American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

January 29, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Thomas West
Tax Legislative Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Curtis G. Wilson
Associate Chief Counsel for
Passthroughs and Special Industries
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: IRS Notice 2015-57 and Request for Immediate Guidance on Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 Regarding Consistent Basis Reporting Between Estates and Beneficiaries (CC:PA:LPD:PR)

Dear Messrs. Koskinen, Wilkins, West and Wilson:

The American Institute of CPAs (AICPA) applauds the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS or "Service") for timely issuing Notice 2015-57 and delaying the due date until February 29, 2016, for filing with the IRS and furnishing to the beneficiary the new section[1] 6035 statement regarding consistent basis reporting between estates and persons acquiring property from a decedent. That provision, which was recently enacted, would have applied the 30-day filing requirement to executors of estates of decedents and to other persons who are required under section 6018(a) or (b) to file a federal estate tax return (Form 706 or Form 706NA) if that return is filed after July 31, 2015. The IRS Notice provided appropriate transition relief and time for IRS and Treasury to issue the needed guidance to taxpayers and practitioners to comply with that provision.

We note that the IRS recently (12/18/15) posted draft IRS Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent (originally posted 12/18/15, and updated draft posted 1/26/16), and draft instructions (originally posted on the Office of Management and Budget website on 1/4/16 and updated draft posted on IRS website on 1/27/16) for reporting the required information. We are submitting separate comments on the draft form and instructions. The below and attached comments focus on various issues, needed guidance, and our suggestions.

[1] All references herein to "section" or "§" are to the Internal Revenue Code of 1986, as amended, or the Treasury Regulations promulgated thereunder.

The AICPA is providing in an appendix to this letter with several suggestions regarding the needed guidance from Treasury and IRS on the application of Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the "Act") relating to the provision of consistent basis reporting between estates and persons acquiring property from a decedent.

Specifically, as detailed in the attachment to this letter, we request and suggest Treasury and IRS immediately publish guidance to:

- Provide penalty relief if the executor acts in good faith and provide reasonable cause penalty relief;

- Clarify the time period (if any) that the executor has continuing responsibilities after providing the original statement;

- Treat trusts as the beneficiary;

- Provide a de *minimis* exemption to the information reporting rules for assets or groups of assets that are not publicly-traded and are of de *minimis* value, such as $3,000;

- Provide an exemption, or at least a de *minimis* threshold and use of estimates, for small estates, which are not required to file an estate tax return; and

    - We recommend that the regulations provide that the information statement requirement of section 6035 not apply to any estate that is otherwise not required to file an estate tax return, including those estates that are otherwise not required to file a return but file only to elect portability.

    - If Treasury and IRS do not agree to the above suggested exemption for all small estates from the information statement reporting requirement, we recommend that regulations provide a provision to exempt estates with a gross value under a certain threshold (e.g., $2 million) and for any estate that is not required to file a return and does not file to elect portability.

    - IRS should continue to allow small estates electing portability to use estimates and not require additional reporting for transfers qualifying for the marital or charitable deductions.

- Provide guidance and clarifications on other issues (see the attachment for specific suggestions).

The AICPA is the world's largest member association representing the accounting profession, with more than 412,000 members in 144 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium size businesses, as well as America's largest businesses.

Background

In July 2015, as part of the Act, Congress amended Internal Revenue Code section 1014 to provide for the consistent use of the value of property passing from a decedent's estate and the value subsequently used by the beneficiary to determine gain or loss upon the disposition of such property acquired from a taxable estate.

In addition, the Act included the addition of section 6035, which requires the executor of any estate required to file a return under section 6018(a) to furnish to the Secretary and to each person acquiring an 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)(3) states that the time for filing such statement is 30 days from the earlier of the date the return was required to be filed (including extensions, if any) or the date the return was actually filed.

Section 6035(b) instructs the Secretary to prescribe regulations necessary to carry out the above, in addition to the application of the above rules for estates that are not otherwise required to file a return (Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return).

Section 6724(d)(1)(D) of the Code provides for a penalty for failure to file with the Secretary the required statement under section 6035.

Finally, section 2004(d) of the Act states that the effective date for the above rules shall apply for property with respect to which an estate tax return is filed after the date of enactment of the Act (July 31, 2015).

General Comments

We are pleased that the Treasury and IRS very timely issued Notice 2015-57, providing delayed implementation until February 29, 2016, for complying with the new information reporting requirement that applies to "estate tax returns FILED after the date of enactment." We note that the statute applied to returns filed after July 31, 2015, rather than for "estate

tax returns for decedents dying after July 31, 2015," making the IRS transition relief extremely helpful for estate tax returns due now.

While the delayed implementation is helpful for the estate tax returns being filed that are subject to this new 30-day reporting rule, many of the executors are likely unaware of the new information reporting requirement and do not know how to comply with the information statement reporting requirement.

The AICPA recognizes that Treasury and IRS are under tremendous pressure to issue timely guidance on the 30-day information reporting requirement.

We suggest IRS consider extending the February 29, 2016, delayed implementation date to allow executors and their representatives to become familiar with regulations when they are issued and become aware of the form and content of the required statements that need to be filed starting February 29, 2016. Practitioners and executors will need ample time to become familiar with the new law and guidance and regulations that will be issued. We suggest that that IRS and Treasure defer the implementation date until 60 days after guidance is released.

In addition, we are attaching a listing of specific comments and suggestions.

* * * * *

We welcome the opportunity to discuss these comments or answer any questions that you may have. I can be reached at (801) 523-1051, or at tlewis@sisna.com; or you may contact Mary Kay Foss, Chair, AICPA Trust, Estate & Gift Tax Technical Resource Panel, at (925) 648-3660 or marykay@cpaskllp.com; or Eileen Sherr, AICPA Senior Technical Manager, at (202) 434-9256, or at esherr@aicpa.org.

Sincerely,

Troy K. Lewis, CPA
Chair, Tax Executive Committee

cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, Department of the Treasury
Ms. Melissa Liquerman, Chief, Branch 4, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Karlene Lesho, Senior Technician Reviewer, Branch 4, Office of Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service

Ms. Theresa Melchiorre, Attorney, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service

ATTACHMENT – AICPA Specific Suggestions for Guidance on Estate Tax Basis Reporting

Specific Comments

A. Treasury and IRS Should Provide Penalty Relief If an Executor Acts in Good Faith and Provide Reasonable Cause Penalty Relief

We request that IRS clarify that it will not impose a penalty for failing to file the necessary statements to comply with section 6035 if the practitioner and executor act in good faith. As an example, IRS should clarify that it will not impose a penalty on an executor who is required to file Form 8971 within 60 days after the Form and instructions have been issued. In addition, we request the regulations provide for reasonable cause penalty relief.

B. IRS and Treasury Should Clarify the Time Period that the Executor Has Continuing Responsibilities After Providing the Original Statement

The regulations should clarify any executor continuing responsibilities regarding having to inform beneficiaries and the IRS of any changes after the original statement has been provided (by further clarifying section 6035(a)(3)).

C. IRS and Treasury Should Treat the Trust as the Beneficiary If the Trust is to Continue after the Estate Administration is Closed

There are many reasons that the executor may not be able to determine the specific beneficiaries of an estate as of the due date of the information reporting. For example, some estates require assets to be placed in trusts that establish discretion regarding the ultimate beneficiaries (i.e., a trust that gives the trustee discretion to benefit children based on their relative needs). In addition, the ultimate beneficiaries of the trust could change due to the exercise of powers of appointment and other events. In situations where assets are to be held in trust after the close of estate administration, the IRS should treat the trust as the beneficiary for which reporting is required. We note that the draft instructions to draft Form 8971 allow trusts to be treated as the beneficiaries.

D. IRS and Treasury Should Provide Special Consideration for Assets of De *Minimis* Value

The Act requires executors to provide information statements on all assets of the estate, without regard to the value of the asset or group of assets. This requirement could be burdensome for the executor in the case of assets of de *minimis* value, such as personal and household effects. Many times, executors, particularly for smaller estates, use estimates for assets or groups of assets of low value on a per unit basis (e.g., household goods, clothing, and some costume jewelry).

We recommend that IRS provide guidance indicating that information reporting is not required for assets or groups of any similar asset that is not traded on a public exchange with a value under $3,000. We suggest the reporting asset threshold be the same $3,000 threshold as provided in the instructions to Form 706, Schedule F, Other Miscellaneous Property, for exempting from the appraisal and statement requirement for assets or groups of similar assets less than $3,000.

In addition, we suggest that when executors aggregate some types of property, such as household furnishings, as a single figure on the estate tax return and the ultimate distribution of the specific individual items is determined at a later date, IRS should clarify that in such a case, where the total value of the type of property does not exceed a reasonable amount, such as $50,000, the executor may submit statements to IRS and the beneficiaries applying the assumption that each beneficiary will equally share the items in the category of assets unless they are bequeathed to a specific beneficiary.

E. IRS and Treasury Should Exempt Small Estates from the Information Statement Reporting Requirement

Section 6035(b) provides that the Secretary shall provide regulations with respect to the information reporting requirement for those estates for which no estate tax return is required to be filed. Thus, Congress did not necessarily intend to require small estates to issue basis statements. We recommend the regulations provide that the information statement requirement of section 6035 does not apply to any estate that is not required to file an estate tax return because the estate does not exceed the monetary threshold set forth in section 6018(a). These estates are small and frequently have assets, such a marketability securities, for which there is an established value and income in respect of a decedent (IRD) items, which are not subject to section 1014. Providing the basis information to the IRS and the beneficiaries would impose an administrative burden on these small estates and would also place an undue burden on IRS to process and retain such information for small estates. We are pleased that the draft instructions to Form 8971 provide that only estates that are required to file Form 706 under section 6018 are required to file Form 8971.

Based on the current regulations, we believe there may be some confusion concerning estates that file an estate tax return solely to elect portability of the deceased spousal unused exclusion amount. Treasury Reg. § 20.2010-2(a)(1), which was finalized on June 12, 2015 (before the enactment of section 6035), provides that: "An estate that elects portability will be considered, for purposes of subtitle B [Estate Tax] and subtitle F [Procedure and Administration] of the Internal Revenue Code (Code), to be required to file a return under section 6018(a)." Estates that file Form 706 solely to make the portability election are not required to file the return under the statute itself but are only considered by the regulations to be required to file the return. We recommend that IRS and Treasury specifically provide

that estates that are only considered under Treas. Reg. § 20.2010-2(a)(1) to be required to file a return under section 6018(a) are not subject to the basis reporting of section 6035(a)(1). Without that statement, IRS and Treasury would not be treating consistently all small estates – those that elect portability and those that do not elect portability.

F. IRS and Treasury Should Continue to Allow Small Estates to Use Estimates and Not Require Additional Reporting

If Treasury and IRS do not exempt all small estates from the information reporting requirement, we recommend that regulations include a provision to exempt estates with a gross value under a certain threshold (e.g., $2 million). For small estates above this threshold, IRS should not require specific values to meet the information reporting requirement. Requiring specific values would place an undue administrative burden on the executor and would be inconsistent with the portability regulations that simplified and streamlined the filing requirements for small estates that are filing an estate tax return only to elect portability. These small estates do not have to report specific values of assets that qualify for either the marital deduction or the charitable deduction. Taxpayers may estimate the value of the total gross estate and round to the nearest $250,000 in accordance with the final portability regulations issued by Treasury and IRS. Executors for small estates not otherwise required to file a return need clear guidance as to what information, if any, they need to report to Service and beneficiaries. Guidance is needed as to whether IRS will require these small estates to obtain and report asset specific values.

G. Additional Issues Needing Guidance

We suggest that IRS and Treasury consider the following issues.

1. The rules presuppose that every asset has a known beneficiary at the date of death. In estates large enough to file a Form 706, often no assets have a known owner because most assets will pass subject to a formula clause. The executor is allowed to choose among the assets available at date of distribution values.

    a. It is unclear exactly who the executor should report as the beneficiary (the estate, the irrevocable trust, the testamentary trust?).

    b. When a trust that has title to the assets, to which entity is the notice provided if there is a section 645 election in place: the estate or the trust?

    The purpose is to ensure IRS and beneficiaries know the basis of reported assets. We suggest that the regulations require the executor to file supplementary beneficiary statements within 30-days of when the asset is distributed.

c. A significant portion of most estates include IRD assets, for which section 1014(a) does not apply. We question the usefulness of a report of fair market value (FMV) when section 1014(a) does not apply. It is, however, important that the carryover basis be properly reported. Therefore, we suggest reporting the carryover basis and not FMV for IRD assets.

2. The IRS should clarify that while there is no duty of consistency with respect to assets that "do not increase the estate tax liability," the executor is still required to provide spouses and charities the finally determined value information notwithstanding that the executor is allowed to ignore such value in the estate tax calculation.

3. We suggest IRS consider possible problems with the reporting and "actual" taxable terminations for purposes of generation-skipping transfer (GST) tax. See section 2654(a)(2). We question whether the executor should apply these rules to actual taxable terminations.

4. Guidance is needed regarding the executor's responsibility to report basis associated with an interest in an asset (as opposed to the actual asset, e.g., a life or term-of-years interest).

5. Guidance is needed regarding how IRS will apply a penalty – particularly since the Form 706 provides all the necessary information to IRS (subject to the first item above) in Question 5 of Part IV.

6. The section 1014 changes only apply to taxable estates, and only taxable estates can use alternate valuation. If the intent of the new reporting rules is to ensure proper future reporting of gains by the beneficiaries, the new law may need some improvements.

   For securities:

   We suggest the Service require that the executors/trustees provide the estate/trust's brokerage firms with the correct section 1014 basis information 30 days after the 6 month alternative valuation date. This timeframe would allow the Forms 1099 to reflect the correct determination of gain when stocks are sold to cover the estate taxes. When securities are transferred to beneficiaries, the estate/trust's brokerage firms would track the updated basis in their systems to supply this information to the beneficiaries.

7. Regarding property covered by section 1014(f), we suggest the IRS consider the following assets as excluded property ("non-section 1014(f) property") for the

reasons noted below. The language of section 1014(f) broadly includes all items of property reported on a decedent's Form 706.

a. IRD

   i. IRD is an included item of property that the executor must report on Form 706. However, as currently written, section 1014(c) specifically provides that section 1014(a) does not apply to property representing IRD under section 691.

   ii. Although IRD is reported as property on Form 706, it is not an asset that the beneficiary may sell, thus, the beneficiary does not require basis information to compute gain or loss.

b. Cash and cash equivalents

   i. Cash and cash equivalents are reported on Schedule C of Form 706, which have a fixed and readily determinable value.

   ii. Cash is not property the sale or disposition of which requires basis to compute gain or loss.

c. Non-tradable promissory notes issued in exchange for property where FMV equals face value

   i. Promissory notes owned by the decedent must be reported on Schedule C of Form 706.

   ii. FMV equals face value eliminates notes discounted for collectability.

d. Separately stated personal tangible property except for property that, if sold by the decedent, would constitute 28 percent rate collectibles. As previously stated, IRS should consider a blanket exemption for all personal property if less than $50,000.

e. Publicly traded stocks and bonds if not valued with discounts.

   i. The executor must report marketable securities on Schedule B of Form 706.

   ii. Since the estate tax value of publicly traded stocks and bonds is determined by reference to readily available market quotations on the date of death, additional reporting of these items of property is unnecessary.

iii. There is no need to provide basis for assets held in brokerage accounts because the broker-basis reporting rules for inherited stock already exist. See Treas. Reg. §1.6045A-1(b)(8).

f. Any property that is sold in a fully taxable transaction by the estate prior to the Form 706 filing.

i. Since no beneficiary will receive the property, IRS should consider the relevance of reporting such property.

ii. Such property includes section 643(e) and section 331 deemed sales.

iii. Such property would not cover sales of property included via section 1014(b)(9) because not sold by the 'estate.'

iv. The regulations should distinguish between a sale and a nonrecognition conversion.

g. Certain passive foreign investment companies (PFICs)

i. Certain PFICs are generally considered "non-section 1014(f) property" (i.e., IRD) for which the estate tax value is not as relevant.

ii. The estate tax value is not relevant for PFICs that are: i) owned by decedents who were US persons within the meaning of section 7701(a)(30); ii) not considered pedigreed qualified electing funds (QEFs); and iii) for which no gain is recognized at death.

iii. There is a statutory provision (section 1291(e)) that generally denies a basis step-up to PFICs owned by US persons if a QEF election is not made.

8. Regarding property covered by section 1014(f), we suggest the IRS consider as "adjustments to basis during estate administration" the following:

a. The current language of section 1014(f) provides that basis of property acquired from the decedent must be consistent with value reported on the federal estate tax return. We suggest that the regulations provide that a beneficiary may use the "readily available market quotations" closing price instead of the value required on Form 706, in order to avoid the need for calculations such as the average of the high and low on the date of death.

b. This language appears not to consider basis adjustments incurred during the period after death and before distribution to the beneficiary. For example, this category of property to which section 1014(f) applies includes property subject to basis adjustment as provided by section 1016, as well as adjustments to interests in passthrough entities determined under subchapter S and subchapter K. Since the date of the Form 706 filing and the date of distribution to the beneficiary are rarely the same, the changes in basis that occur during estate administration need to be considered.

c. We suggest that basis should not include section 752 liability allocation.

d. We question the usefulness of the date of death value (basis) of a partnership interest that is distributed a number of years after the Form 706 is filed.

e. We recommend that the date of death basis reported to beneficiary be equal to:

+ section 1014(a) value
+/- section 1016 adjustments for depreciation, capitalization, etc.
+/- section 1367 for S Corporations & section 705 for partnerships
+/- section 469(j)(12) & Prop. Reg. §1.465-67(b) [additions to basis on distribution]
+ section 722, section 358 [capital contributions]
- section 733, section 1368, section 301(c)(2) [distributions]
+/- basis adjustments for reorganizations (section 355, section 368, §1.708-1(c), §1.708-1(d))
+/- basis adjustments for Controlled Foreign Corporations & PFICs (Mark to Market & QEFs)

9. Treatment of exempt beneficiaries is another issue. We suggest that the estate should not have to provide a statement to the following exempt beneficiaries

a. Charitable beneficiaries, the transfers to which qualify for the charitable deduction under section 2055.

i. Would still be needed for charitable lead trusts and charitable remainder trusts.

ii. We suggest an exception for property that is reasonably expected to generate unrelated business taxable income.

b. Non-resident aliens (including foreign trusts).

i. Exception if the property will generate effectively connected income (domestic operating business).

ii. Exception if the property is a United States real property interest (within the meaning of section 897(c)).