \$5,800,000 and a 706 would have been required.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule: Example**

- The agent takes the position that the basis of all the property is zero because a 706 was not filed.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule: Example 2**

- Rancher Bill dies with land, buildings, feed and cattle valued at \$5,300,000, below the exemption amount of \$5,450,000. His executor file a protective 706. All his property passes to his only child, Billy Jr. Life is good and Billy Jr. manages the ranch for 25 years until he sells the ranch.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule: Example 2**

- His CPA files his income tax return reporting a basis of \$4,900,000, the exact amount used in the probate filing. Billy Jr. is audited by a friendly but aggressive and learned IRS agent.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule: Example 2**

- The agent looks at comparables and determines the fair market value at Billy Sr.'s death was \$5,800,000.
- The story ends at this point because Billy's lawyer Sally Statute explains that the 706 is closed and the agent needs to accept the basis of \$5,300,000.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Zero-Basis Rule**

- **Can the IRS do that?**
  - § 1014(f)(4) states that “[t]he Secretary may by regulations provide exceptions to the application of this subsection”
- **Can cash have a zero basis?**

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**REPORTING REQUIREMENTS UNDER § 6035**

**Supplemental Returns**

- To ensure that the IRS (and each beneficiary) is apprised of any changes in reported values, there is a general duty imposed on the executor to supplement any reporting that changes after the initial Form 8971 and Schedule(s) A are filed

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**REPORTING REQUIREMENTS UNDER § 6035**

The proposed regulations impose a duty to supplement any changes to Form 8971 and Schedule A. Such changes include:

- Discovery of assets that were not included on the estate tax return;
- Changes in the value of assets reported pursuant to an IRS audit, litigation or otherwise;

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**REPORTING REQUIREMENTS UNDER § 6035**

- A change in the identity of the recipient; or
- A disposition of an assets of the decedent by the executor that results in the basis of the new assets being determined with reference to the disposed assets (in whole or in part, such as a like-kind exchange or an involuntary conversion).

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers**

- The reporting rules extend not only to the executor, but also to a beneficiary who makes a subsequent transfer of his property

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers**

- The proposed regulations require that, if property previously reported or required to be reported on Form 8971 (and thus on the recipient's Schedule A) is received by a beneficiary of the estate, and that beneficiary then makes a gift of the property to a related party, the beneficiary must file a supplemental Schedule A with the IRS and furnish a copy to the transferee

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers**

- This rule applies not only to gifts but also to any "transaction in which a related transferee determines its basis, in whole or in part, by reference to the recipient/transferor's basis."

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers: Example**

- B owns Blackacre as joint tenants with rights of survivorship with Husband.
- At Husband's death, the interest in Blackacre vests in B at date of death and is not subject to administration in Husband's estate.
- After Husband's death, B makes improvements to Blackacre that increase her basis in the property.
- Shortly thereafter, B makes a gift of Blackacre to D.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers: Example**

- The estate tax return for Husband has not been filed, nor has the Form 8971 and Schedule A.
- However, within 30 days after the gift, B will be required to prepare a Schedule A to report the transfer of Blackacre to D.
- This report will need to be given to D, the IRS and the executor of H's estate.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers: Example**

- Because B has not yet received a Schedule A, she does not need to include a value of Blackacre on the Schedule A that she prepares.
- However, she may separately report the value of the improvements to Blackacre, so that D will have that information, which will be needed to determine D's own basis in the property.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers: Example**

- When the executor later files Form 8971 and Schedule A, the Schedule A that shows the value of Blackacre as reported on the estate tax return will be furnished to D instead of to her mother, B.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers: Example**

- In addition, it appears that if D swaps her interest in Blackacre 50 years later with her sister, S, in exchange for S's interest in Whiteacre in a like-kind exchange, D will need to furnish a Schedule A to S and to the IRS that provides the value of Blackacre as initially reported on H's estate tax return that was filed 50 years before.

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**REPORTING REQUIREMENTS UNDER § 6035**

**Subsequent Transfers: Example 2**

- Randy makes a testamentary gift of stock to his infant niece Hannah.
- Randy's estate must provide Hannah's legal guardian a Schedule A.
- Eighty-five years later, Hannah makes an *inter vivos* transfer of the stock to her grandchildren.
- Hannah is required to give her grandchildren a Schedule A.

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**FORM 8971**

**8971 Information Regarding Beneficiaries Acquiring Property From a Decedent**

OMB No. 1545-2064

Department of the Treasury Internal Revenue Service

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 Titles of the additional executors.

9 If the estate elected alternate valuation, indicate the alternate valuation date: \_\_\_\_\_

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## FORM 8971

**Part 1 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

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## FORM 8971

**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 penalty 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**  
 Preparer's name \_\_\_\_\_ Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_  Preparer  Self-employed  
 Firm's name \_\_\_\_\_ Firm's EIN \_\_\_\_\_  
 Firm's address \_\_\_\_\_ Phone no. \_\_\_\_\_

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 37166F Form 8971 (1-2016)

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## FORM 8971

Form 8971 (1-2016)

**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](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

**Part 1. General Information**

1 Decedent's name \_\_\_\_\_ 2 Decedent's TIN \_\_\_\_\_ 3 Beneficiary's name \_\_\_\_\_ 4 Beneficiary's TIN \_\_\_\_\_  
 5 Executor's name \_\_\_\_\_ 6 Executor's phone no. \_\_\_\_\_  
 7 Executor's address \_\_\_\_\_

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**FORM 8971**

**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 —			

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**FORM 8971**

Listings of bulk assets may be attached to Schedule A in lieu of a detailed description of each item that has been acquired (or is expected to be acquired) by a beneficiary. The listing should consist of a related property (for example, stocks held in a single brokerage account) and only include information relevant to basis reporting such as name/description of the property, value, and valuation date. Do not attach property appraisals to Schedule A.

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**FORM 8971**

**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.

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**FORM 8971**

**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 won't be processed. A form with an answer of "unknown" won't be considered a complete return.

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**ADVISING CLIENTS**

- The executor and the beneficiaries of an estate often have conflicting interests
- There will be confusion with the receipt of Schedule A
- The property listed on Schedule A might not actually be the property the beneficiary may receive from the estate

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**ADVISING CLIENTS**

- The value that is listed on the estate tax return and Schedule A is the "initial basis" of a beneficiary of the estate (and his or her subsequent transferees) will often not be the actual basis in the hands of that person

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**ADVISING CLIENTS**

As you know, I am serving as [executor] of the Estate of [decedent]. Pursuant to federal law, the [executor] is required to provide certain information to you as a beneficiary of the Estate. Enclosed is a completed Schedule A to Form 8971 which that contains this required information, a copy of which is also being provided to the Internal Revenue Service as required by law.

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**ADVISING CLIENTS**

The Schedule A provides you with information about the value of property as reported on the estate tax return of the Estate that you have received or may receive, in whole or in part, from the Estate. This information may be important to you if you receive any of this property and later at any time sell, give or otherwise transfer the property, or change the ownership of the property, in whole or in part.

Please consult your tax advisor regarding your federal income tax obligations with respect to this information and possible tax penalties for failure to comply with federal law in connection with this information.

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**ADVISING CLIENTS**

**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), 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. See the Instructions for Form 706 or Form 706-NA, for more information on the filing requirement for those forms.

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## ADVISING CLIENTS

**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.

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## PENALTIES

### Failure to File Correct Forms 8971 by the Due Date

- \$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.
- Increases to \$260 per Form 8971 (including all Schedule(s) A) if it is filed ***more than 30 days*** after the due date. The maximum penalty is \$3,193,000 per year.

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## PENALTIES

### Failure to File Correct Forms 8971 by the Due Date

- 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.

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**PENALTIES**

**Failure to File Correct Forms 8971 by the Due Date**

**Inconsequential error or omission.** An inconsequential error or omission isn't considered a failure to include correct information. An inconsequential error or omission doesn't 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.

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**PENALTIES**

**Failure to Furnish Correct Schedules A to Beneficiaries by Due Date**

- \$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.
- Increases to \$260 per Form 8971 (including all Schedule(s) A) if it is filed ***more than 30 days*** after the due date. The maximum penalty is \$3,193,000 per year.

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**PENALTIES**

**Failure to Furnish Correct Schedules A to Beneficiaries by Due Date**

- 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.

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**PENALTIES**

**Failure to Furnish Correct Schedules A to Beneficiaries by Due Date**

**Inconsequential error or omission.** An inconsequential error or omission isn't considered a failure to include correct information. An inconsequential error or omission can't 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.

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**PENALTIES**

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

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**STATUTE OF LIMITATIONS**

The Act also broadened the scope of the extended six-year statute of limitations on assessment in § 6501(e) to ensnare taxpayers selling property

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QUESTIONS?

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