

# TAX SECTION

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June 17, 2016

*Via Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov)*

CC:PA:LPD:PR (REG-127923-15)

Internal Revenue Service

Room 5203

P. O. Box 7604

Ben Franklin Station

Washington, DC 20044

**Re: Comments on Proposed Regulations Regarding Consistent Basis Reporting Between Estate and Person Acquiring Property from Decedent**

Dear Ladies and Gentlemen:

On behalf of the Tax Section of the State Bar of Texas, I am pleased to submit the enclosed response to the request of the Department of the Treasury ("Treasury") and Internal Revenue Service ("IRS") in the Notice of Proposed Rulemaking (REG-127923-15) issued on March 4, 2016 (the "Proposed Regulations"). The Proposed Regulations provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE TAX SECTION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

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THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE TAX SECTION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE TAX SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED AND THE COMMENTS REPRESENT THE VIEWS OF THE MEMBERS OF THE TAX SECTION WHO PREPARED THEM.

We appreciate being extended the opportunity to participate in this process.

Respectfully submitted,

A handwritten signature in black ink, reading "Alyson Outenreath". The signature is fluid and cursive, with the first name "Alyson" being more prominent and the last name "Outenreath" following in a similar style.

Alyson Outenreath, Chair  
State Bar of Texas, Tax Section

COMMENTS ON PROPOSED REGULATIONS REGARDING CONSISTENT BASIS  
REPORTING BETWEEN ESTATE AND PERSON ACQUIRING PROPERTY FROM  
DECEDENT

These comments on the Proposed Regulations (“Comments”) are submitted on behalf of the Tax Section of the State Bar of Texas. The principal drafters of these Comments were Lora G. Davis, a Council Member, and Celeste C. Lawton, Chair of the Estate and Gift Tax Committee, of the Tax Section of the State Bar of Texas. The Committee on Government Submissions (COGS) of the Tax Section of the State Bar of Texas has approved these Comments. Robert D. Probasco, Co-Chair of COGS, reviewed these Comments. Laurel Stephenson, Vice-Chair of the Estate and Gift Tax Committee, also reviewed the Comments and made substantive suggestions on behalf of COGS.

Although members of the Tax Section who participated in preparing these Comments have clients who would be affected by the principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: June 17, 2016

## **I. INTRODUCTION**

These Comments are in response to the Proposed Regulations regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes, which were issued by Treasury and the IRS on March 2, 2016.

We recognize and appreciate the time and thoughtful work invested by Treasury and the IRS in preparing the Proposed Regulations and the accompanying explanatory preamble to the Proposed Regulations. These efforts are extremely useful to taxpayers and practitioners. It is our intent to present items for consideration that may help and support Treasury and the IRS in this endeavor.

## **II. COMMENTS REGARDING PROPOSED REGULATIONS UNDER SECTION 6035**

### **A. Alternate Method for Reporting Assets not yet Acquired by a Beneficiary by the Due Date of Schedule A of Form 8971**

Section 6035(a)(1) requires an executor of an estate that is required to file an estate tax return to provide the IRS and each beneficiary "acquiring any interest" in the property included on the estate tax return a statement, on Schedule A to Form 8971, identifying the value of the "interest in such property." The due date for providing this information is generally 30 days after the due date of the estate tax return.

The nature of assets in the larger estates that will be subject to this filing requirement are often complicated in nature and the distribution of assets, or even the decisions regarding the division of those assets among multiple beneficiaries of an estate, is not often accomplished prior to the deadline for Schedule A. A beneficiary cannot have a basis consistency reporting requirement with respect to assets he or she has not yet received from an estate. The IRS has acknowledged that determining which assets to report on Schedule A by the due date may be challenging. Accordingly, Proposed Regulation § 1.6035-1(c)(3) provides that if an executor has not determined which assets a beneficiary will receive by the due date, the executor must list on the beneficiary's Schedule A all items of property "that the executor could use to satisfy that beneficiary's interest."

We commend the IRS on their creative approach to finding a solution that will both meet the statutory requirements and accomplish the goal of providing information relating to the value of property of the estate to the beneficiaries of the estate. However, we do not believe this would be the most effective approach in many cases. Accordingly, we respectfully suggest that the IRS consider allowing an alternate method. Under this alternate method, to the extent that assets have not yet been distributed to a beneficiary by the filing due date, the executor would file Schedule A when due, reporting only a dollar amount equal to the value of the beneficiary's share of estate assets not yet distributed, but without identification of specific assets. When the distributions of assets from the estate are later made, the executor would then file a supplemental Schedule A to report any assets that were actually distributed to each beneficiary that are subject

to the basis consistency rules. In complex estates, this approach would reduce the compliance burden on the executor, reduce potential fiduciary risk to the executor, and reduce or eliminate confusion for beneficiaries who would otherwise receive information that is not needed or relevant at the time. The supplemental Schedule A later filed by the executor will result in the accurate information being provided to both the IRS and the beneficiary at a time when it will be needed, without creating unnecessary confusion.

We understand that some executors may be able to easily comply with the rule in the Proposed Regulations. Under that rule, no supplemental Schedule A would need to be prepared, as long as the initial Schedule A included the value information on each asset the beneficiary later received. For those estates that can easily comply with this requirement, this alternative should reduce the compliance burden on the executor and the beneficiaries, while providing the necessary information to the IRS in an efficient manner. Accordingly, we respectfully request that the IRS offer both alternatives – the reporting method in the Proposed Regulations and the alternate method suggested above – as options for reporting on Schedule A.

#### **B. Extension of Time to File Form 8971 and Furnish Schedule(s) A**

Proposed Regulation § 1.6035-1(d) generally requires that the executor file Form 8971 and Schedule(s) A with the IRS and furnish Schedule A to each beneficiary of the estate within 30 days after the estate tax return is due. Pursuant to section 6081, the IRS has authority to grant a reasonable extension of time for filing any return, statement or other document required under the Code or regulations thereunder. We respectfully suggest that the IRS consider permitting the executor to request an automatic extension of time to file with the IRS and furnish the Schedule(s) A to the beneficiaries of an estate. An automatic extension of six months would, for most estates, allow the executor sufficient time to accurately determine the assets that will be required to be reported on the return and the schedules. This would, in turn, reduce the overall burden on executors and the beneficiaries of the estate by reducing the need for supplemental filings to correct errors and would result in lower processing costs and increased efficiency for the IRS.

#### **C. Excepted Property to Include Cash Equivalents**

Proposed Regulation § 1.6035-1(b) provides exceptions with respect to property that is subject to the reporting requirements under Section 6035. Specifically, pursuant to Proposed Regulations § 1.6035-1(b)(1)(i), cash does not have to be reported on Form 8971 and Schedule(s) A. We respectfully suggest that Proposed Regulation § 1.6035-1(b)(1)(i) be expanded to include cash equivalents, including, but not limited to, money market funds and certificates of deposit.

### **III. CONCLUSION**

We greatly appreciate the opportunity to work with your office on these significant tax issues and hope these comments provide relevant analysis for your review. Thank you for your consideration.