

Public Hearing on Proposed Regulations

Consistent Basis Reporting Between Estate and person Acquiring Property from Decedent

[Reg-127923-15]

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Comments by Lora Davis, representing the State Bar of Texas

My comments are being presented on behalf of the Tax Section of the State Bar of Texas. My 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. My comments are being made as a result of the approval of the Committee on Government Submissions of the Tax Section of the State Bar of Texas and pursuant to the procedures of the Council of the Tax Section, which is the governing body of that Section. No approval or disapproval of the general membership of the Tax Section of the State Bar of Texas has been obtained and the comments represent only the view of the members of the Tax Section who prepared them.

I would first like to thank the Treasury and IRS for all of their efforts to pull together a completely new reporting process and corresponding guidance with respect to this entirely new law. My comments today are intended to assist in the development of procedures that will provide the information needed while placing the minimum burden on the taxpayers affected by this law.

I would specifically like to address two concerns: one relating to the information required on the statement to be filed with the IRS and furnished to certain beneficiaries of the estate under section 6035(a) and the other to the timing of the required reporting.

Under section 6035, Schedule A is generally due 30 days after the estate tax return is due. The proposed regulations provide that if assets have not yet been distributed, then the executor must report any assets that “could” be distributed to a beneficiary on Schedule A, even if this results in a duplicative reporting. In Texas, we might call that fishing with dynamite, but I will refer to it as the “kitchen sink” approach. This method could be effective in estates that have limited assets or a small number of beneficiaries. We support the retention of this proposed rule to give flexibility to executors to comply with these new rules. However, in many cases, we believe that the kitchen sink approach will be costly and inefficient and we request that you consider an additional alternate, more customized approach.

Requiring large estates with substantial assets to file duplicative Schedules A for multiple beneficiaries seems contrary to common sense. The reason for the basis consistency rules is to ensure that certain taxpayers who inherit assets don’t report basis in an amount higher than reported on the estate tax return. The reporting requirement should reflect that goal by requiring the executor to only report assets actually distributed. For example, giving the IRS and beneficiaries information on a large stock portfolio of hundreds of stock positions that are all sold after Schedule A is filed but before any distributions are made is of no use and has no purpose. It only results in increased legal fees to the estate, increased administrative burden on the IRS and confusion for the beneficiaries who receive the statement but not the assets.

For those estates that determine it to be impractical to comply with the kitchen sink approach, an alternative that would allow Schedule A to be furnished 30 days following an actual distribution certainly makes sense and is a viable option that is compliant with the statute. Section 6035 requires the executor to identify and report the value of each interest acquired by the beneficiary to the IRS and the beneficiary. If no distribution has been made, the interest of the beneficiary is not in any specific asset, but is in the nature of a claim equal to the dollar amount of the beneficiary's share of the estate. Thus, a proper report by the executor to satisfy the statutory requirements would include furnishing Schedule A to a beneficiary that describes this general claim in undistributed assets and the dollar amount of that claim. Later, when a distribution is actually made to that beneficiary in satisfaction of his or her claim, a supplemental report may need to be filed to report any assets of the estate that were included on the estate tax return or are otherwise required to be reported. If this optional "customized" reporting is permitted, the IRS and the beneficiaries will only receive the information that may actually be needed, rather than receiving a large amount of extraneous and unnecessary information. I see no downside to permitting this type of reporting, which in many cases, will be the only logical option.

The efficiencies in this proposed customized option are obvious. Executors can avoid filing mini 706s for each beneficiary. Significant fiduciary risk may also be reduced. For example, in estate with complicated family dynamics, the kitchen sink reporting option could increase tensions among family members, which could in turn, increase fiduciary risks and associated legal fees. The ability to reduce these costs and risks, along with reducing the inevitable confusion that beneficiaries will have under the kitchen sink approach cannot be emphasized enough.

This provision of the proposed regulations will affect nearly every estate subject to section 6035. We respectfully request that the IRS and Treasury take another look and consider the more customized option as an alternative to the kitchen sink approach. We believe it is compliant with the statute, responsive to the desired result, and will be, in some cases, more efficient and effective for executors, beneficiaries and the IRS.

Secondly, we, along with many others, would like to request that automatic extensions of up to 6 months be provided. Although section 6035 limits the initial due date of the statements by saying the statements must be filed at such time prescribed by the secretary but "in no case at a time later than" the 30-day rule, section 6081(a) empowers the Secretary to "grant a reasonable extension of time for filing ANY return, declaration, statement or other document required under the code or by regulation, with such extension generally limited to 6 months. The regulations under section 6081 specifically include any return or statement required under Subtitle F, which includes section 6035. We believe the IRS has the authority to grant an extension under section 6081 notwithstanding the language in section 6035, which could easily be interpreted to refer only to the "original" due date. No reference is made to a prohibition on extensions. Similarly, section 6072 provides dates that other returns "shall be filed" on but extensions for those returns have been granted under section 6081. Allowing an extension will give executors time to file a complete and accurate return that requires fewer supplements, which will reduce the overall burden on taxpayers and processing costs of the IRS. Thus we respectfully request that the IRS consider allowing automatic extensions of time to file Form 8971 and to furnish Schedules A.

Thank you for your attention. I would be happy to answer any questions.