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

August 31, 2016

The Honorable Orrin G. Hatch, Chairman
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady, Chairman
House Committee on Ways & Means
1233 Longworth House Office Building
Washington, DC 20515

The Honorable Ronald L. Wyden
Ranking Member
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sander M. Levin
Ranking Member
House Committee on Ways & Means
1236 Longworth House Office Building
Washington, DC 20515

RE: Request for Legislation Modifying the Deadline for Estate Basis Reporting

Dear Chairmen Hatch and Brady, and Ranking Members Wyden and Levin:

The American Institute of CPAs (AICPA) urges Congress to modify the reporting provisions for estate basis statements to require such reporting by February 15 following the end of a calendar year in which an estate distributes assets to a beneficiary, rather than 30 days after an estate files the Federal estate tax return. Our suggestion would:

- Continue the reporting of estate basis to beneficiaries and the IRS;
- Maintain the intent of the provision;
- Simplify and improve the administrative process;
- Result in more accurate reporting; and
- Provide more meaning to the information provided by the executor to beneficiaries.

Present Law

Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 provided rules for consistent basis reporting between estates and beneficiaries.

In July 2015, as part of the Act, Congress amended Internal Revenue Code section 1014[1] 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.

The Act also added 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

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

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) authorizes the Secretary to prescribe regulations necessary to carry out the provisions of section 6035(a), including applying these provisions to estates that are not otherwise required to file a return (Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return).

Section 2004(c) of the Act adds statements under section 6035 to the list of information returns and payee statements subject to the penalties under section 6721 and section 6722, respectively. Specifically, the Act adds new paragraph (D) to section 6724(d)(1) to provide that the term *information return* means any statement required to be filed with the Secretary under section 6035. The Act also adds new paragraph (II) to section 6724(d)(2) to provide that the term *payee statement* means any statement required to be furnished under section 6035 (other than a statement described in section 6724(d)(1)(D)).

Section 2004(d) of the Act states that the above rules shall apply to property with respect to which an estate tax return is filed after the date of enactment of the Act (July 31, 2015). IRS Notice 2015-57 delayed until February 29, 2016, the due date, which otherwise would have begun August 30, 2015, and provided transition relief as well as time for IRS and Treasury to issue the needed guidance to taxpayers and practitioners to comply with that provision. IRS Notice 2016-19, issued February 11, 2016, further extended the due date to March 31, 2016, pending issuance of proposed regulations. As the AICPA requested, the March 31, 2016 due date was further extended to June 30, 2016 by Notice 2016-27.

Description of Proposal

Congress should revise the section 6035(a)(3) due date for providing statements to beneficiaries and the IRS to February 15 following the end of a calendar year in which the property is distributed to the beneficiaries in order to streamline the process and make the reporting more accurate and useful to the beneficiaries and the IRS. See attached proposed legislative language modification.

Analysis

For many estates, the executor does not know *within thirty days after filing the estate tax return* which beneficiary will receive what asset. In fact, it is customary that many, if not most, executors do not fully distribute estate assets until after they have received the IRS closing letter to ensure that there are sufficient funds in the estate to meet its federal and state tax obligations.

Because the executor usually does not know which assets are to be distributed to each beneficiary 30 days after the time the estate tax return is filed (before the executor has settled the estate), the information provided to each beneficiary at that time, due to the filing requirement, includes all the assets in the estate that the executor could possibly distribute to that beneficiary. The beneficiary may receive pages and pages listing almost all of the estate's assets. The beneficiary will need to keep these pages to determine the basis of the assets that the beneficiary actually receives, perhaps several years later. Each beneficiary also gains knowledge of all the assets in the estate, even though the beneficiary may receive a small share of those assets and is not entitled to know the extent of the estate's holdings. Such disclosure of information has the potential to cause family disputes and discord.

The beneficiary needs the basis of the assets that the beneficiary actually receives; the executor should provide that information contemporaneously with the distribution of the respective assets. This information would help the IRS as well. The proposed regulations provide that executors may, but are not required to, file supplemental statements after the assets are distributed, while the current IRS instructions for Form 706 require executors to submit supplemental filings once the assets are distributed. Requiring executors to file supplemental statements places an additional administrative burden on the estates. Even if executors are merely given the option to file supplemental statements, the problem is resolved by moving the original due date of the returns until after it is known which beneficiary will receive which assets.

Another advantage of moving the due date is that the statements are more likely to reflect the final value of the assets for Federal estate tax purposes. Because the executor generally waits to distribute most of the assets until after the estate receives its IRS closing letter, the value of the assets on the statements will reflect any adjustments in value made during the estate tax audit. In these situations, moving the due date would eliminate the need to file the supplemental return required by section 6035(a)(3)(B) when the value of assets changes upon audit.

This legislative proposal would provide more administrable reporting deadlines for executors and provide more accurate and relevant information on basis to the beneficiaries and IRS because under the proposal the reporting is required after the property is actually distributed to a beneficiary. Because an annual post-distribution filing deadline will produce more accurate reporting, we believe this reporting regime is preferable to the current system, despite the inconvenience of more frequent filings.

Our suggestion of a February 15th filing requirement has the following advantages:

- Post-distribution reporting of actual assets distributed (and not over-reporting of assets that the executor might distribute);

- Only one Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent, filing per year (regardless of how often the executor makes distributions during that year);

- Executors would file Form 8971 the same time as any consolidated Form 1099 reporting (if any required by the estate executor or corporate trustee/fiduciary for interest, dividends, sales proceeds and basis for their accounts under management) and two weeks after the January 31st deadline for any Form 1099-INT filed by estate executors;

- Basis reporting to a beneficiary with sufficient time prior to the beneficiary's annual tax compliance (i.e., Form 1040, due April 15th).

We considered the possibility of an annual Form 8971 filing based on an estate's fiscal year; however, we concluded that annual reporting based on a calendar year is preferable to fiscal year reporting because of the reasons below.

- If the requirement were to file Form 8971 with the estate's Form 1041, U.S. Income Tax Return for Estates and Trusts:

    - The estate could obtain an extension to file Form 1041, resulting in the return due 8½ months after the end of the fiscal year. If Form 8971 is due with Form 1041, the beneficiary might have to wait 19½ months after receiving a distribution of an asset before the basis of that asset is reported to him or her. For example, if a distribution is made in the first month of an estate's fiscal year, an additional 11 months exists until the fiscal year end, and potentially 8½ months before Form 1041 and Form 8971 are filed. In the meantime, the beneficiary may have already sold the asset and needed the basis information to file properly his or her income tax return.

- If the requirement were to file Form 8971 within 30 days after the end of the estate's fiscal year:

    - The executor would provide basis information more timely than if it were filed with Form 1041, but the reporting would not align with the beneficiary's income tax reporting schedule and may arrive too late for the completion of the beneficiary's individual income tax return if the asset was sold shortly after the beneficiary received it.

Conclusion/Recommendation

We urge Congress to revise the section 6035(a)(3) due date for providing statements to beneficiaries and IRS to February 15 following the end of the calendar year in which specific property is distributed to the respective beneficiaries in order to streamline the process and make the reporting more accurate and useful to the beneficiaries and the IRS.

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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 1887. 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-sized businesses, as well as America's largest businesses.

We thank you for the opportunity to present our views on this issue. Please feel free to contact me at (801) 523-1051, or tlewis@sisna.com, or Eileen Sherr, AICPA Senior Technical Manager, at (202) 434-9256, or esherr@aicpa.org, to discuss the above comments or if you require any additional information.

Sincerely,

Troy K. Lewis, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Ways and Means Committee
The Honorable Mark Mazur, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Thomas C. West, Tax Legislative Counsel, Department of the Treasury
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

AICPA Proposed Legislative Amendment to Internal Revenue Section 6035

§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 February 15 following the end of the calendar year in which such property included in the decedent's gross estate is distributed to the person. ~~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.