

TAX SECTION

State Bar of Texas



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December 1, 2017

Via e-mail: OIRA_Submission@OMB.EOP.gov;

Via e-mail: PRA@treasury.gov

(Notice, 82 Fed. Reg. 50733)

Office of Information and Regulatory Affairs
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Attention: Desk Officer for Treasury
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Treasury PRA Clearance Center
1750 Pennsylvania Ave., N.W., Suite 8142
Washington, D.C. 20220

Re: Comments on Burden Estimate Regarding Form 8971 – Information Regarding Beneficiaries Acquiring Property from a 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”) in the Notice requesting comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, with respect to Form 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent) which was developed by the Internal Revenue Service (“IRS”) to fulfill reporting requirements imposed under section 6035 of the Internal Revenue Code of 1986, as amended (“Code”).

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

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COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW. 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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephanie M. Schroepfer". The signature is written in a cursive style with a long, sweeping underline.

Stephanie M. Schroepfer, Chair
State Bar of Texas, Tax Section

SS/lab

Enclosure

COMMENTS ON BURDENS REGARDING FORM 8971

These comments on the burdens regarding Form 8971, including the associated Schedule A (the “Comments”), are submitted on behalf of the Tax Section of the State Bar of Texas. The principal drafters of these Comments were Celeste C. Lawton, Co-Chair of the Estate and Gift Tax Committee, Laurel Stephenson, Co-Chair of the Estate and Gift Tax Committee, Matthew S. Beard, Vice-Chair of the Estate and Gift Tax Committee, Corey M. Junk, a member of the Tax Section, and Carol G. Warley, Vice-Chair of the Estate and Gift Tax Committee. The Committee on Government Submissions (COGS) of the Tax Section of the State Bar of Texas has approved these Comments. Henry Talavera, Co-Chair of the Committee on Government Submissions (COGS) of the Tax Section of the State Bar of Texas, has approved these Comments on behalf of COGS. Lora Davis 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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I. INTRODUCTION

These Comments are provided in response to the Treasury’s request for comments regarding Form 8971 (including the associated Schedule(s) A), which is used to report the estate tax value of property distributed from an estate to the IRS and via Schedule A to each beneficiary receiving property from the estate.

Code § 6035¹ requires executors of an estate or other persons who are required to file an estate tax return to report to the IRS and to each beneficiary receiving property from an estate the estate tax value of the property. Form 8971 and Schedule A were developed by the IRS to fulfill these reporting obligations. Because these forms are a byproduct of Code § 6035 and the Proposed Regulations under Code § 6035 (the “Proposed Regulations”), it is necessary to address the burdens imposed by the Proposed Regulations, which burdens are materialized through Form 8971 and Schedule A. We appreciate the opportunity to make suggestions to reduce the burden in connection with the preparation and filing of Form 8971 and Schedule A.

To reduce such burdens, as discussed in more detail below, we respectfully request that the Office of Management and Budget, along with Treasury and the IRS, consider the following.

1. Providing an alternate method for reporting assets not yet acquired by a beneficiary by the due date of Schedule A of Form 8971 to that imposed by Proposed Regulation § 1.6035-1(c)(3) and reflected in the Form 8971 Instructions, which is to list on that beneficiary’s Schedule A all items of property that could be used, in whole or in part, to fund his or her bequest. In addition to the current method, we suggest that the alternate method should permit the disclosure on that beneficiary’s Schedule A of the dollar amount of his or her interest in the estate as of the decedent’s date of death (or the alternate valuation date pursuant to Code § 2032, as applicable) with the requirement that a Supplemental A be filed to report the actual assets ultimately distributed to the beneficiary in satisfaction of that claim.

2. Excepting property distributed in kind to a beneficiary to satisfy a pecuniary bequest from the reporting requirements.

3. Allowing for an automatic six-month extension of time to furnish Schedule(s) A to the beneficiaries of an estate and file copies of such along with the Form 8971 with the IRS. We suggest that this could be accomplished by permitting taxpayers to simply check a box on the estate tax return.

4. Removing any supplemental Form 8971 filing requirements with respect to subsequent transfers.

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

II. UNDUE BURDEN IMPOSED BY REQUIREMENT THAT ASSETS NOT YET ACQUIRED BY A BENEFICIARY BY THE DUE DATE OF FORM 8971 BE REPORTED ON SCHEDULE A

We respectfully recommend that the IRS consider expanding the reporting requirements provided in Proposed Regulation § 1.6035-1(c)(3) to include an optional reporting method of a dollar amount of a beneficiary’s interest (valued as of the decedent’s date of death or the alternate valuation date pursuant to Code § 2032, as applicable) rather than reporting all assets that could be distributed to a beneficiary to reduce the burden on taxpayers and to improve the accuracy of information collected by Schedule A to Form 8971. Based upon our experience, we

¹ All references herein to the “Code §” are to the Internal Revenue Code of 1986, as amended.

also suggest that permitting this alternative will prevent the provision and collection of unnecessary and potentially confusing information.

The nature of assets in the larger estates that will be subject to the filing requirement under Code § 6035(a)(1) are often complicated in nature. In that regard, the distribution of assets, along with the decisions regarding the division of those assets, is not often accomplished prior to the deadline for Schedule A. A beneficiary cannot have a basis consistency reporting requirement with respect to assets such person has yet to receive from an estate. If no distribution of assets has been made to a beneficiary by the filing due date, then the property “acquired” from the estate at that time is simply a claim equal to the value of the assets allocable to the beneficiary on the estate tax return, which could be reported as a dollar amount equal to the value of such claim, without the need to identify specific assets in connection with the claim.

We suggest that when the later distribution of assets from the estate actually occurs, the executor would then file a supplemental Schedule A to report the assets that were actually distributed to each beneficiary. In complex estates, this approach would arguably reduce the compliance burden on the executor and reduce or eliminate confusion for beneficiaries who would otherwise receive information that is not needed or relevant at the time initially received. We also suggest that the supplemental Schedule A later filed by the executor will result in accurate information being provided to both the IRS and the beneficiary at a time when it will be needed, without creating unnecessary confusion and collection of superfluous information.

We understand that the IRS has acknowledged that it may be challenging to determine which assets to report on Schedule A by the due date. 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.” Under this approach, no supplemental Schedule A will need to be prepared as long as the beneficiary received the value information on the initial Schedule A for each item he or she actually received.

Although we do not believe that this approach will be appropriate in every situation, we acknowledge that some executors, due to the nature of an estate and its beneficiaries, may be able to easily comply with the rule in the Proposed Regulations and recommend that this reporting method be retained as an alternative option for reporting on Schedule A. For those estates that can easily comply with this requirement, our proposed 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, to reduce the burden on taxpayers and to prevent the provision and collection of unnecessary and potentially confusing information, we request that the reporting options be revised to permit either of the aforementioned reporting methods.

III. UNDUE BURDEN IMPOSED BY FORM 8971 DUE TO REQUIREMENT THAT SCHEDULE A INCLUDE ESTATE TAX VALUE OF PROPERTY DISTRIBUTED IN KIND TO SATISFY CERTAIN PECUNIARY BEQUESTS

We respectfully suggest that the IRS consider expanding the exception to the reporting requirements provided in Proposed Regulation § 1.6035-1(b)(1)(iv) to include in kind satisfactions of pecuniary bequests based upon date of distribution values. We believe that our suggestion will reduce the burden on taxpayers and improve the accuracy of information collected by Schedule A to Form 8971.

The Proposed Regulations provide exceptions for certain types of property that do not need to be reported on Schedule A, including but not limited to, the exception provided in Proposed Regulation § 1.6035-1(b)(1)(iv) for “[p]roperty sold, exchanged, or otherwise disposed of (and, therefore, not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized.” When property of an estate is distributed in kind to satisfy a pecuniary bequest using that property’s date of distribution value, the estate will recognize either (a) a taxable gain to the extent that the property’s fair market value upon distribution exceeds its estate tax value (i.e., the value of the property that is reported on Schedule A) or (b) a loss to the extent its date of distribution value is less than its estate tax value. As a result of the estate recognizing gain or loss (whether capital in nature or some other type of gain or loss) on the distribution, the beneficiary will receive a basis in the property equal to its fair market value as of the distribution date, rather than its estate tax value.

Nevertheless, the Proposed Regulations require the executor to deliver to such a beneficiary a Schedule A reporting the estate tax value of the property distributed in satisfaction of that bequest. We suggest that providing this information on Schedule A to the beneficiary and IRS in this situation does not achieve the purpose of Schedule A, which is to provide both with the initial basis of any property received by the beneficiary. We suggest that providing this information has no utility or value to anyone because it is irrelevant to the beneficiary’s initial basis in the property received, while its provision to the IRS and the beneficiary causes considerable expense and an undue financial burden on the taxpayer. Further, we suggest in our experience that it could cause the beneficiary to incorrectly report such person’s basis at a later time. Accordingly, we believe that the requirement to report such assets on Schedule A under the Proposed Regulations imposes an undue and unnecessary financial burden on taxpayers and should, therefore, be eliminated.

IV. UNDUE BURDEN IMPOSED BY FORM 8971 DUE TO THE TIMING OF THE DUE DATE FOR ITS FILING

We respectfully suggest that the IRS consider exercising its discretion pursuant to Code § 6081 to permit an executor to request an automatic six-month extension of time to fulfill the reporting requirements pursuant to Code § 6035. We believe that our suggestion will reduce the burden on taxpayers and improve the accuracy of information collected by the IRS.

Proposed Regulation § 1.6035-1(d) generally requires that the executor furnish a Schedule A to each beneficiary of the estate and file Form 8971 and the Schedule(s) A with the IRS within 30 days after the Form 706 is due. Pursuant to Code § 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 exercising that discretion to permit the executor to request an automatic six-month extension of time to furnish the Schedule(s) A to the beneficiaries of an estate and file copies of such, along with the Form 8971, with the IRS by checking a box requesting that election on the estate tax return.

We respectfully assert that allowing executors this additional time to fulfill the reporting and filing requirements with respect to Form 8971 and Schedule(s) A would reduce the need for supplemental filings to correct errors. Also, allowing executors this additional time will enable them to better determine the specific assets to be used in funding pecuniary bequests and satisfying residuary bequests so that only those assets actually distributed to a beneficiary will be reported on his or her Schedule A. Having additional time for filing will enable executors to provide beneficiaries in receipt of those bequests with Schedule(s) A containing meaningfully specific information relating solely to assets they have received (or will receive) rather than providing an excessive amount of what may ultimately be irrelevant information that relates solely to assets the beneficiary has not received (and may never actually receive). Accordingly, we believe providing for an automatic extension of time to file Form 8971 and Schedule(s) A will reduce the burden on taxpayers and assist in providing the IRS in collecting more accurate information.

V. UNDUE BURDEN IMPOSED BY FORM 8971 DUE TO ADDITIONAL REPORTING REQUIREMENTS RELATED TO SUBSEQUENT TRANSFERS

We believe that the requirement to report subsequent transfers of certain estate assets under Proposed Regulation § 1.6035-1(f) results in undue burden on and potentially duplicative reporting by taxpayers. As a result, we respectfully suggest that this requirement be removed.

Proposed Regulation § 1.6035-1(f) provides that if all or any portion of property that previously was reported or is required to be reported on an information return is transferred (by gift or otherwise) by the recipient in a transaction in which a related transferee determines its basis, in whole or in part, by reference to the recipient/transferor's basis, then the recipient/transferor must, no later than 30 days after the date of the transfer, file with the IRS a supplemental information return and statement (i.e., Form 8971 and Schedule A) and furnish a copy of the same supplemental statement (i.e., Schedule A) to the transferee. Thus, the recipient/transferor who acquires property from a decedent and then subsequently transfers that property by gift could potentially be required to file both a gift tax return ("Form 709") and a supplemental Form 8971 and Schedule A. In such instance, we suggest that such duplicative reporting is unnecessarily burdensome for the recipient/transferor, as well as the IRS, because the recipient/transferor's adjusted basis of the gift is already required to be reported on Schedule A of the Form 709.

Finally, Proposed Regulation § 1.6035-1(f) expands the scope of Code § 6035 beyond the statutory language. Code § 6035(a)(1) provides that the executor of any estate required to file an estate tax return shall furnish to the Secretary and to each person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes a statement identifying the value of each interest in such property as reported on such return. Code § 6035

does not apply to a recipient/transferee who acquires property from a decedent and subsequently transfers it, regardless of the value of the property at the time of transfer or whether the transfer is required to be disclosed on a gift tax return. However, Proposed Regulation § 1.6035-1(f) nonetheless imposes reporting requirements with respect to gifts and certain other previously-described transfers to related parties. We suggest that this requirement is inconsistent with Code § 6035 for the reasons previously outlined and causes an undue burden on taxpayers.

Accordingly, we respectfully request that the reporting requirements with respect to Schedule A be limited to reporting information within the scope of Code § 6035 by removing the additional reporting requirements relating to subsequent transfers contained in Proposed Regulation § 1.6035-1(f).