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January 19, 2016

Office of Chief Counsel (Passthroughs and Special Industries)
CC:PA:LPD:PR (Notice 2015-57) Room 5203
Internal Revenue Service
PO Box 7604 Ben Franklin Station
Washington, DC 20044

Via Electronic Mail: Notice.comments@irs.counsel.treas.gov

Dear Ladies and Gentlemen:

The American College of Trust and Estate Counsel ("ACTEC") is pleased to submit the enclosed comments on new sections 6035 and 1014(f) of the Internal Revenue Code of 1986, as amended (the "Code"). Sections 6035 and 1014(f) were enacted as part of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, (P.L. 114-41) signed into law on July 31, 2015. Notice 2015-57 delayed reporting under section 6035 until February 29, 2016 to allow time for guidance to be issued and invited comments. On December 18, 2015, a draft Form 8971, "Information Regarding Beneficiaries Acquiring Property from a Decedent" was released for reporting under section 6035. On January 6, 2016, the Treasury released Instructions for Form 8971 and Schedule A.

ACTEC is a professional organization of approximately 2,600 lawyers from throughout the United States. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of federal taxes, with a focus on estate, gift, and GST tax planning, fiduciary income tax planning, and compliance. ACTEC offers technical comments about the law and its effective administration, but does not take positions on matters of policy or political objectives.

If you or your staff would like to discuss ACTEC's recommendations, please contact Ellen Harrison, Chair of the Washington Affairs Committee at (202) 756-8635 or by email at eharrison@mwe.com, or Leah Weatherspoon, ACTEC Communications Director, at (202) 688-0271, or by email at lweatherspoon@actec.org.

Respectfully submitted,

Bruce Stone, President

Enclosure: ACTEC Comments on Notice 2015-57/IRC §6035 and 1014(f)

CC: Catherine V. Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, U.S. Department of the Treasury

NOTICE 2015-57 / IRC §6035 AND 1014(f)

ACTEC COMMENTS

Background. On July 31, 2015, the President of the United States signed H.R. 3236, *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), into law. Section 2004 of H.R. 3236 enacted new §1014(f) and §6035 of the Internal Revenue Code (“IRC”).

IRC §1014(f) provides rules requiring that the basis of certain property acquired from a decedent, as determined under IRC §1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on a statement made under IRC §6035.

IRC §6035 imposes new reporting requirements with regard to the value of property included in a decedent’s gross estate for federal estate tax purposes. IRC §6035(a)(1) provides that the executor of any estate required to file a return under IRC §6018(a) must furnish, to both the Secretary and the 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. In addition, IRC §6035(a)(2) provides that each person required to file a return under IRC §6018(b) must furnish, both to the Secretary and 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 IRC §6035(a)(1).

IRC §6035(a)(3)(A) provides that each statement required to be furnished under IRC §6035(a)(1) or (a)(2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under IRC §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. Failure to furnish these statements may result in penalties under IRC §§6721 and 6722. On December 18, 2015, the Treasury Department released a draft Form 8971, “Information Regarding Beneficiaries Acquiring Property from a Decedent” and accompanying Schedule A (hereinafter referred to as “Form 8971” or “Schedule A”, as appropriate) to fulfill the IRC §6035 reporting obligations to the IRS and the beneficiaries of estates. On January 6, 2016, the Treasury Department released Instructions for Form 8971 and Schedule A (hereinafter referred to as the “Instructions”).

On August 21, 2015 the IRS issued Notice 2015-57, which announced that the due date for any Form 8971 and Schedule A required to be filed with the IRS or furnished to a beneficiary before February 29, 2016 is extended to February 29, 2016 “in order to allow the Treasury Department and IRS to issue guidance implementing the reporting requirements of section 6035.” Notice 2015-57 further announced that the Treasury Department and the IRS expect to issue additional guidance to assist taxpayers in complying with IRC §1014(f) and IRC §6035. The Treasury Department and the IRS invited comments to IRC §1014(f), IRC §6035, and the draft Form 8971, Schedule A, and Instructions.

ACTEC hereby submits the following comments and suggestions to clarify various areas of uncertainty and to suggest guidance in connection with Form 8971 and Schedule A. ACTEC believes that the Treasury Department and the IRS should adopt rules to make the

new information reporting obligations imposed on fiduciaries administrable, understandable, and as consistent as possible with other fiduciary obligations.

Proposed Limits on Scope of Form 8971 and Schedule A. IRC §6035(a) requires that the executor or other person required to furnish the statement provide “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.” Guidance is needed to determine the scope of the information required to be identified on Form 8971 and Schedule A.

In the situation in which a specific asset has been distributed to a beneficiary from the decedent’s estate prior to furnishing Form 8971 and Schedule A, the value of that asset as reported on the decedent’s estate tax return will be easily determined in most cases and can be identified as such. However, the “value” as reported on the decedent’s estate tax return will not necessarily be the basis of the asset in the hands of the beneficiary. Adjustments are made to basis following death but prior to distribution to a beneficiary for a variety of reasons (such as, for example, depreciation with respect to the property and estate funding decisions). We believe that to be in compliance with the provisions of IRC §6035, the executor¹ or other person required to furnish Schedule A must identify only the value of the asset as reported on the estate tax return for purposes of IRC §6035. IRC §6034A(a) currently requires the fiduciary of an estate or trust required to file an income tax return for any taxable year to furnish each beneficiary who receives a distribution from the estate or trust, or to whom income is allocated, a statement containing such information as the Secretary may prescribe. IRC §6034A(c) requires any beneficiary who reports items in a manner inconsistent with the treatment on the estate or trust’s return to notify the Secretary of any inconsistent treatment. IRC §6034A provides ample authority for the reporting of basis or other relevant tax information. In addition, the executor may provide additional information to the beneficiary with respect to any items that affect basis subsequent to the decedent’s date of death to fulfill certain fiduciary duties or for other reasons. Therefore, we do not believe that reporting basis or post-death basis adjustments is or should be a requirement under IRC §6035. We respectfully request confirmation that only the value as reported on the estate tax return is required to be identified on Schedule A. However, as discussed below in the section “**Treatment of Basis Adjustment Events,**” to facilitate reporting by fiduciaries to beneficiaries, we request that Schedule A include a section in which the executor may, but is not required to, report any post-death basis adjustments that have occurred as of the time Schedule A is furnished to a beneficiary.

In all other situations in which a beneficiary has not yet received a specific asset in satisfaction of the beneficiary’s interest in the decedent’s estate prior to furnishing Form 8971 and Schedule A, it may be impossible to know with certainty which assets will be distributed to such beneficiary. This situation commonly occurs with formula bequests, residuary gifts, and pecuniary gifts that can be satisfied with cash or property at the discretion of the executor.

¹ The person required to file Form 8971 and Schedule A may be an executor, a trustee, or any other person in possession of assets included in the taxable estate of the decedent. For purposes of these comments, “executor” will be deemed to include any person required to file Form 8971 and Schedule A unless specifically indicated to the contrary.

The Instructions to Form 8971 and Schedule A provide “All property acquired (or expected to be acquired) by a beneficiary must be listed on that beneficiary’s Schedule A. If the executor has not determined which beneficiary is to receive an item of property as of the due date of the Form 8971 and Schedule(s) A, the executor must list all items of property that could be used, in whole or in part, to fund the beneficiary’s distribution on that beneficiary’s Schedule A. (This means that the same property may be reflected on more than one Schedule A.)” We believe that in some circumstances this approach may cause confusion and would result in significant additional administrative time and expense being incurred. Accordingly, we believe the executor should be given an option to utilize the method set forth in the Instructions or the alternative method discussed below.

Providing Schedule A to a beneficiary listing all items of property that could be used to fund the beneficiary’s distribution, when the beneficiary will not, in fact, receive all of such assets (even when the listing states that the beneficiary’s distribution will be funded in whole or in part with the listed assets), can result in a beneficiary believing he or she will be entitled to all of such assets. Schedule A does not provide a place for the executor to notify such a beneficiary that the assets reported on the Schedule as property in which the beneficiary has acquired an interest includes assets (and potentially a significant number of assets) that the beneficiary will not receive. Moreover, we believe that the confusion will be increased by the portion of Schedule A titled “Notice to Beneficiaries” which states “[y]ou have received this schedule to inform you of the value of property you received from the estate of the decedent named above” (emphasis added). (See further discussion below in the section entitled “**Notice to Beneficiaries’ on Schedule A.**”)

If no assets are distributed in satisfaction of a beneficiary’s interest in the decedent’s estate prior to furnishing Form 8971 and Schedule A, then the specific interest in the property of the decedent’s estate acquired at that point in time is a general claim equal to the value of the assets allocable to the beneficiary. It may be many months or years before the executor determines with certainty the specific assets that will be distributed to specific beneficiaries, or before there is an actual distribution of assets to a beneficiary in satisfaction of his, her or its interest in the estate. We believe that to be in compliance with the provisions of IRC §6035, in these situations, the executor should be permitted to identify on a Schedule A to be provided to a beneficiary only the value as reported on the estate tax return without providing asset information at the time Schedule A is furnished. The executor should only be required to furnish to each beneficiary a Schedule A showing the dollar amount of that beneficiary’s interest in the property of the estate as one item, rather than an asset-by-asset listing of the property of the estate that may or may not be received by that beneficiary (referred to as the “alternative method”). In connection with this alternative method, we request that Schedule A include a section for the executor to indicate that the specific items of property in which the beneficiary has acquired an interest have not been determined as of the due date of Form 8971 and Schedule A. Furthermore, we recommend that if the alternative method is selected, when the executor later distributes assets to the beneficiary, for any assets distributed to a beneficiary that were listed on the estate tax return, the executor would be required within 30 days of making the distribution to file a supplemental Form 8971 and Schedule A providing the asset information and value of the property as shown on the return.

Following is an example of the application of the initial reporting by the executor if the alternative method is chosen:

Decedent's Estate with a value of \$10 million is allocated under her will as follows: outright devise of House (reported with a value of \$2 million on the estate tax return) to Beneficiary H, formula bequest of \$5 million to Trust A, and residuary bequest of \$3 million to Trust B. As of the date of the filing of the estate tax return, House has been distributed to Beneficiary H, but no other distributions have been made. Schedule A to Beneficiary H would include the \$2 million value of House as reported on the estate tax return. Schedule A to Trustee of Trust A would include a description of the property of the estate in which it has acquired an interest as "\$5 million in cash or property (unfunded)." Schedule A to Trustee of Trust B would include a description of the property of the estate in which it has acquired an interest as "\$3 million in cash or property (unfunded)." Within 30 days after assets are distributed to Trust A and Trust B, the executor would be required to file a supplemental Form 8971 and Schedules A with the IRS and provide a supplemental Schedule A to the trustees of Trust A and Trust B.

If the executor chooses to use the method provided for in the Instructions, the executor would not be required to later file a supplemental Form 8971 and Schedule A. Rather, as the Instructions state, if the executor has not determined which beneficiary is to receive an item of property at the due date of Form 8971 and Schedule A, "[a] supplemental Form 8971 and corresponding Schedule(s) A should be filed once the distribution to each such beneficiary has been made." We respectfully request confirmation that an executor who chooses to report assets not yet distributed in accordance with the method provided for in the Instructions will have no further reporting obligations.

Treatment of Basis Adjustment Events.

Basis Adjustment Events Subsequent to Decedent's Date of Death. IRC §1014(f)(1) provides that the basis of certain property acquired from a decedent, as determined under IRC §1014, may not exceed the value of that property as finally determined for federal estate tax purposes, or if not finally determined, the value of that property as reported on Schedule A. However, the basis of an asset is often adjusted during an owner's holding period for a variety of reasons (*e.g.*, partnership distributions that decrease basis and capital improvements that increase basis). Clarification is needed in the regulations or in the Instructions to confirm that although the value reported on a federal estate tax return and then subsequently on Schedule A sets a limit on the basis a beneficiary can use for an inherited asset as of the date of death of the decedent, any and all adjustments subsequent to the date of death of the decedent can and will adjust the basis in the inherited asset subsequent to such date, as permitted or required under other provisions of the IRC. In order to avoid confusion to any beneficiary, we also request that Schedule A advise the beneficiary that adjustments may have been made to the basis of the property the beneficiary has received and that the value reported on Schedule A is the value of the property as reported on the decedent's estate tax return and does not include any post-death adjustments that may affect basis in the hands of the beneficiary, except as discussed below with respect to an executor's discretionary funding decisions.

Basis Adjustments Due to Discretionary Funding. In certain circumstances the executor of an estate may be given the discretion to fund a specific gift with cash or other property or may be given the discretion to fund a cash gift with property. In those situations, the funding determination made by the executor could result in recognition of gain or loss by the estate due to the nature of the funding. For example, an executor may satisfy a bequest of \$10,000 in cash with shares of publicly traded stock equal in value to \$10,000 that have a

basis in the estate of \$7,000. In that case, the estate would be required to report a gain of \$3,000 on the funding for income tax purposes and the basis in those shares that the beneficiary receives would be \$10,000. See Rev. Rul. 74-178, C.B. 196; Treas. Reg. §1.1014-4(a)(3). If the executor reports the “value” of those shares as reported on the estate tax return on Schedule A as \$7,000, this may create confusion for the beneficiary with respect to his, her, or its basis for income tax purposes. To avoid confusion in these types of discretionary funding situations, we respectfully request that Schedule A include a section in which the executor may, but is not required to, report any post-death basis adjustments that have occurred as of the time Schedule A is furnished to the beneficiary.

Circumstances in Which No Reporting Requirement Exists.

Clarification of Returns “Required” to be Filed. IRC §6035 applies to “[t]he executor of any estate required to file a return under section §6018(a).” The Treasury Department and the IRS should clarify that the term “any estate required to file a return under section 6018(a)” applies only to estates where the gross estate of the decedent exceeds the basic exclusion amount in effect under IRC §2010(c) (adjusted for prior taxable gifts as provided in IRC §6018(a)(3)). It should not apply when an estate tax return is filed solely at the discretion of the executor, including situations in which a return is filed in order to elect portability. Without this guidance, confusion may arise for executors filing returns solely to make a portability election because the “portability regulations” under IRC §2010 (Treas. Reg. §20.2010-2(a)(1)) provide a due date for an estate tax return to elect portability for a return that is not otherwise required to be filed pursuant to IRC §6018 (nine months after death). These regulations provide that an estate that elects portability will be considered to be required to file a return under IRC §6018(a). In addition, for an estate where the value of the gross estate is less than the basic exclusion amount, an executor might file an estate tax return in order to begin the statute of limitations period under IRC §6501 (e.g., the value of the gross estate may be near but not more than the basic exclusion amount and the executor elects to file the return as a precautionary measure). The Instructions provide that if an executor is not required to file an estate tax return but does so for the “sole purpose of making an allocation or election respecting the generation-skipping transfer tax” that there is no Form 8971 or Schedule A filing requirement. Likewise, we believe that the Treasury Department and the IRS should specifically provide that IRC §6035 does not apply when an executor who is not otherwise required to file an estate tax return pursuant to IRC §6018 files an estate tax return for the purpose of making the IRC §2010 portability election or for the purpose of starting the statute of limitations period under IRC §6501(a).

Application of IRC §6035 to Property with Regard to which No Estate Tax Return Is Required To Be Filed. IRC §6035(b)(1) provides that the Secretary may issue 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.”

Clarification is needed as to what “property with regard to which no estate tax return is required to be filed” means. Although the statutory language appears to give the Secretary broad authority to require executors of estates in which no estate tax return is required to be filed to furnish a Form 8971 and Schedule A, we do not believe that this regulatory authority was meant to expand the express language of IRC §6035 to require executors of estates that are not required to file an estate tax return pursuant to IRC §6018 to furnish Form 8971 and Schedule A. We request clarification that not every decedent’s estate (whether or not an estate tax return is required to be filed pursuant to IRC §6018) needs to furnish Form 8971 and Schedule A.

Property for which There is no Basis Adjustment upon a Decedent's Date of Death.

Pursuant to IRC §1014(a), the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent is, unless otherwise provided in IRC §1014, the fair market value of the property at the date of the decedent's death. (In the case of an election under IRC §2032, the beneficiary's basis is its value at the applicable valuation date prescribed by those sections; in the case of an election under IRC §2032A, the beneficiary's basis is its value determined under such section; and to the extent of the applicability of the exclusion described in IRC §2031(c), the beneficiary's basis is the basis in the hands of the decedent.)

IRC §1014(c) provides that the basis adjustment provisions of IRC §1014 do not apply to items of income in respect of a decedent ("IRD") under IRC §691.

IRC §6035 regulations, or other guidance including the Instructions, should provide that Form 8971 and Schedule A is required to be furnished only to beneficiaries who receive assets that have a basis determined pursuant to IRC §1014(a). No Form 8971 and Schedule A should be required with regard to assets includible in a decedent's gross estate for estate tax purposes if the assets a beneficiary receives do not receive a basis adjustment under IRC §1014(a). Such assets include cash, any income in respect of a decedent under IRC §691, proceeds of life insurance includible in the decedent's gross estate, and similar items. Providing a Form 8971 and Schedule A with respect to assets that do not receive a basis adjustment pursuant to IRC §1014(a) would be of no use to the IRS or to the beneficiary receiving such assets. Doing so would be burdensome to the estate, resulting in additional unnecessary expense to the estate, and would create unnecessary work for the IRS and the Treasury Department. Moreover, providing a Form 8971 and Schedule A to such beneficiaries could be confusing to the beneficiaries, who may assume, incorrectly, that the Schedule A that reports the value of the assets for estate tax purposes also establishes a basis in the assets received by the beneficiaries.

If the IRS and the Treasury Department determine that Schedule A should nonetheless be required for items of cash, IRD, and similar items, Schedule A or the Instructions thereto should specifically include a provision that explains to the beneficiary receiving the Schedule A that an IRD asset received is reported at its value for estate tax purposes but that the value so reported does not establish the beneficiary's basis in the asset for income tax purposes.

Non-Resident Alien Estate Tax Returns. Guidance is needed to determine the extent to which an estate tax return filed by a non-resident alien is subject to IRC §6035. When a United States estate tax return is filed by a non-resident alien, non-US situs assets are often listed on the estate tax return, as may be required for treaty reasons or to claim deductions. We respectfully request a clarification that in these circumstances the executor is required to furnish the Form 8971 and Schedule A solely with respect to property subject to United States estate tax as that is the only property included in the decedent's gross estate for federal estate tax purposes.

Guidance on Who Must Furnish the Form 8971 and Schedule A.

The IRS and the Treasury Department should include in any guidance a definition of "executor." We recommend that the term be defined to be consistent with IRC §2203 whereby if there is a court-appointed executor or administrator, then that person is the

executor. However, if there is no court-appointed executor, then the "executor" is the person in actual or constructive possession of any property of the decedent, and thus there can be multiple "executors" required to furnish Form 8971 and Schedule(s) A if multiple persons are in possession of a decedent's property. If there are multiple executors, then each executor should only be responsible to provide a Form 8971 and Schedule A for property under his, her, or its control.

If an executor is unable to make a complete Form 8971 because the executor knows there is property that the executor is unable to specifically identify for purposes of completing Schedule(s) A (and for which a return under IRC §6018(b) will be required), such executor should include in the Form 8971 and Schedule(s) A a notification that the Schedule(s) A do not include all property of the estate. In addition, if property is to be reported on a Schedule A but such property is not within the control of an executor, that executor should be required to disclose that property (so far as known by the executor) on an attachment to its Form 8971. Unfortunately, the Instructions do not address these concerns. Instead, the Instructions state that a form with an answer of "unknown" or similar language will not be a complete return. Clarification should be provided for situations in which the executor cannot obtain such information. In such situations, the reasonable cause exception discussed in the Instructions should apply to the executor so that no penalties will be incurred.

If the executor is unable to file a complete Form 8971 and Schedule A as to a person acquiring an interest in property of the estate, such executor should include on the Schedule A furnished to that person and to the IRS a statement that the Schedule A does not include all required information and indicate who has the relevant information (so far as is known to the executor).

The Instructions provide that all executors are liable for the information on Form 8971 and Schedule(s) A and are liable for all applicable penalties. If there are multiple executors that require multiple Forms 8971 and accompanying Schedule(s) A to be filed, such as in the case of a return required under IRC §6018(a) and §6018(b), each executor is responsible for only the return he, she, or it is required to file and should not be subject to penalties for mistakes in or failure to file a Form 8971 and Schedule(s) A that are the responsibility of any other executor. We respectfully request clarification in the final instructions for Form 8971 and the regulations to this effect.

Guidance on to Whom the Form 8971 and Schedule A Must be Furnished.

Background. IRC §6035(a)(1) references IRC §6018(a) and states that the executor must furnish Form 8971 and Schedule A to "the Secretary and to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes...." IRC §6035(a)(2) references IRC §6018(b) and states that each person required to file a return under IRC §6018(b) is required to furnish Form 8971 and Schedule A to the Secretary and "each other person who holds a legal or beneficial interest in the property to which such return relates...."

Guidance is needed with respect to the meaning of "each person acquiring any interest in property included in the decedent's gross estate" and "each other person who holds a legal or beneficial interest in the property to which such return relates." Specifically, as noted below, the terms "any interest" and "a legal or beneficial interest" should be narrowly construed in the cases where the interest acquired is acquired by a trust, or the interest is a life estate or term-of-years.

Trusts. The statutory language is potentially ambiguous with regard to bequests or devises to a trustee of a trust for the benefit of other persons. Whether the trust is created *inter vivos* or under the decedent's Will, the trustee of the trust holds the legal ownership of the trust assets, but the trust's beneficiaries hold a beneficial interest in the trust property.

IRC §6035(a)(1) refers to "each person acquiring any interest in property" and IRC §6035(a)(2) refers to "persons who hold a legal or beneficial interest in the property." Neither provision, however, clearly identifies what is meant by "the property." A beneficiary of a testamentary or *inter vivos* trust has a beneficial interest only in what the trustee holds. Arguably, the beneficiaries of the trust do not have an interest or a beneficial interest "in the property" of the decedent's estate. The most logical and practical approach is to treat the trustee as the only person to whom Schedule A must be furnished. We believe that this approach is best for several reasons.

First, the trustee will be the person required to file a federal income tax return reporting any gain on the sale or exchange of the assets that were includible in the decedent's gross estate. The beneficiaries of the trust (unless the trust is taxable under IRC §678) do not usually report these gains on their personal income tax returns. If gain on the sale of trust property is included in the trust's distributable net income as provided in IRC §643 and reportable by the beneficiary pursuant to IRC §652 or §662 (and deductible by the trust pursuant to the IRC §651 or §661 income distribution deduction), the trustee is still the person who reports the sale on the trust's income tax return, with the beneficiary receiving a Schedule K-1 showing any capital gain the beneficiary must report pursuant to IRC §652 or §662. Thus, basis is important to the trustee, rather than to the beneficiaries. A reasonable exception could be made when the executor knows that the trust is deemed owned by a beneficiary under IRC §678.

Second, the executor often does not possess and cannot obtain information regarding the identity of the beneficiaries of an *inter vivos* trust to which some portion of the decedent's estate may be added. It would be unreasonable to hold the executor responsible for identifying these persons, when doing so may be beyond the executor's powers.

Third, the interests of trust beneficiaries are often difficult to ascertain, and giving Schedule A to all possible beneficiaries may create confusion and involve an unnecessary expenditure of an executor's time and of estate resources.

Fourth, it is often impossible to identify all of the members of a class of beneficiaries of a trust, either because the trustee has broad discretion to select the actual recipients of trust distributions (as where the trustee is authorized to make distributions to "any charity that is exempt from federal income taxes and to which deductible distributions may be made for federal income tax purposes"), or because a beneficiary holds a broad power of appointment over the trust assets. In such situations, requiring the executor to identify all of the persons who hold a beneficial interest in a trust would be unreasonable.

If an executor is required to give notice to the beneficiaries of a recipient trust, guidance is requested as to whom Schedule A should be provided for these purposes. For example, if there are any unborn or unascertainable beneficiaries who may later become beneficiaries of the trust (*e.g.*, a trust for all of the settlor's descendants, or a trust to child 1 for life and then upon child 1's death to the child's then living descendants), guidance is needed to identify all of the required recipients of Schedule A.

Subtrusts. If an estate consists of assets that pass ("pour over") to a trust, or an existing trust has assets on the date of the decedent's death that are includible in the decedent's gross estate for federal estate tax purposes and those assets pass to a subtrust created thereunder (e.g., a Family Trust or Marital Trust), guidance is requested as to whether Schedule A should be furnished by the executor to only the trustee of the "master" trust or must it be furnished to the trustee of the subtrust(s). We recommend that executors of estates that pour over to one master trust that will later be distributed to one or more subtrusts be required to provide Schedule A only to the trustee of the master trust. Similarly, when assets of an existing trust are includible in a decedent's gross estate for federal estate tax purposes by reason of IRC §2036, §2038 or §2044, we recommend that the executor of such estates be required to provide Schedule A only to the trustee of the existing trust. Furthermore, where the trustee of an existing trust includible in a decedent's gross estate under IRC §2036, §2038 or §2044 is the person required to file a return under IRC §6018(b), we recommend that Schedule A be furnished only to the beneficiaries of the existing trust if the existing trust makes outright distributions to the beneficiaries. If the existing trust makes distributions to a subtrust, then Schedule A should be furnished to the trustee of the subtrust.

Confirmation is needed that if Schedule A is required to be provided to the trustee of the "master trust," then no supplemental Form 8971 and Schedule A needs to be filed with the IRS or provided to the beneficiaries of the master trust when the subtrusts are funded. This burden should not be on the executor as the executor may be different than the trustee and may not know or even be entitled to know when the funding of the subtrusts occurs.

Term Interest and Remainder Interests. Assets may be left to one person for life or for a term of years, with the remainder then passing to another person. It is unclear to whom IRC §6035(a) requires the executor to give information in such cases.

The most logical approach would be to require the executor to give Schedule A to the life tenant (or other term interest holder), because he or she will be required to file an income tax return reporting any gain or loss on a sale of the property. In Rev. Rul. 61-102, 1961-1 CB 245, the IRS stated that a taxpayer who has the power to sell property in which he or she has a life interest, but who is required under the terms of the Will creating the life interest, to reinvest and conserve the proceeds of such a sale for future distribution to the remainderpersons, is considered, for federal income tax purposes, as acting in a fiduciary capacity with respect to the proceeds of any such sale. A taxpayer who sells property under such circumstances must report any gain from the sale on a U.S. Income Tax Return for Estates and Trusts (IRS Form 1041), and pay the tax due thereon. See also *United States v. DeBonchamps*, 278 F.2d 127 (9th Cir. 1960); *Robinson v. United States*, 192 F.Supp. 253 (N.D. Ga. 1961).

Some courts have held that gain on the sale of property held in a life estate with remainder to another person is the personal obligation of the life tenant, reportable on his or her personal federal income tax return (IRS Form 1040). This result appears to arise only if the life tenant has an unrestricted power to consume the sales proceeds. See *Hirschmann v. United States*, 309 F.2d 104 (2d Cir. 1962); *West v. United States*, 310 F. Supp. 1289 (N.D. Ga. 1970); but cf. *Gaskill v. United States*, 188 F.Supp. 507 (N.D. Tex. 1960) (gain taxable to bank that was, as part of the overall transaction, named to hold and invest the sales proceeds that the life tenant turned over). Even in those situations, however, the life tenant is still required to file the income tax return reporting the sale, and so he or she

remains the person most interested in the basis of the property. For these reasons, we respectfully request that the Treasury Department and the IRS provide that the executor is only required to give Schedule A to the life tenant (or other term interest holder) in these circumstances.

Alternatively, if the IRS requires that Schedule A be furnished to both the life tenant (or other term interest holder) and the remainderpersons, we request clarification that the executor need only give Schedule A to those persons who would be the remainderpersons if the life tenant (or other term interest holder) died immediately after the decedent (the “presumptive remainder beneficiaries”). Any other requirement could result in the executor being required to furnish Schedule A to a very large class of potential remainderpersons, in many cases, many of whom likely will never receive any interest in the property itself.

Whether or Not Subject to the Basis Consistency Rules of IRC §1014(f). IRC §1014(f)(2) provides that the basis consistency provisions of IRC §1014(f)(1) only apply to property whose inclusion in the decedent's estate increased the estate tax liability for the estate. However, IRC §6035 has no such restriction, and Form 8971 and Schedule(s) A are to be furnished to the IRS and Schedule A is to be furnished to each beneficiary acquiring an interest in property included in the decedent's gross estate for federal estate tax purposes. We note that Schedule A of draft Form 8971 includes a column to indicate if an asset increased estate tax liability, which appears to be included to indicate whether an asset is subject to the basis consistency rules of IRC §1014(f). Guidance is needed with respect to the meaning of “property whose inclusion in the decedent's estate increased the estate tax liability for the estate”, which is not defined in the statute, Form 8971 (Schedule A, column c) or the Instructions. It appears that every asset includible in an estate subject to the IRC §6018 filing requirement where any estate tax is due, unless specifically passing in a manner qualifying for the marital deduction pursuant to IRC §2056 or charitable deduction pursuant to IRC §2055, would increase the estate tax liability for the estate, including assets passing in a manner shielded from estate tax by the decedent's applicable exclusion amount. We also respectfully request that the Treasury Department and the IRS consider providing that because assets passing in a manner qualifying for the estate tax marital deduction pursuant to IRC §2056 and the charitable deduction pursuant to IRC §2055 are not subject to the IRC §1014(f) basis consistency provisions, no Form 8971 and Schedule(s) A need to be furnished by the executor to the IRS and no Schedule A needs to be furnished to such beneficiaries with respect to such assets. We believe that this is consistent with the intent of IRC §1014. Requiring the executor to provide such information when the beneficiary will not be subject to the provisions of IRC §1014 will unnecessarily involve a substantial expenditure of an executor's time and of estate resources. Should the Treasury Department and the IRS determine that reporting of each asset distributed to a beneficiary is required, whether or not the asset increased estate tax liability, then we respectfully request that additional guidance be given in connection with Form 8971 as to the types of items that do not increase estate tax liability and the effect of this designation pursuant to IRC §1014(f) on the recipient of the Schedule A.

Survivorship Requirements. The executor must furnish Schedule A to the person(s) acquiring an interest in specifically bequeathed or devised property. Often, however, a will or trust requires that an individual survive the decedent by a stated period in order to receive a bequest or devise (the “Determination Period”). Where this period is relatively long, the executor may not be able to identify the person who is acquiring an interest in the specific property on the date that Schedule A is to be furnished.

If the Determination Period extends beyond the due date of the federal estate tax return, the executor should be permitted to give the Schedule A to whomever would be entitled to receive the property on the date that the federal estate tax return is filed, without regard to whether that person is also alive on the expiration of the survivorship period. Requiring that notice be given to both the current and the contingent alternate beneficiaries would lead to confusion on the part of individuals who are receiving information regarding the value of property that they may never receive.

Death of Beneficiary. If a person acquiring an interest in a decedent's property dies after the decedent but before the furnishing of the Schedule A, guidance is needed to determine to whom the Schedule A is to be furnished. If there is a probate proceeding then pending for the deceased beneficiary, we recommend that the proper party should be the deceased beneficiary's court-appointed executor or personal representative. However, if no probate proceeding is then pending for the deceased beneficiary and if the executor of the decedent's estate in question does not know who will be acquiring an interest in the property, we respectfully request that the executor be required only to provide Schedule A to the IRS under these circumstances, or, alternatively that the executor be permitted to furnish Schedule A to the deceased beneficiary at his or her last known address (but if the executor after due diligence cannot ascertain any last known address for the deceased beneficiary, then the executor should only be required to file Form 8971 and Schedule A with the IRS). As noted above, the Instructions state that if either Form 8971 or Schedule A state that the address of the beneficiary is "unknown," the return will not be a complete return and penalties may be incurred. We respectfully request additional guidance to address situations in which the executor acted in a responsible manner and took steps to obtain the missing information but was unable to do so.

Missing Beneficiaries/Uncooperative Beneficiaries. In certain circumstances, the executor may not be able to obtain information from a beneficiary. For example, a beneficiary may be uncooperative and refuse to provide his, her, or its taxpayer identification number ("TIN") prior to the due date of Form 8971 and Schedule A, and the executor has no authority to compel the disclosure. In addition, if the beneficiary is a trust and the trustee of such trust has not yet obtained a TIN (as when a trust has not been funded and has no income or deductions to report for federal income tax purposes), or if the beneficiary does not have a TIN (because he or she is not a U.S. citizen), there may not be a TIN at the due date of Form 8971 and Schedule A. The Instructions state that a form with an answer of "unknown" or similar language will not be a complete return. In the case of a TIN, the Instructions provide that a TIN (or presumably the lack thereof) is an error or omission that is never inconsequential. The Instructions impose an impossible burden on the executor in these circumstances and are unreasonable. We believe that if an executor, after reasonable due diligence, cannot obtain the address or taxpayer identification number for a beneficiary that the executor should be allowed to answer "unknown", similar to how the Form 706 instructions for Part 4, Line 5 provide "[e]nter the SSN of each individual beneficiary listed. If the number is unknown, or the individual has no number, please indicate 'unknown' or 'none.'" Guidance is needed to determine how Form 8971 and Schedule A can be completed in these circumstances. We respectfully request that the executor be required only to provide Form 8971 and Schedule A to the IRS under these circumstances. Form 8971 and Schedule A could include a section for the executor to indicate that some or all of the information is unavailable, and to provide all of the information then available to the executor that may be helpful to identify the beneficiary for whom such information is unavailable or nonexistent. We respectfully request that guidance be given that confirms that providing information in this manner will satisfy the

reporting requirements applicable to the executor under IRC §6035 and will fall under the reasonable cause exception to the penalties imposed for failure to file Form 8971 and Schedule(s) A and for failing to provide Schedules A to beneficiaries.

If the decedent's testamentary document is being contested and it is unknown as of the due date of the filing of Form 8971 and Schedule A who is entitled to acquire an interest in the decedent's property, guidance is needed to determine who should receive Schedule(s) A. Similarly, if the decedent died intestate and there is pending litigation over who the decedent's heirs are as of the due date of the filing of the Form 8971 and Schedule A, guidance is needed to determine who should receive Schedule(s) A. We respectfully request that the executor be required only to provide Form 8971 and Schedule A to the IRS under these circumstances. Form 8971 and Schedule A could include a section for the executor to indicate that the identity of the persons acquiring an interest in the decedent's property are unknown due to pending litigation. Once the identities of the actual recipients are determined, the executor would then furnish Schedule A to those recipients within the time period required for adjustments under IRC §6035(a)(3)(B). Similarly, if the decedent's ownership of property is the subject of dispute, guidance is needed to determine how to indicate that the executor is unable to ascertain the precise nature of the decedent's property interests. Form 8971 and Schedule A could include a section for the executor to indicate that the decedent's interest in the property is subject to dispute. We respectfully request that guidance be given that confirms that providing information in this manner will satisfy the reporting requirements applicable to the executor under IRC §6035 and will fall under the reasonable cause exception to the penalties imposed for failure to file Form 8971 and Schedule(s) A and for failing to provide Schedules A to beneficiaries.

Supplemental Forms 8971 and Schedule(s) A. IRC §6035(a)(3)(B) provides that “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.”

“Adjustment.” Clarification is needed as to the meaning of the term “adjustment.” The term should generally be limited to adjustments to the value of property as reported on the federal estate tax return, and adjustments arising from the inclusion of interests in property in the decedent's gross estate that were not reported on the federal estate tax return.

The phrase “an adjustment to the information required to be included on a statement...” should be clarified to include an adjustment to the value of an asset reported on the estate tax return which is agreed to by the executor and the IRS (*i.e.*, changed by audit of the estate tax return) and an adjustment of the value of an asset reported on the estate tax return by court order. In addition, if the executor files a supplemental estate tax return valuing an asset at a value different than the value reported on the estate tax return, then the change should be included within the definition of “adjustment.” Similarly, if the executor files a supplemental estate tax return that includes assets that were not reported on the estate tax return, the addition of such assets should be included within the definition of “adjustment.”

As previously discussed, other than elections that affect the estate tax return value of an asset (*e.g.*, the alternate valuation election pursuant to IRC §2032, the special use election pursuant to IRC §2032A, and similar elections), we do not believe that actions taken by the executor or others during the administration of the estate that affect the basis of an asset,

(including, but not limited to an estate electing to realize gain under IRC §643(e)) should be “adjustments,” nor should other matters that affect basis that occur during administration (*i.e.*, depreciation, partnership income/loss that affects basis, additions or improvements made to rental, investment or other property, stock splits or spin-offs that require a basis allocation different from the value originally reported on the estate tax return, and other similar items) be considered an “adjustment.” Similarly, we do not believe that a basis adjustment made pursuant to IRC §469(j)(12) (providing that when a passive activity is distributed out of an estate any suspended passive losses are added to increase the basis of the interest) should be considered an “adjustment” for purposes of IRC §6035.

Furthermore, for basis adjustments due to discretionary funding decisions by the executor (*e.g.*, when an executor funds a bequest by distributing appreciated assets in-kind to a beneficiary that increase basis from the date-of-death value to include the gain recognized by the estate on funding such bequest), such increase should not be considered an “adjustment” for purposes of IRC §6035. Instead, Schedule A should include a section where the executor reports the estate tax return value and also permits, but does not require, the executor to report any post-death basis adjustments due to the executor’s discretionary funding decisions that have occurred by the time Form 8971, Schedule A is furnished.

When a Supplemental Form 8971 and Schedule A is Due. IRC §6035(a)(3)(B) provides that a supplemental Form 8971 and Schedule A is required to be filed not later than the date which is 30 days after an adjustment is made. Clarification of when an “adjustment” occurs for purposes of §6035(a)(3)(B) is needed, as that will affect the due date of the supplemental Form 8971 and Schedule A. In the case of an agreement between the executor and the IRS, it is not clear if the adjustment occurs on the date the closing agreement is signed or on the date the IRS issues a closing letter for purposes of IRC §6035. We recommend that the date on which the closing agreement is signed be considered the date of the adjustment. Guidance is also needed when there is litigation over whether an asset is includible in an estate or with regard to the valuation of an asset. We respectfully request that the date of an adjustment resulting from litigation be the date on which the order of the court or an agreement between the parties becomes final and binding on the parties and is no longer subject to appeal by any party to the litigation.

Treatment of Special Property.

Community Property.

Pursuant to IRC §1014(a) and §1014(b)(6), upon the death of a married decedent, a basis adjustment is made to both the decedent's one-half share of community property and the surviving spouse's one-half share of community property if at least one-half of the entire community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (IRC §2001 et. seq.).

In preparing the decedent’s estate tax return, the executor may report only the decedent’s one-half interest in the community property, or may report all of the community property and then subtract the value of the surviving spouse’s interest in such property. The decedent’s gross estate for federal estate tax purposes, however, only includes the decedent’s one-half interest in community property.

The plain language of IRC §6035 provides that the property to which Form 8971 and Schedule A applies is the property included in the decedent's gross estate for federal estate tax purposes. In addition, Schedule A is to be furnished to each person acquiring any interest in such property. Upon the decedent's death, the surviving spouse does not acquire any interest in the surviving spouse's share of community property; the surviving spouse already owns his or her interest. Therefore, clarification is needed to confirm that when a decedent owns an interest in community property, regardless of whether the decedent's estate tax return reports all of the community property, the only interest subject to the reporting requirements of IRC §6035 is the decedent's interest in the community property. Clarification is further needed to confirm that if the decedent transfers at death his or her interest in community property to a beneficiary other than the surviving spouse, the executor is not required to provide Schedule A to the surviving spouse with regard to the surviving spouse's retained interest in the community property because it was not included in the decedent's estate for estate tax purposes.

Additional guidance is needed with respect to funding following the closing of an estate that included community property as part of the gross estate. Situations may arise where the surviving spouse who owns an interest in community property receives other assets in lieu of his or her interest in the community property.

For example, the laws of the state in which the decedent resided or the decedent's testamentary documents may authorize a non pro rata division of the community property. In those circumstances, the executor may divide the property so that the surviving spouse receives all of one community property asset and a beneficiary (*e.g.*, a trust for the surviving spouse) receives all of another community property asset of equivalent value. As another example, community property may be titled in the name of one spouse or in the name of both spouses. If a community property asset is titled solely in the name of the decedent who purports to transfer the entire asset to a beneficiary other than the surviving spouse, the surviving spouse's community property interest in the transferred property may be satisfied with other assets of the decedent's estate.

In both of these examples, although the surviving spouse is entitled to his or her interest in the community property, he or she receives other assets in satisfaction of this interest. If the distributions of specific community property assets is determined before Form 8971 and Schedule A is required to be furnished, the executor should be required to identify the value of only the decedent's interest in the community property, and the person to whom that interest has been distributed. As further example, if the estate included the decedent's community one-half interest in stock and a residence, and if before Form 8971 and Schedule A is furnished, the executor determines to distribute both halves of the community property interest in the stock to the trustee of a bypass trust and both halves of the community property interest in the residence to the surviving spouse, then the executor should furnish a Schedule A to the trustee of the bypass trust identifying the value of the decedent's one-half interest in the stock and should furnish a Schedule A to the surviving spouse identifying the value of the decedent's one-half interest in the residence. However, if at the time that the Form 8971 and Schedule A is required to be furnished, no assets have been distributed in satisfaction of a beneficiary's interest in the decedent's interest in community property, then the specific interest in the property of the decedent's estate acquired at that point in time is a general claim equal to the value of the assets allocable to the beneficiary as reported on the estate tax return. In this latter situation, we believe that the duty of the executor or other person required to furnish Form 8971 and Schedule A is limited to identifying the value of the property as shown on the estate tax return, which will

be an amount equal to the beneficiary's interest in the estate property rather than an asset-by-asset listing. In addition, if the decedent's surviving spouse is not a beneficiary of the decedent's estate and does not acquire any interest in the decedent's property, the executor should not be required to provide Schedule A to the surviving spouse.

Tangible Personal Property.

If assets are valued on the estate tax return as a group (*e.g.*, personal effects or an art collection) rather than as individual items (*e.g.*, piano), and if the grouped items pass to more than one person (and not necessarily equally), clarification is needed as to how to identify and allocate the value of the property among the persons acquiring an interest in the property. As of the time for filing the estate tax return, the executor may not know what items of personal effects are passing to what particular beneficiaries when the personal effects pass to a group of beneficiaries (*e.g.*, personal effects "to be divided among them as they agree"). In *Janis v. Commissioner*, T.C. Memo 2004-117, *aff'd*, 461 F.3rd 1080 (9th Cir. 2006), the Court held that the discounted estate tax value of an art gallery (group) set the aggregate basis of the art works, which aggregate basis was then to be spread among the individual items. As beneficiaries may disagree as to the value of their share of tangible personal property, the executor should have the obligation to inform each beneficiary of that beneficiary's aggregate share of a "group value."

Where tangible personal property is identified and valued on an estate tax return as one or more "groups of items," we respectfully request that the executor be given the authority to allocate the value reported on the estate tax return among the group of items, on any reasonable basis, and if a beneficiary receives a group of items that the beneficiary be given the authority to further allocate the value so allocated by the executor to such items on any reasonable basis. In addition, we request that the Treasury Department and the IRS include in the section of Schedule A entitled "Notice to Beneficiaries" an instruction that the beneficiary may allocate the group value among the assets included in the group reported on Schedule A on any reasonable basis.

Any items of tangible personal property individually listed and valued on the estate tax return should also be individually listed on Schedule A. We respectfully request that the IRS adopt a *de minimis* rule providing that items of tangible personal property (excluding items individually listed on the estate tax return) aggregating \$50,000 or less (which represents less than 1% of the basic exclusion amount) do not need to be included on Schedule A.

Penalties. Guidance should clarify that penalties for failure to file the Form 8971 and Schedule A with the IRS and the persons acquiring an interest in a decedent's property will only be assessed when the Form 8971 and Schedule A is not filed as required. The Treasury Department and the IRS should confirm that Form 8971 and Schedule A is per beneficiary and not per asset (as reflected in the draft Form 8971 and the Instructions), and that any penalty assessed is per beneficiary and not per asset. Guidance should provide how the executor can substantiate, consistent with the "reasonable cause" exception included in the Instructions, that penalties will not be assessed when an executor makes reasonable efforts to substantially comply with the requirements of IRC §6035 (*e.g.*, when the executor is unable to obtain information needed to specifically identify property, the executor is unable to obtain required information from a beneficiary, pending litigation prevents the executor from identifying the persons entitled to the decedent's property, and similar issues).

Overstatement Penalties for Beneficiary. IRC §1014(f) provides that the basis of any property to which IRC §1014(a) applies shall not exceed (A) in the case of property the final value of which has been determined for purposes of the tax imposed by chapter 11 on the estate of such decedent, such value, and (B) in the case of property not described in subparagraph (A) and with respect to which a statement has been furnished under IRC §6035(a) identifying the value of such property, such value. We believe Schedule A should inform the person receiving Schedule A that the basis in the asset received may not be “the value” of such property as reported on the Schedule A (or as finally determined), but that the basis of such property may be adjusted by reason of post-death adjustments as discussed above. Thus, if a beneficiary believes that an asset received was incorrectly overvalued on the estate tax return, the beneficiary still must determine the appropriate basis to claim. Pursuant to IRC §1014(f), that basis is limited to the value reported on Schedule A, as adjusted by reason of any post-death adjustments. The requirements under IRC §6034A(c) with regard to beneficiaries disclosing inconsistent positions are independent of, and in addition to, the requirements of IRC §1014(f) and IRC §6035.

Other Comments to Form 8971, Schedule A, and the Instructions.

Due Date for Furnishing Schedule A. Form 8971 provides that the executor must indicate the date of service of Schedule A. In addition, the Instructions provide that “[t]he executor of the estate . . . must certify on Form 8971 the date on which the Schedule A was provided to each [of the]² beneficiaries.” We believe that the terminology used in Form 8971 and the Instructions is unclear. Accordingly, we request that the Instructions be revised to clarify that date of mailing (or the date of sending by one of the other listed means), rather than the date of receipt, is the date to be used in determining if the executor timely provided Schedule A to the beneficiary. Likewise, we request that Form 8971 be revised so that Part II, Column D be revised to read “Date Provided to Beneficiary” rather than “Date of Service.”

“Notice to Beneficiaries” on Schedule A. The “Notice to Beneficiaries” at the bottom of Schedule A provides that Schedule A is being provided to inform the beneficiary of “the value of property you received from the estate. . . .” This statement may not be accurate in every case and thus, may be misleading to the beneficiary. Pursuant to IRC §6035, Schedule A is to be provided to each person acquiring an interest in property of the estate and to identify the value of that interest as reported on the estate tax return. At the time of furnishing Schedule A to a beneficiary, no property may have been distributed to that beneficiary, and when property is distributed to a beneficiary, it may not be the property listed on Schedule A. We respectfully request that any notice to beneficiaries included on Schedule A be revised to reflect the nature of the information to be reported pursuant to IRC §6035. Accordingly, we request that the first sentence of the Notice to Beneficiaries on Schedule A be revised to read: “You have received this schedule to inform you of the value of the property described above, as reported on the estate tax return (or in the case of a supplemental schedule, as adjusted).”

Purpose of Form Statement. The Instructions provide that “[s]ome property received by a beneficiary may have a consistency requirement, meaning that the beneficiary must use the

² Bracketed language is missing in Schedule A.

value reported on Schedule A as the beneficiary's initial basis [of]³ the property." This statement is not consistent with IRC §1014 or IRC §6035. IRC §1014(f)(1)(B) provides that the basis of property shall not exceed the value of any property reported to a beneficiary on Schedule A. IRC §6035 is a value-reporting requirement, not a basis-reporting requirement. We respectfully request clarification in the final instructions for Form 8971 to accurately describe the scope of IRC §1014 and IRC §6035.

Respectfully Submitted,

Gregg M. Simon, Chair of the ACTEC Task Force
on comments to Notice 2015-57 / IRC §6035 and 1014(f)

³ Bracketed language is missing in Instructions.