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

June 1, 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 Proposed Regulations Regarding Consistent Basis Reporting Between Estates and Beneficiaries (CC:PA:LPD:PR) (REG-127923015, Docket ID IRS-2016-0010-0002)

Dear Messrs. Koskinen, Wilkins, West and Wilson:

The American Institute of CPAs (AICPA) is commenting on the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS or "Service") proposed regulations (REG-127923015) regarding the new section[1] 1014(f) requirement for consistency between a recipient's basis in property acquired from a decedent and the value of the property as reported for estate tax purposes, and regarding associated reporting requirements pursuant to new section 6035. The reporting provision, which was recently enacted, applies a 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 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.

In the below comments, the AICPA suggests that Treasury and IRS:

- Remove the "zero basis rule" contained in Prop. Reg. § 1.1014-10(c)(3) and allow the filing of a supplemental Form 706 at any time even if the statute of limitations has expired.

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

- Remove the Prop. Reg. § 1.6035-1(f) reporting requirement for subsequent transfers by beneficiaries.

- Include and address in the regulations several other issues:

  - Provide clarification regarding the obligation to report the transfer of charitable or marital deduction property.

  - Clarify an executor's reporting obligations for an individual retirement account ("IRA") or other retirement plan where the decedent had a basis in the account or plan, resulting from a decedent's non-deductible contributions and other situations to an IRA or retirement plan, or to the account's status as a Roth IRA, Roth 401(k), or Roth 403(b) arrangement.

  - Provide guidance on whether the reporting exception applies to section 1231 property.

  - Provide clarification that no reporting is needed for loan forgiveness to a beneficiary.

  - Provide clarification regarding whether it is sufficient to attach to Form 8971 exhibits reporting the assets, similar to attachments to Form 706.

  - Retain the language from the proposed regulations and revise the Form 8971 instructions to permit (not require) an executor to file a supplemental Form 8971 with supplemental Schedule A if (1) the first filing indicated several potential recipients of assets and (2) later developments leave the property or interest described to fewer than all of them.

  - Allow executors to certify that they will fund a bequest in cash and exempt the executor from filing a Schedule A for that beneficiary.

  - Clarify that an executor is not responsible for determining the allocation of uniform basis when two or more beneficiaries actuarially share an asset.

  - Accept and process Form 8971 if the executor enters "unknown" on a particular field if the executor includes an explanation for the entry when filing the form.

  - Permit an executor to enter "unknown" or "unknown-foreign" for a beneficiary who does not have an ITIN.

- Clarify if there are audit changes or other situations when basis is affected by subsequent events whether the executor has any reporting requirements to beneficiaries regarding the basis of assets distributed or distributable to them.

- Provide guidance clarifying that the executor is not required to, but may, report in a supplement or any other reasonable format additional information, such as the adjusted basis of property distributed to a beneficiary.

- Correct Example #1 at Prop. Reg. § 1.1014-10(e) to provide that the gain on the sale of the partnership interest is $2 million instead of $1 million in paragraph (ii) and $1.5 million instead of $500,000 in paragraph (iii).

- Allow taxpayers to request an extension of time to file the Form 8971.

**Background**

In July 2015, as part of the Surface Transportation and Veterans Health Care Choice Improvement Act ("the Act"), Congress amended Internal Revenue Code section 1014 to require consistency between the basis of property in the hands of an estate beneficiary and the value reported on the federal estate tax return. Basis is significant for income tax purposes, including the determination of gain or loss upon the disposition of such property, depreciation deductions, and other purposes.

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 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 required filing date of the return (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, including 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 6662(k) adds underpayments resulting from inconsistent basis reporting to actions subject to the 20 percent accuracy related penalty.

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). IRS Notice 2016-19 and IRS Notice 2015-57 provided transition relief and time for IRS and Treasury to issue the regulatory guidance to taxpayers and practitioners to comply with that provision. We are pleased that Treasury and IRS timely issued Notice 2015-57, providing delayed implementation until February 29, 2016, and then issued Notice 2016-19, delaying implementation until March 31, 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 filed from August 1, 2015, until March 31, 2016.

However, the regulations were not issued and published in the Federal Register until March 4, 2016, and as our March 4, 2016, letter stated, while the February 29 and then March 31, delayed (from the August 31, 2015) implementation dates were helpful for the estate tax returns that were being filed that are subject to this new 30-day reporting rule, many of the executors likely continued to be unaware of the new information reporting requirement and until the proposed regulations were issued, taxpayers and practitioners did not know how to comply with the information statement reporting requirement. We requested that the IRS consider an additional 60 days delay until May 31, 2016 to allow executors and their representatives to become familiar with the proposed regulations and become aware of the Form 8971 and content of the required statements that are now required. We were pleased when the IRS issued Notice 2016-27 on March 23, 2016, further delaying the reporting date to June 30, 2016.

**General Comments**

Prior to the issuance of these proposed regulations, on January 29, 2016, the AICPA submitted comments suggesting Treasury and IRS consider and address various issues in the proposed regulations. We are pleased that Treasury and IRS followed several of our suggestions in the proposed regulations – not requiring the estate basis reporting for estate tax returns filed solely for electing portability, and not requiring estate basis reporting for assets of *de minimis* value (e.g., household goods) or assets to which section 1014(a) does not apply (e.g., cash and income in respect of a decedent (IRD)).

In addition, the AICPA previously submitted comments on January 29, 2016, on drafts of the now final IRS Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, and instructions. We understand that Treasury and IRS will not revise the form and instructions until the regulations are finalized. We continue to suggest IRS consider our January 29, 2016 recommendations of needed changes and clarifications to the form and instructions.

In the below comments, we note our concerns with the proposed regulations overreaching the statutory legislative authority regarding the zero basis rule and supplemental filings. In addition, we continue to suggest Treasury and IRS include and address in the regulations several issues identified in our prior January 29, 2016, guidance request and changes to Form 8971 and instructions letters. Several other suggestions are noted in the below comments as well.

**Specific Comments**

A. Remove the "zero basis rule" contained in Prop. Reg. § 1.1014-10(c)(3) and allow the filing of a supplemental Form 706 at any time even if the statute of limitations has expired.

Section 1014 generally provides that the basis of property in the hands of a person acquiring the property from a decedent's estate is the fair market value on the date of the decedent's death.[2] This tax treatment is the case even if no estate tax return is required to be filed.

The proposed regulations address the basis determination for property discovered after the filing of an estate tax return and for property omitted from an estate tax return. Pursuant to Prop. Reg. § 1.1014-10(c)(3)(i)(B), if the executor does not report the after-discovered or omitted property on an initial or supplemental estate tax return filed prior to the expiration of the statute of limitations (generally 3 years from the filing of the estate tax return), the basis to the beneficiary of the omitted property is zero. Further, Prop. Reg. § 1.1014-10(c)(3)(ii) provides that if no return is filed, and if the inclusion of the after-discovered or omitted property would have generated or increased the estate tax liability, all property receives a zero basis until an estate tax return is filed.

The AICPA believes that the position in the regulations is a punitive overreach not intended in the legislation. Section 1014(a) provides that a beneficiary's basis is generally the fair market value at the date of a decedent's death. Treasury regulations specifically provide that it is not necessary that "an estate tax return be required to be filed for the estate of the decedent or that an estate tax be payable" in order for section 1014 to apply.[3] The purpose of section 1014(f) is to ensure that this basis is consistent with the value reported when a decedent's estate tax return is filed, not to change the operation of section 1014(a). The AICPA recommends that Treasury and IRS remove this "zero basis" provision of the proposed regulations.

---

[2] Basis of property to a person succeeding to the decedent's property may differ from date of death value as a result of certain elections by the executor, including the alternate valuation election of section 2032 and the special use valuation election of section 2032A.
[3] Proposed Reg. § 1.1014-2(b)(2).

If the zero basis rule for unreported assets is not removed, we suggest Treasury and IRS allow the executor to file a supplemental Form 706 at any time, even if the 3 year statute of limitations has passed, in order for section 1014 to operate as Congress intended (i.e., in order to receive a step-up in basis for the assets.) Currently, we note that many practitioners consider a supplemental Form 706 that is filed after the statute of limitations has run as not meeting the definition of a "tax return." If this understanding is correct, then one may consider that currently there is no requirement to file a supplemental Form 8971 after the filing of a supplemental Form 706 that is beyond the running of the statute of limitations. Clarification on this issue is needed, and we suggest Treasury and IRS allow the filing of a supplemental Form 706 at any time even if the statute of limitations has passed solely for the purpose of complying with section 6035.

B. <u>Remove the Prop. Reg. § 1.6035-1(f) reporting requirement for subsequent transfers by beneficiaries</u>.

Section 6035(a) provides the general rule requiring the "executor of any estate required to file a return under section 6018(a)" to provide information to the IRS and to each person acquiring any interest in property included in a decedent's gross estate. Section 6035(b) gives Treasury regulatory authority, specifically identifying regulations relating to (1) the application of section 6035 to property with regard to which Treasury and IRS do not require the filing of an estate tax return, 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.

Proposed Reg. § 1.6035-1(f) imposes a reporting obligation on the recipient of property previously reported or required to be reported if that recipient subsequently transfers such property to a related transferee (as defined) in a non-taxable transaction. Such non-taxable transaction includes a transaction in which the transferee's basis is determined, in whole or in part, by reference to the transferor's basis, for example, a transfer by gift. For this purpose, a related party is defined as one of the following:

1) A member of the transferor's family (spouse, ancestor or lineal descendant of the individual or the individual's spouse or sibling);

2) A controlled entity owned by the transferor or the transferor's family; or

3) A grantor trust as to the transferor.

The Preamble to the regulations notes section 6035(b)(2) (cited above) as authority for requiring subsequent transfer reporting by beneficiaries.

The AICPA believes that the authority granted in section 6035(b)(2) does not extend to requiring reporting by estate beneficiaries when they subsequently transfer the inherited property.

Taxpayers will frequently transfer property in transactions where the basis of property "carries over" to the transferee, for example in the context of gifts, estate planning, and the creation of business organizations. The transfer can occur soon after the taxpayer receives the property from the decedent, or many years later. The regulations do not include an expiration period on the requirement to report. Therefore, Treasury and IRS are adding a duty to report for estate beneficiaries as long as they own the inherited property. And presumably Treasury and IRS are obligating the transferee taxpayer to report upon a second transfer since the obligation applies to "all or any portion of property that previously was reported." The reporting requirement could continue for generations. We think nonresident alien beneficiaries will find this subsequent transfer reporting obligation especially burdensome, and the IRS will find it unenforceable and unable to monitor such subsequent transfers, especially of property that is no longer in the U.S.

In addition, in many cases, the obligation to report the basis of property transferred is duplicative of other required filings. For example, financial institutions are required to maintain and report basis information on Form 1099, which could result in the reporting of basis on any traded security both redundant and potentially conflicting. For another example, Treasury and IRS require the reporting of a taxable transfer by gift on an annual gift tax return Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. The Form 709 includes an entry line for the basis of property transferred. Therefore, the IRS is already informed of the basis of gifted property if the transfer is subject to reporting on a gift tax return. Likewise, IRS requires the reporting by the transferor of a nontaxable transfer of property to a controlled corporation under the regulations to section 351.[4]

The AICPA also questions the reasoning for extending the reporting requirement in the case of a taxpayer's subsequent transfer to his or her own grantor trust. We note that in most such cases, the grantor trust does not file its own income tax return, rather, the income and deductions associated with property held in the grantor trust is reported directly on the grantor's own tax return.

C. Include and address in the regulations several other issues.

The AICPA also suggests Treasury and IRS issue further guidance on the following items:

- Provide clarification regarding the obligation to report the transfer of charitable or marital deduction property.

[4] Treasury Reg. § 1.351-3(a)(3).

Proposed Reg. § 1.1014-10(b)(2) provides that property that qualifies for an estate tax charitable or marital deduction under sections 2055, 2056, or 2056A is excluded from the consistent basis requirement. Proposed Reg. § 1.6035-1(b) provides that the basis reporting requirement applies to all property which is either reported on an estate tax return or for which estate tax reporting is required under section 6018. Although cash, IRD, and other types of property are specifically excluded from the reporting requirements, no exclusion is provided for the transfer of charitable or marital deduction property that is not subject to consistent basis requirement. The AICPA requests clarification regarding the obligation to report the transfer of charitable or marital deduction property.

- <u>Clarify an executor's reporting obligations for an IRA or other retirement plan where the decedent had a basis in the account or plan, resulting from a decedent's non-deductible contributions and other situations to an IRA or retirement plan, or to the account's status as a Roth arrangement (i.e., Roth IRA, Roth 401(k), or Roth 403(b) arrangement)</u>.

  Proposed Reg. § 1.6035-1(b)(ii) excludes property which is considered income in respect of a decedent (as defined in section 691). Treasury and IRS should clarify an executor's reporting obligations for an IRA or other retirement plan where the decedent had a basis in the account or plan. We note that a section 401(a) plan, which includes a 401(k) plan, can have basis from after-tax contributions. That basis remains after death or when rolled into an IRA. Another issue is that unless the retirement plan is payable to the estate or has no beneficiary, the executor has no control over the plan and may even have difficulty determining fair market value. The trustee (if a trust is the beneficiary) or the individual named beneficiary is treated as the executor because of control of the asset. This situation could impose an obligation for a beneficiaries to provide Form 8971 to themselves.

  We note that in addition to non-deductible IRA contributions, basis can occur in qualified plans when loan payments are made to a participant loan subsequent to the loan being defaulted. Additionally, although not common, there are still balances in Thrift Savings Plans which prescribed mandatory post-tax employee contributions. IRS should clarify the executor's reporting responsibilities regarding basis for these types of situations.

- <u>Provide guidance on whether the reporting exception applies to section 1231 property</u>.

  Proposed Reg. § 1.6035-1(b)(1)(iv) exempts from the reporting obligation property that is sold, exchanged, or otherwise disposed of by an estate in a transaction in which capital gain or loss is recognized. The regulation does not specifically exclude property sold in a transaction in which a gain or loss is recognized under section 1231. The

AICPA requests guidance on whether the reporting exception applies to section 1231 property.

- Provide clarification that no reporting is needed for loan forgiveness to a beneficiary.

  Clarity is needed regarding whether the executor needs to report forgiveness of a loan to a beneficiary. We suggest IRS provide an exemption from reporting for loan forgiveness similar to the exemption for cash. The executor and beneficiary could consider the loan forgiveness as a distribution of cash, which the beneficiary then could use to pay off the note.

- Provide clarification regarding whether it is sufficient to attach to the Form 8971 exhibits reporting the assets, similar to attachments to the Form 706.

  We understand that the executor needs to list assets still not yet sold and on hand. Clarification is needed regarding whether attaching exhibits, such as brokerage account statements and other "bulk asset" reports, to the Form 8971 and Schedule A and listing the lump sum total and referencing the exhibit are sufficient in order not to have to list each item separately. IRS should allow the use of attached "bulk asset" exhibits or reports for Form 8971 and Schedule A, similar to what is currently allowed for reporting on attachments to Form 706 for many types of assets, including collections (every art piece or all art), appraisals of tangible personal property at an address, and oil and gas royalty interests. To simplify reporting, we suggest allowing the executor to attach the exhibit and not require listing each asset. If individual securities or assets are distributed in different pro-rata portions among various beneficiaries, the executor should have to list the assets separately on each Schedule A to each beneficiary.

- Retain the language from the proposed regulations and revise the Form 8971 instructions to permit (not require) an executor to file a supplemental Form 8971 with supplemental Schedule A if (1) the first filing indicated several potential recipients of assets and (2) later developments leave the property or interest described to fewer than all of them.

  Currently, there is a conflict between the proposed regulations and the Form 8971 instructions regarding whether a supplemental Form 8971 with supplemental furnishing of Schedule A is suggested or required if (1) the first filing indicated several potential recipients of assets and (2) later developments leave that property or interest described to fewer than all of them. The instructions require the supplement, while the proposed regulations recommend it. Specifically, the proposed regulations state, "Supplemental Information Return and Statements may be filed, but are not required, to correct an inconsequential error…or to specify the actual distribution of assets previously reported as being available to satisfy the interests of multiple beneficiaries." The Form 8971 instructions state, "A supplemental Form 8971 and corresponding Schedules A should be filed once the distribution to each such beneficiary has been made." We suggest that IRS continue to keep the above language from the proposed regulations in the final regulations and make the instructions consistent with the regulations. IRS should revise the instructions to state that in the above noted situation, supplemental filing of the Form 8971 and supplemental Schedule A is not required, but the executor may file a supplemental Form 8971 and Schedule A even though not required.

- Allow executors to certify that they will fund a bequest in cash and exempt the executor from filing a Schedule A for that beneficiary.

  Because executors may not make or know about many funding decisions by the due date for Form 8971, to eliminate unnecessary filings, Treasury and IRS should allow executors to certify that they will fund a bequest in cash, and IRS would exempt the executor from filing a Schedule A for that beneficiary. If a beneficiary is later paid in kind, then the IRS would require the executor to file a supplemental Form 8971 within 30 days of such distribution. This treatment is especially important for pecuniary bequests because the executor must recognize gain or loss in every event, even if the bequest is later satisfied in kind.

- Clarify that an executor is not responsible for determining the allocation of uniform basis when two or more beneficiaries actuarially share an asset.

  It is possible that the executor needs to allocate the basis of a decedent's property between a life estate holder and a remainder interest holder. The allocation would depend on how many years the life estate holder is expected to live. Section 7520 would require the executor to make inquiries as to the health of the beneficiaries. The AICPA believes that such inquiries are beyond the scope of what Treasury and IRS should require to file Form 8971.

- Accept and process Form 8971 if the executor enters "unknown" on a particular field if the executor includes an explanation for the entry when filing the form.

  Section 6035 requires the filing of Form 8971 by the executor a mere 30 days after the filing of the decedent's estate tax return. Instructions to the form indicate that the IRS will not process Form 8971 if any fields on the form are left blank, or if any fields are answered as "unknown." In some situations, the executor, does not know, is not aware of, and cannot obtain the required information by the due date of Form 8971. The IRS should accept and process Form 8971 if the executor enters "unknown" in a particular field if the executor includes an explanation for the entry when filing the form.

- Permit an executor to enter "unknown" or "unknown-foreign" for a beneficiary who does not have an ITIN.

  The IRS released Form 8971 along with instructions in early 2016. The instructions specifically state that IRS will not consider a form with an answer of "unknown" as a complete return. In some cases, we note that there are estate beneficiaries who are U.S. nonresident aliens without an Individual Taxpayer Identification Number ("ITIN"). It is typically a difficult and lengthy process for a nonresident alien to obtain an ITIN. The AICPA requests guidance on an executor's responsibility to obtain an ITIN from a nonresident alien who may never have a U.S. tax reporting obligation. As suggested in our January 29, 2016 letter, the AICPA recommends that in the event the beneficiary does not have an ITIN, Treasury and IRS should permit an executor to enter "unknown" or "unknown-foreign" for that beneficiary.

  It is also possible that a beneficiary of a specific devise will refuse to provide his or her Social Security Number ("SSN"). Some executors may delay distribution until after receiving the beneficiary's SSN. However, many executors may have other fiduciary duties, by state law or the will/trust agreement, preventing them from delaying distribution to coerce a beneficiary into providing a SSN.

  If "unknown" is not permitted, we suggest that the IRS permit additional exceptions to reporting when certain assets, such as assets that do not produce U.S. income, are distributed to foreign beneficiaries. For example, Treasury and IRS should provide an exception for reporting on an asset that will not produce U.S. income, such as tangible personal property, that is distributed to a foreign beneficiary and immediately transferred outside of the U.S. We note that the U.S. will never subject these assets to U.S. income tax, and basis reporting on such assets is unnecessary.

  Finally, we note that income tax regulations do not require SSN or ITIN information in order for a trust or person to send payments to individuals; instead U.S. withholding is generally required against such payments. It is inconsistent to prevent executors from filing Form 8971 when ITIN information is not available from foreign beneficiaries. Several commentators have noted that the estate basis reporting regulations do not comply with the regulations requiring ITINs. An issue with the executor supplying an ITIN of each beneficiary, including foreign person beneficiaries, is that the IRS may not technically have the authority to request the ITIN information from foreign persons under existing regulations. Treasury Reg. § 301.6109-1(b)(2) and (c) provides the rules for when one can file a return with another person's identifying information, and this regulation provides limited circumstances where a foreign person must obtain an ITIN; these limited circumstances do not include basis reporting.

- <u>Clarify if there are audit changes or other situations when basis is affected by subsequent events whether the executor has any reporting requirements to beneficiaries regarding the basis of assets distributed or distributable to them</u>.

  The general purpose of basis reporting is to advise both the IRS and beneficiaries of an estate about the reported fair market value (FMV) of assets distributed. If values are changed after an IRS audit or other situations when basis is affected by subsequent events (i.e., depreciation or income from pass-through entities), the beneficiaries of an estate are no longer aware of the correct basis in assets distributed (or distributable) to them. We request Treasury and the IRS provide guidance on the reporting requirements to beneficiaries following an audit of the estate or other situations when basis is affected by subsequent events and where changes are made to the FMV of covered assets.

- <u>Provide guidance clarifying that the executor is not required to, but may, report in a supplement or any other reasonable format additional information, such as the adjusted basis of property distributed to a beneficiary</u>.

  The regulations state that a beneficiary's basis in property is the final value (as defined in Prop. Reg. § 1.1014-10(c)). The regulations acknowledge that a beneficiary's basis may be adjusted for events occurring after death (e.g. depreciation, capital improvements, post-mortem net income of a partnership/LLC interest and S corporation stock, post-mortem collections with respect to notes receivable). The instructions for Form 8971 require the reporting of the final value (on Schedule A, Column E). We request Treasury and the IRS provide guidance stating that that there is no executor reporting responsibility concerning the adjusted basis resulting from post-death changes such as depreciation, deemed sales, etc. If an executor wants the option to provide such additional optional (not required) adjusted basis information to the beneficiary in order for the beneficiary to receive more accurate information on the basis that the beneficiary should report on their personal income tax return, IRS should provide instructions on how to optionally report the adjusted basis in property distributed to a beneficiary when the basis differs from the initial basis in the property.

  We suggest that IRS provide a uniform method for an executor to optionally report the beneficiary's adjusted basis in addition to the Form 706 reported value. For example, the IRS could provide in the Form 8971 and Schedule A instructions that the executor may attach supplemental information regarding the beneficiary's adjusted basis in the distributed property.

- <u>Correct Example #1 at Prop. Reg. § 1.1014-10(e) to provide that the gain on the sale of the partnership interest is $2 million instead of $1 million in paragraph (ii) and $1.5 million instead of $500,000 in paragraph (iii)</u>.

We have identified an error in Example #1 at Prop. Reg. §1.1014-10(e). The example describes a situation where a decedent owned a 50 percent interest in Partnership P, which owned a rental building with a fair market value of $10 million subject to nonrecourse debt of $2 million. The partnership interest is valued at $4 million (the net value after debt). In the example, the beneficiary sells the partnership interest for $6 million. Paragraph (ii) of the example states that the beneficiary's gain is $ 1 million (giving the beneficiary $1 million of basis for the nonrecourse debt). While the beneficiary's share of basis of the underlying real estate is $5 million, the beneficiary's basis in the partnership interest is $4 million. Therefore, we suggest Treasury and IRS correct Example #1 at Prop. Reg. § 1.1014-10(e) to provide that the gain on the sale of the partnership interest in paragraph (ii) is $2 million ($6 million received for partnership interest less $4 million basis in the partnership interest and net value after debt) instead of $1 million. The error is repeated in paragraph (iii), which incorrectly states that the gain is $500,000 instead of $1.5 million.

- <u>Allow taxpayers to request an extension of time to file Form 8971</u>.

  Providing an extension of six months to file Form 8971 will allow flexibility for taxpayers in filing Form 8971. For example, allowing an extension to file Form 8971 beyond the 30 days after filing Form 706 would allow time for taxpayers to assemble information concerning any assets sold, or otherwise disposed of, during the administration of an estate. IRS could modify Form 4768 to include Form 8971.

* * * * *

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

Troy K. Lewis, CPA, CGMA
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
Ms. Meghan Howard, Attorney, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service