



American Institute of CPAs
1455 Pennsylvania Avenue, NW
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January 29, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
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Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
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Mr. Thomas West
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Department of the Treasury
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Washington, DC 20220

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Associate Chief Counsel for
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Internal Revenue Service
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Washington, DC 20224

Re: Draft Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, and Draft Instructions

Dear Messrs. Koskinen, Wilkins, West and Wilson:

The American Institute of CPAs (AICPA) applauds the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS or “Service”) for timely issuing [Notice 2015-57](#), delaying until February 29, 2016, the due date for filing with the IRS and furnishing to the beneficiary the new section¹ 6035 statement regarding consistent basis reporting between estates and persons acquiring property from a decedent. That provision would have applied the 30-day filing requirement to executors of estates of decedents and to other persons who are required under section 6018(a) or (b) to file a federal estate tax return ([Form 706](#), U.S. Estate (and Generation-Skipping Transfer) Tax Return, or [Form 706NA](#), U.S. Estate (and Generation-Skipping Transfer) Tax Return for an estate of a nonresident not a citizen of the U.S.) if that return is filed after July 31, 2015. Without the extension granted in Notice 2015-57, the filings would have been due as early as August 30, 2015. The IRS Notice provided appropriate transition relief and time for IRS and Treasury to issue the needed guidance to taxpayers and practitioners.

Below are our comments on the [draft IRS Form 8971](#), Information Regarding Beneficiaries Acquiring Property from a Decedent, posted on the IRS draft forms website (originally posted 12/18/15 and updated draft posted 1/26/16), (herein referred to as “the Form”) and [draft instructions](#) (originally posted on an Office of Management and Budget website 1/4/16, and then [updated](#) draft posted on IRS website 1/27/16). We also separately are submitting comments on other needed regulatory guidance.

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

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The AICPA suggests the IRS consider the following issues and suggestions regarding the draft Form 8971 and instructions.

1. IRS Should Clarify that if Form 706 is Filed Solely for Electing Portability, the Form 8971 is Not Required. The draft instructions state that only those executors who are required to file a Form 706 are required to file a Form 8971. The draft instructions then clarify that the requirement to file Form 8971 does not apply if the Form 706 is filed solely to make an allocation or election respecting the generation-skipping transfer tax. We suggest that IRS also state that the requirement to File 8971 does not apply if the Form 706 is filed solely to elect portability of the deceased spousal unused exclusion amount.
2. Executor Should Include Both the Date Provided and Date that Form 706 was Filed. The Form requires that the executor include the “date provided,” which the instructions indicate is the date on which the beneficiary was provided Schedule A. This is to comply with the 30-day requirement specified in section 6035, but the date on which Form 706 was filed (thus starting the 30-day period for the initial filing of Form 8971) is not required. We suggest that IRS require the executor include both dates on the Form.
3. Unknown may be Appropriate; IRS Should Require an Explanation and If Provided, Consider the Form Complete and Process the Form. Specific instructions indicate that an answer of “unknown” will cause IRS to treat the Form as incomplete, and IRS will not process the Form. In that situation, the estate may be subject to penalties for failure to file a correct Form 8971 by its due date. In many cases, “unknown” may be the correct answer to the Part II question: “How many beneficiaries received (or are expected to receive) property from the estate?” because an executor may not complete the search for heirs by the date Form 706 is filed. We suggest that the IRS require the executor to attach an explanation if the executor cannot furnish a specific number. We suggest that if an explanation is provided, the IRS consider the Form as complete, and IRS should process the Form.
4. IRS Should Ask If the Estate Tax Value is Used for Income Tax Purposes. Schedule A of the Form does not ask if the Estate Tax Value is used for income tax purposes. We suggest that IRS add a column to ask “If the Estate Tax Value is not used for income tax purposes, please explain.” Possible explanations are income in respect of a decedent (IRD) asset, depreciable asset, etc.
5. Executor Should List the Trust as the Beneficiary Who is Required to Receive a Schedule A, and IRS Require a Supplemental Filing when Assets Pass to the Trust Beneficiaries if the Trust is to Terminate at the Close of Administration. The instructions for Schedule A indicate that the executor should list every possible

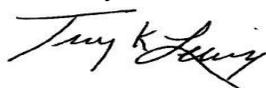
beneficiary and that every possible beneficiary receive a Schedule A, even if the possible beneficiary may never be entitled to the assets listed thereon. A supplemental filing is required when the actual distribution is made. Many assets “poured over” to trusts or are held in trusts that may terminate at the close of estate administration. If the trust will terminate at the close of the estate administration, we suggest that the executor list the trust as the beneficiary who is required to receive Schedule A and that the IRS require a supplemental filing when assets pass to the trust beneficiaries. Listing beneficiaries who may never receive assets could cause litigation or other problems that would prolong estate administration and delay the transfer of assets.

6. Form Should Include the Date of the Previous Filing. Schedule A asks that the executor check a box for a supplemental filing. We envision that executors will need to complete more than one supplemental filing. Perhaps the executor will need to complete one supplemental filing after the IRS examination is complete, one supplemental filing after a will contest is settled, and one supplemental filing after the trust beneficiary distributes assets, etc. We recommend that for supplemental filings, the IRS require on the Form the date of the previous filing in order for beneficiaries (and IRS) to know that they are receiving the latest information.
7. Instructions Should Include Guidance on post Form 706 Filing Information Needed by Beneficiaries for Determining Basis. The draft instructions give no (and should provide some) guidance relating to any post Form 706 filing that the beneficiary needs for determining basis. For example, beneficiaries will need to know about reinvested dividends and depreciation or income from passthrough entities received after the date of death.
8. Instructions Should Allow “Unknown” or “Unknown—Foreign” for the tax identification number (TIN) of Foreign Beneficiaries. Draft Form 8971 requires the TIN of each beneficiary. For purposes of Part II, Column B of the Form, the draft instructions state that writing “none” or “unknown” will result in the form being considered incomplete and possibly subject to penalties. Foreign persons may not possess an existing individual tax identification number (“ITIN”). Obtaining an ITIN can often take several months, and IRS may not have the authority to request the ITIN information of foreign persons under existing regulations. Treas. Reg. §301.6109-1(b)(2) and (c) provides the rules for when one can file a return with another person’s identifying information, and this regulation provides limited circumstances where a foreign person must obtain an ITIN; these limited circumstances do not provide for basis reporting. Therefore, we suggest the IRS allow “unknown” or “unknown—foreign” for the TIN of foreign beneficiaries.

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We welcome the opportunity to discuss these comments or answer any questions that you may have. I can be reached at (801) 523-1051, or at tlewis@sisna.com; or you may contact Mary Kay Foss, Chair, AICPA Trust, Estate & Gift Tax Technical Resource Panel, at (925) 648-3660 or marykay@cpaskllp.com; or Eileen Sherr, AICPA Senior Technical Manager, at (202) 434-9256, or at esherr@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, Tax Executive Committee

cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, Department of the Treasury
Ms. Melissa Liquerman, Chief, Branch 4, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Karlene Lesho, Senior Technician Reviewer, Branch 4, Office of Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Theresa Melchiorre, Attorney, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service