

Submitted Via Electronic Mail

January 28, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20024

Re: Internal Revenue Service Draft Form 8971 and Instructions, “Information Regarding Beneficiaries Acquiring Property from a Decedent”

Dear Commissioner Koskinen:

The American Bankers Association (ABA)¹ would like to comment on the recently released Draft Form 8971 and instructions for information reporting by executors on certain decedents’ estates. Many of our banks, savings associations, and trust companies act as executor or personal representative (collectively, executors) on decedents’ estates that would be subject to the information reporting. These institutions are seeking reasonable reporting relief and additional guidance from the Internal Revenue Service (IRS) to facilitate proper compliance with the new requirements.

Background on New Reporting

Section 2004(b) of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Act)² created new Internal Revenue Code section 6035, which requires executors of any estate required to file a return under section 6018(a) to furnish, both to the IRS and any beneficiary of the estate, a statement identifying the value of each interest in such property. This reporting is due within thirty days of filing the federal estate tax return, Form 706. Because the

¹ The American Bankers Association is the voice of the nation’s \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

² P.L. 114–41 (July 31, 2015).

Act's provision went into effect immediately, the earliest reporting would have been due in late August 2015, with respect to estate tax returns filed at the beginning of that month. Given that guidance and forms had yet to be developed, the IRS issued Notice 2015-57 on August 21, 2015, and directed executors not to file any statements that might otherwise be due until February 29, 2016.

On December 18, 2015, the IRS issued draft Form 8971, "Information Regarding Beneficiaries Acquiring Property from a Decedent." On January 6, 2016, draft instructions for Form 8971 were sent to the Office of Management and Budget for review. We wish to offer comments on this form and draft instructions.

Immediate Extension of Filing Needed

ABA urges the IRS and Department of the Treasury to grant additional time for executors, both individuals and corporate fiduciaries, such as banks and trust companies, to file the required reports to the IRS and the estate beneficiaries from February 29, 2016, to another six months at a minimum. This reasonable delay is necessary because the Form 8971 and related instructions are still drafts, and bank executors have not had adequate time for software developers to incorporate the new reporting requirements. Some ABA member banks have multiple estate tax filings a month that would be captured by the new reporting and therefore need to automate the process for reporting, with a goal of making this reporting as accurate as possible for both bank executors, the IRS, and the beneficiaries who will be receiving the Schedule A of Form 8971.

General Comments about Basis Reporting

ABA members do not object to providing this basis reporting, and many do so already as a service to the beneficiaries of these estates. However, with many estates, the executor does not know within thirty days of filing the estate tax return which beneficiary will receive what asset. In fact, it is customary that as a matter of bank procedure, executors do not distribute fully estate assets until after they have received an IRS closing letter to ensure that there are sufficient funds

in the estate to meet its federal and state tax obligations. The IRS does not send the closing letter until sometimes years after the initial filing.³

Any information reported prior to an executor settling an estate will necessarily be of a preliminary nature and will always be subject to change. In that regard, the information provided would doubtless not be helpful either to the IRS or to the beneficiaries, as there are events and circumstances occurring during the life of estate administration that may well cause this initial reporting to be inaccurate. If executors are required to send an information statement to estate beneficiaries before a distribution has been made, and before it is known which assets will ultimately be distributed to which beneficiaries, recipient-beneficiaries will no doubt be confused and frustrated when only later told that that information was inaccurate (regardless of whether it was the “best guess” at the time). We, therefore, urge the IRS to allow executors to make the Schedule A reporting to beneficiaries when the property is actually distributed to the beneficiaries so as to eliminate multiple provisional statements, and to simplify and streamline the process.

Specific Comments on Draft Form 8971 and Instructions

Because the language in the Act does not address all the nuances of estate tax reporting, the IRS should clarify in the instructions or other guidance key outstanding issues. In addition, it would be helpful to illustrate this guidance with examples of estate scenarios.

1. ABA urges the IRS to make it clear that information reporting is not necessary when the Form 706 is filed solely for the purpose making a portability election by a surviving spouse. This exception would eliminate many unnecessary information filings with the IRS and provide relief to the many families that are filing simply to take advantage of the deceased spouses’ unused applicable exclusion amount.
2. Similarly, executors should not be required to send statements to beneficiaries who only receive cash or items constituting income in respect of a decedent (IRD). Although such items are “property,” information statements with respect to these items are unnecessary, because cash has no basis and there is no basis adjustment for items of IRD.
3. Executors should not be required to send statements to beneficiaries receiving tangible personal property of nominal value (a threshold dollar amount should be included in

³ We further note that as of June 1, 2015, executors must request closing letters from the IRS, which will no longer automatically issue them after having reviewed the Form 706.

guidance). Without such relief, executors may have to appraise and report separately to the beneficiaries such items as household goods of little value.

4. It is not uncommon that an executor is unable to identify the recipients of particular assets. For example, when assets are to be divided by formula language between a bypass trust and a marital trust, the overall value of the assets is known when the estate tax return is filed, but the particular assets to be used in the funding will likely be unknown until long after the thirty day period required for sending the statements. In these situations, the IRS should modify the draft instructions and grant an extension until the plan of distribution is prepared.⁴ In many cases, the executor will have sold the assets listed in the Form 706 and thus cannot use them to fund the future trusts or to make future distributions to beneficiaries.
5. Does the basis disclosure statement apply only to interests in property that were included in a decedent's estate for federal estate tax purposes? What if assets held at date of death are sold by the estate and cash is distributed to the beneficiaries? What if the estate purchases new assets after death and distributes those to the beneficiaries? Is the executor required to include assets sold by the estate or assets purchased after date of death on the basis disclosure statements? It appears that Form 8971 was intended to report basis only for assets that were acquired from a decedent and that were reported on the decedent's Form 706 and that were, or will be, distributed to estate beneficiaries. Guidance confirming this interpretation would be helpful. Schedule A, Form 8971, includes the Schedule and item number where the property was reported on the decedent's Form 706.
6. If a trust was reported on Form 706 as a single asset, and an estate valuation was attached to support the valuation, how should executors report the trust on Form 8971 before the individual assets have been distributed to the estate beneficiaries? Can executors show the trust as a single asset on Form 8971, and Schedule(s) A, attach a copy of the estate value, and show percentages for each residual beneficiary? Note also that the amounts shown on the Form 706 schedules will be gross amounts before estate administration expenses and taxes. If this is not acceptable for purposes of the preliminary Form 8971, and Schedule(s) A, executors will need to pull a list of estate assets as of the date that the Form 8971 is prepared, determine which of the current holdings were held as of date of death, and key those assets in manually on Schedule A for each beneficiary.
7. The draft instructions state that the executor is required to keep documentation for proof of mailing, proof of delivery, acknowledgement of receipt, or other relevant information regarding Schedule(s) A for the estate's records. Does this require executors to send all Schedule(s) A by Certified Mail or UPS so that executors will have proof of service? Are

⁴ The draft instructions for Schedule A state: "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.) A supplemental Form 8971 and corresponding Schedule A should be filed once the distribution to each such beneficiary has been made."

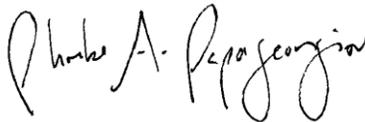
executors who also act as trustee of a trust that will be receiving estate assets required to send the basis statements to themselves?

8. The draft instructions state that if the information reported on a previously filed Form 8971 or a Schedule A changes, the executor is required to file a Supplemental Form 8971 within thirty days after the adjustment. To limit unnecessary filings for both the IRS and beneficiaries, ABA urges the IRS to clarify that this does not require executors to file Supplemental Forms within thirty days every time an asset is sold or a partial distribution of assets is made.
9. The recipient of the property may have better information on its value than the executor. How should these situations be addressed? Can the recipient-beneficiary challenge the valuation and have it altered? IRS guidance should address this situation.

Conclusion

We appreciate this opportunity to comment on the draft Form 8971 and related instructions and strongly urge the IRS and Treasury Department to extend by at least six months the required reporting. We also ask that the IRS address the outstanding issues this letter raises in the Form 8971 instructions or in other guidance.

Sincerely,



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