

**SAN FRANCISCO PARALEGAL ASSOCIATION
PROBATE AND ESTATE PLANNING SECTION**

RECENT DEVELOPMENTS

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FEDERAL DEVELOPMENTS

I. FEDERAL INFLATION ADJUSTMENTS

In Rev. Proc. 2015-53 (November 17, 2015) the IRS announced the 2016 inflation-adjusted federal items related to gift and estate taxes:

- Estate Tax Exemption - \$5,450,000 (increased from \$5,430,000)
- Lifetime Gift Tax Exemption - \$5,450,000 (increased from \$5,430,000)
- Generation-Skipping Transfer Tax Exemption - \$5,450,000 (increased from \$5,430,000)
- Gift tax annual exclusion: \$14,000 (no change)
- Gift tax exclusion for non-US citizen spouse: \$148,000 (increased from \$147,000)
- Special use valuation (§ 2032A): The maximum estate tax value reduction allowable is \$1,110,000 (increased from \$1,100,000)
- IRC 6166: The “2-percent” portion is \$1,480,000 (increased from \$1,470,000)

II. MISCELLANEOUS TAX ISSUES AND TAX REPORTING

A. Portability (federal estate taxes)

The ability to “port” (carry over) a deceased spouse’s unused exemption (DSUE) to the surviving spouse so that the surviving spouse can use both exemptions at his/her later death.

In theory, simplifies planning but there are many more issues to take into account so planning is not necessarily easier:

- Non-tax reasons (control; no creditor protection)
- Appreciation (contrast: assets in a bypass trust are protected from tax at second death no matter what they appreciate to)
- DSUE not indexed for inflation
- No GST portability
- All or a part of the surviving spouse's DSUE may be lost if he/she remarries
- Loss of ability to use both spouse's \$1 million non-residence parent-child exclusion for California real property

Election to "port" is made on a Form 706 (no "Form 706-EZ" yet), although modified reporting requirements if assets pass directly to surviving spouse.

Final regulations issued, effective June 12, 2015: https://www.irs.gov/irb/2015-26_IRB/ar12.html

B. No More Estate Tax Closing Letters Without Request

The following is copied from the IRS website (emphasis added):

When can I expect the Estate Tax Closing Letter?

For all estate tax returns filed on or after June 1, 2015, estate tax closing letters will be issued only upon request by the taxpayer. Please wait at least four months after filing the return to make the closing letter request to allow time for processing. Please wait at least four months after filing the return to make the closing letter request to allow time for processing. For questions about estate tax closing letter requests, call (866) 699-4083.

For estate tax returns filed before June 1, 2015

There can be some variation, but for returns that are accepted as filed and contain no other errors or special circumstances, you should expect to receive your closing letter about 4 to 6 months after the return is filed. Returns that are selected for examination or reviewed for statistical purposes will take longer.

For estate tax returns filed after January 1, 2015 and before June 1, 2015		
If...	And...	Then:
The filing threshold was met	<ul style="list-style-type: none"> • No portability election was made; or • The portability election not denied; or • The portability election was denied due to a late filing 	A closing letter will be issued
The filing threshold was not met	<ul style="list-style-type: none"> • No portability election was made; or • The portability election was not denied 	A closing letter will be issued
	The portability election was denied due to a late filing	No closing letter will be issued
The return was filed pursuant to Rev. Proc. 2014-18	The portability election was not denied	A closing letter will be issued
	The portability election was denied due to failure to meet the requirements	No closing letter will be issued

C. Income Taxation of Trusts and Estates

1. For 2016, threshold amounts for taxable income of trusts and estates are: 0% for amounts up to \$2,550; 15% for amounts over \$2,550 and up to \$12,400 and 20% for amounts over \$12,400.
2. Final regulations clarify how to determine the basis of a term interest in a charitable remainder if the term interest is sold or otherwise disposed of. https://www.irs.gov/irb/2015-35_IRB/ar06.html

D. ABLE Accounts

“Achieving A Better Life Experience” (ABLE) accounts. For tax years beginning after December 31, 2014, states can allow tax-exempt ABLE accounts to assist persons with disabilities in building an account to pay for qualified disability expenses. With the new accounts, people with disabilities will for the first time be able to accrue up to \$100,000 in savings without losing access to Social Security and other government benefits. Medi-Cal coverage will remain intact no matter how much money is saved in an individual’s ABLE account. See recent New York Times article at <http://www.nytimes.com/2016/02/14/your-money/a-closer-look-at-529-able-accounts.html?smid=tw-share&r=0> for a good “plain English” explanation.

E. Basis Consistency

For estate tax returns filed after July 31, 2015, the basis of property reported on the estate tax return is the basis that MUST be used by the recipient for income tax purposes. (New IRC 6035) To make this work, the IRS has issued Form 8971 (SAMPLE ATTACHED), which must be furnished to the beneficiary(ies) within 30 days of filing. (Thirty days, think about that).

Things are in a bit of a muddle as of today since in its most recent pronouncement (February 11, 2016), SEE ATTACHED NOTICE 2016-19) the IRS has extended the filing date to March 31, 2016 so that it can issue regulations and practitioners can have the benefit of those regulations before completing the form.

The form itself raises many issues and several tax practitioner organizations (AICPA, ACTEC, etc.) have already written to the IRS for clarification on how to handle a significant number of issues (for example, 30-day-after-filing-requirement, treatment of community property, what happens if estate sells asset during administration, is Form 8971 required if the election is only to make a portability election, treatment of tangibles are valued as a group and then distributed among several people, clarification on penalties, etc.)

F. Charitable Distributions from IRAs

The rule allowing up to \$100,000 in required minimum distributions from IRAs to be contributed tax-free to charity is now permanent.

III. SELECT FEDERAL CASES AND RULINGS

A. *Estate of Foster v. Commissioner* 9th Circuit 565 Fed Appx 654

Unpublished decision: Ninth Circuit (governs us here in the Bay Area) concluded that the estimated date-of-death value of a disputed lawsuit was not ascertainable with reasonable certainty and was not deductible on the decedent's estate tax return.

B. *Specht v. US* (SD Ohio 2015) 2015-1 USTC Para 50,134, 115 AFTR2d 357

Attorney's incompetence is not reasonable cause for failure to timely file an estate tax return and pay estate tax.

C. *Estate of Ellen S. Belmont* (2015) 144 TC No. 6

No fiduciary income tax charitable deduction allowed where pending litigation created a real possibility that funds set aside for charitable purposes (ordinarily deductible under IRC 642(c)) would never reach the charity.

D. *Voss v. Commissioner* (9th Circuit 2015) 796 F.2d 1051

Unmarried taxpayers who shared residence may *each* deduct mortgage interest under IRC 163(h). (Compare, married couple can only take one deduction). Case of first impression in parsing out language of IRC 163(h).

Information Regarding Beneficiaries Acquiring Property From a Decedent

OMB No. 1545-2264

► Information about Form 8971 and its separate instructions is at www.irs.gov/form8971.

Check box if this is a supplemental filing ☐

Part I Decedent and Executor Information

1 Decedent's name	2 Decedent's date of death	3 Decedent's SSN
4 Executor's name (see instructions)	5 Executor's phone no.	6 Executor's TIN
7 Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code)		

8 If there are multiple executors, check here ☐ and attach a statement showing the names, addresses, telephone numbers, and TINs of the additional executors.

9 If the estate elected alternate valuation, indicate the alternate valuation date:

Part II Beneficiary Information

How many beneficiaries received (or are expected to receive) property from the estate? For each beneficiary, provide the information requested below. If more space is needed, attach a statement showing the requested information for the additional beneficiaries.

A Name of Beneficiary	B TIN	C Address, City, State, ZIP	D Date Provided

Notice to Executors:

Submit Form 8971 with a copy of each completed Schedule A to the IRS. To protect privacy, Form 8971 should not be provided to any beneficiary. Only Schedule A of Form 8971 should be provided to the beneficiary. Retain copies of all forms for the estate's records.

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, all information reported herein is true, correct, and complete.

Signature of executor

Date

May the IRS discuss this return with the preparer shown below? See instructions

☐ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name ►

Firm's EIN ►

Firm's address ►

Phone no.

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SCHEDULE A—Information Regarding Beneficiaries Acquiring Property From a Decedent► Information about Form 8971 (including Schedule A) and its separate instructions is at www.irs.gov/form8971.Check box if this is a supplemental filing ☐**Part 1. General Information**

1 Decedent's name	2 Decedent's SSN	3 Beneficiary's name	4 Beneficiary's TIN
5 Executor's name			6 Executor's phone no.
7 Executor's address			

Part 2. Information on Property Acquired

A Item No.	B Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here.	C Did this asset increase estate tax liability? (Y/N)	D Valuation Date	E Estate Tax Value (in U.S. dollars)
1	Form 706, Schedule _____, Item _____ Description —			

Notice to Beneficiaries:

You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. **Retain this schedule for tax reporting purposes.** If the property increased the estate tax liability, Internal Revenue Code section 1014(f) applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

SCHEDULE A—Continuation Sheet

Use only if you need additional space to report property acquired (or expected to be acquired) by the beneficiary.

Check box if this is a supplemental filing ☐

Part 1. General Information

1 Decedent's name	2 Decedent's SSN	3 Beneficiary's name	4 Beneficiary's TIN
5 Executor's name			6 Executor's phone no.
7 Executor's address			

Part 2. Information on Property Acquired

A Item No. <small>(continue from previous page)</small>	B Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here.	C Did this asset increase estate tax liability? (Y/N)	D Valuation Date	E Estate Tax Value (in U.S. dollars)

Notice to Beneficiaries:

You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. **Retain this schedule for tax reporting purposes.** If the property increased the estate tax liability, Internal Revenue Code section 1014(f) applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

Instructions for Form 8971 and Schedule A

Information Regarding Beneficiaries Acquiring Property from a Decedent

For estates of decedents that file Form 706, Form 706-NA, or Form 706-A after July 31, 2015.

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8971 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8971.

Reminders

Provide each beneficiary only with a copy of that beneficiary's own Schedule A. Do not provide a copy of the Form 8971 with or without attached Schedule(s) A to any beneficiary.

General Instructions

Purpose of Form

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires executors of an estate and other persons who are required to file a Form 706, Form 706-NA, or Form 706-A, to report to the Internal Revenue Service (IRS) and to each beneficiary receiving property from an estate the estate tax value of the property, if the return is filed after July 31, 2015. Form 8971 is used to report to the IRS and a Schedule A will be sent to each beneficiary and a copy of each Schedule A will be attached to the Form 8971. Some property received by a beneficiary may have a consistency requirement, meaning that the beneficiary must use the value reported on Schedule A as the beneficiary's initial basis the property.

A beneficiary is an individual, trust, or other estate who has acquired (or is expected to acquire) property from the estate. If the executor is also a beneficiary who has acquired (or is expected to acquire) property from the estate, the executor is a beneficiary for purposes of the Form 8971 and Schedule A.

Who Must File

An executor of an estate and other persons required to file Form 706 or Form 706-NA under section 6018(a) and 6018(b) or a qualified heir required to file Form 706-A under section 2032A after July 31, 2015, whether or not that form is filed timely, is required to file Form 8971 with attached Schedule(s) A with the IRS and to provide each beneficiary

listed on the Form 8971 with that beneficiary's Schedule A. Therefore, this requirement does not apply to an executor of an estate that is not required to file an estate tax return under section 6018(a) but who does so for the sole purpose of making an allocation or election respecting the generation-skipping transfer tax.

See the instructions to Form 706, Form 706-NA, or Form 706-A for more information on who is required to file these forms.

When to File

Form 8971 (including all attached Schedule(s) A) must be filed with the IRS and the Schedule A must be provided to the beneficiary listed on that Schedule A no later than the earlier of—

- (i) The date that is 30 days after the date on which Form 706, Form 706-NA, or Form 706-A is required to be filed (including extensions granted, if any) with the IRS, or
- (ii) The date that is 30 days after the date Form 706, Form 706-NA, or Form 706-A is filed with the IRS.

If the first Form 706, Form 706-NA, or Form 706-A is filed both after the form's due date (including extensions granted, if any) and after July 31, 2015, the Form 8971 and Schedule(s) A are due 30 days after the filing date.

Note. Pursuant to Notice 2015-57, the due dates of all Forms 8971 (including the attached Schedule(s) A) required to be filed with the IRS and of all Schedules A required to be provided to beneficiaries after July 31, 2015, and before February 29, 2016, are delayed until February 29, 2016.

Where to File

File Form 8971 (including attached Schedules A) at the following address:

Department of the Treasury
Internal Revenue Service Center
Mail Stop #824G
Cincinnati, OH 45999

A beneficiary can be provided his, her, or its Schedule A by the following means:

- In person to an individual beneficiary, to the trustee(s) of a beneficiary trust, or to the executor(s) of beneficiary estate,
- By email,
- By U.S. mail to the beneficiary's last known address, or

- By private delivery service to the beneficiary's last known address.

The executor of the estate (or other person required to file) must certify on Form 8971 the date on which the Schedule A was provided to each beneficiaries and should keep proof of mailing, proof of delivery, acknowledgement of receipt, or other relevant information for the estate's records. In cases where a trust beneficiary or another estate beneficiary has multiple trustees or executors, providing Schedule A to one trustee or executor is sufficient to meet the requirement.

Private delivery services. Certain private delivery services designated by the IRS may be used to meet the "timely mailing as timely filing" rule for tax returns. These private delivery services include only the following:

- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, FedEx International First, FedEx First Overnight, FedEx International Next Flight Out, and FedEx International Economy.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, UPS Worldwide Express, and UPS Next Day Air Early AM.

The private delivery service can tell you how to get written proof of the mailing date.

Supplemental Forms 8971 and Schedules A

The value of the property to be reported on Form 8971 and the attached Schedule(s) A is the fair market value of the asset as finally determined for purposes of the federal estate tax. A value is considered "final" for such purposes when:

- The value of the property is shown on a return filed under section 6018 and that value is not contested by the IRS before the period of assessment expires;
- The value of the property is specified by the IRS and is not timely contested by the executor of the estate (or other person required to file under section 6018(b)); or
- The value of the property is determined by a court or pursuant to a settlement agreement with the IRS.

If information reported on a Form 8971 or a Schedule A that has already been filed with the IRS or provided to a beneficiary changes (as a result of the factors set forth above or otherwise), the executor or other person required to make this filing must file a supplemental Form 8971 and affected Schedule(s) A with the IRS and provide an

updated supplemental Schedule A to each affected beneficiary no later than 30 days after the adjustment. See "Where to File," above. On both the supplemental Form 8971 and each supplemental Schedule A, the "Supplemental Filing" box should be checked and only the information that has changed should be reported.

If the executor or other person required to file Form 8971 has been notified that a Form 706, Form 706-NA, or Form 706-A to which the Form 8971 and Schedule(s) A relate has been selected for examination, a copy of the supplemental Form 8971 with attached supplemental Schedule(s) A should be provided to the office conducting the examination.

Rounding Off to Whole Dollars

The value of property should be reported in United States dollars and rounded to whole-dollar amounts. To do so, drop the cents from any amount with less than 50 cents and increase any amount with 50 to 99 cents to the next greater dollar. For example, \$1.39 becomes \$1 and \$2.55 becomes \$3.

Penalties

Failure to File Correct Forms 8971 by the Due Date (IRC Section 6721).

If the executor of an estate or other person required to file Form 8971 fails to file a correct Form 8971 and/or Schedule A with the IRS by the due date and reasonable cause is not shown, a penalty may be imposed. The penalty applies if there is a failure to file timely, a failure to include all information required to be shown on the form or schedule, a failure to include correct information on the form or schedule, or a failure to file a correct supplemental Form 8971 and/or Schedule A by the due date. A complete Form 8971 includes all Schedule(s) A.

Only one penalty will apply for all failures relating to a single filing of a single Form 8971 and the Schedule(s) A required to be filed along with it. Each filing of a Form 8971 with Schedule(s) A is a separate filing, regardless as to whether the filing is of the initial Form 8971 and Schedule(s) A or a supplemental Form 8971 and Schedule(s) A.

The amount of the penalty depends on when the correct Form 8971 and Schedule(s) A is filed.

The penalty is:

- \$50 per Form 8971 (including attached Schedule(s) A) if it is filed within 30 days after the due date. The maximum penalty is \$500,000 per year (or \$175,000 if the taxpayer qualifies for lower maximum penalties, as described below).

- \$250 per Form 8971 (including attached Schedule(s) A) if it is filed more than 30 days after the due date or if it is not filed. The maximum penalty is \$3,000,000 per year (\$1,000,000 if the taxpayer qualifies for lower maximum penalties, as described below).

Lower maximum penalties. You qualify for lower maximum penalties if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are \$5 million or less.

Intentional disregard of filing requirements. If any failure to file a correct Form 8971 or Schedule A is due to intentional disregard of the requirements to file correct Forms 8971 and Schedules A, the penalty is at least \$500 per Form 8971 and the Schedules A required to be filed along with it with no maximum penalty.

Inconsequential error or omission. An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission does not prevent or hinder the IRS from processing the Form 8971 and the Schedules A required to be filed along with it. Errors and omissions that are **never** inconsequential are those related to a TIN, a beneficiary's surname, and the value of the asset the beneficiary is receiving from the estate.

Note. A TIN is a Social Security Number (SSN), an Employer Identification Number (EIN), an Individual Taxpayer Identification Number (ITIN), or any other number used by the IRS in the administration of tax laws.

Failure to Furnish Correct Schedules A to Beneficiaries by the Due Date (IRC Section 6722).

If the executor of an estate or other person required to file Form 8971 fails to provide a correct Schedule A to a beneficiary and does not show reasonable cause, a penalty may be imposed. The penalty applies if there is a failure to provide the schedule by the due date, a failure to include all information required to be shown on the schedule, a failure to include correct information on the schedule, or a failure to provide a correct supplemental Schedule A by the due date. The penalty applies for each Schedule A required to be provided.

The amount of the penalty depends on when a correct Schedule A is provided.

The penalty is:

- \$50 per Schedule A if it is provided within 30 days after the due date. The maximum penalty is \$500,000 per year (or \$175,000 if the taxpayer qualifies for lower maximum penalties, as described below).
- \$250 per Schedule A if it is provided 30 days or more after the due date or if it is not filed. The maximum penalty is \$3,000,000 per year (\$1,000,000 if the taxpayer qualifies for lower maximum penalties, as described below).

Lower maximum penalties. You qualify for lower maximum penalties if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are \$5 million or less.

Intentional disregard of filing requirements. If any failure to provide a correct Schedule A is due to intentional disregard of the requirements to provide correct Schedules A, the penalty is at least \$500 per Schedule A with it with no maximum penalty.

Inconsequential error or omission. An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission cannot reasonably be expected to prevent or hinder the beneficiary from timely receiving correct information and using the information to report basis on the beneficiary's own return. Errors and omissions that are **never** inconsequential are those related to the value of the asset the beneficiary is receiving from the estate and a significant item in a beneficiary's address.

Reasonable Cause exception to the penalties for failing to file Forms 8971 and Schedules A and for failing to provide Schedules A to beneficiaries.

The penalties for failing to file correct Form 8971 and Schedules A with the IRS and for failing to provide correct Schedules A to beneficiaries will not apply to any failure that is shown to be due to reasonable cause and not to willful neglect. In general, it must be shown that the failure was due to an event beyond the taxpayer's control or due to significant mitigating factors. It must also be shown that the executor or other person required to file acted in a responsible manner and took steps to avoid the failure.

Penalties for inconsistent filing

Beneficiaries who report basis in property that is inconsistent with the amount on the Schedule A may be liable for a 20 percent accuracy-related penalty under section 6662.

Obtaining Forms and Publications to File or Use

You can access the IRS website 24 hours a day, 7 days a week, at [IRS.gov](https://www.irs.gov) to:

- Download forms, instructions, and publications;
- Order IRS products;
- Research tax questions;
- Search publications by topic or keyword; and
- Sign up to receive local and national tax news by email.

Specific Instructions – Form 8971

Complete Form 8971 and each attached Schedule A in its entirety. A form or schedule filed with the IRS without entries in each field will not be processed. A form with an answer of “unknown” will not be a complete return.

Part I – Decedent and Executor Information

Line 3

Enter the Social Security Number (SSN) of the decedent. If the decedent did not have an SSN, the executor (or other person required to file Form 706) should obtain one for the decedent by filing Form SS-5 with a local Social Security Administration office.

Line 4

If there is more than one executor, enter the name of one executor and see the instructions for line 8

Line 6

Provide only the taxpayer identification number (TIN) of the executor listed on line 4 and see the instructions for line 8.

Note. A TIN is an SSN, an Employer Identification Number (EIN), an Individual Taxpayer Identification Number (ITIN), or any other number used by the IRS in the administration of tax laws.

Line 7

Provide only the address of the executor listed on line 4. Use Form 8822, Change of Address, to report a change in the executor's address. Also, see the instructions for line 8.

Line 8

On an attached statement, provide the names, addresses, telephone numbers, and TINs of each executor (if any) other than the one named on line 4.

Part II – Beneficiary Information

Column A

Enter the name of each individual, trust, or other estate that acquired (or is expected to acquire) property from the estate. Retain a copy of the Form 8971 (including all attached Schedule(s) A) for the estate's records.

Column B

Enter the TIN of each beneficiary listed. Entering "none," "unknown," or similar language, or otherwise failing to enter a TIN, will cause the form to be considered incomplete and may subject the estate to penalties.

Column D

For each beneficiary, enter the date on which the executor provided that beneficiary his, her, or its Schedule A. See instructions under *Where To File*, above.

Return preparer. Permission to discuss the Form 8971 is limited to the information reported on (or required to be reported on) the Form 8971 and attached Schedule(s) A and does not authorize the return preparer to represent the estate before the IRS or to enter into any agreements with the IRS respecting the Form 8971 and attached Schedule(s) A.

Complete and attach Form 2848 if the executor would like the return preparer to represent the estate before the IRS with respect to the Form 8971 and Schedule(s) A or any other matter related to the estate. Completing Form 2848 authorizes the person designated on that form to sign agreements, consents, waivers, or other documents.

Complete and attach Form 8821 if the executor would like to authorize the return preparer to receive and/or inspect confidential tax information not specific to the Form 8971 and Schedule(s) A prepared by the return preparer but not to represent the estate before the IRS.

Anyone who is paid to prepare the Form 8971 and/or any Schedule A must sign the form as a paid preparer and give a copy of the completed Form 8971 and/or Schedule(s) A to the executor required to file Form 706, Form 706-NA, or Form 706-A.

Note. A paid preparer may sign original or amended returns by rubber stamp, mechanical device, or computer software program.

Signature and Verification

All executors shown on Form 8971 and listed on any attached statement are responsible for the reporting requirements related to Form 8971 and Schedule(s) A. However, it is sufficient for only one of the executors to sign Form 8971.

Form 8971 is signed under penalties of perjury and all executors are responsible for the information included on Form 8971 and Schedule(s) A as filed with the IRS and Schedules A provided to beneficiaries. All executors are also liable for all applicable penalties, including failure to file.

Schedule A – Information for Beneficiaries Acquiring Property from a Decedent

Executors of estates filing Form 8971 are required to complete a Schedule A for each beneficiary that acquired (or is expected to acquire) property from the estate. You will need a copy of the Form 706, Form 706-NA, or Form 706-A filed by the estate of the decedent shown on page 1 of Form 8971 to complete this schedule. 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.) A supplemental Form 8971 and corresponding Schedule(s) A should be filed once the distribution to each such beneficiary has been made.

Use and duplicate page A-2 (Schedule A Continuation Sheet) if additional space is needed to list the property acquired (or expected to be acquired) by a beneficiary. Attach a copy of each completed Schedule A to Form 8971 and submit to the IRS. Provide a copy of each Schedule A only to the beneficiary named on that Schedule A. Don't provide a copy of the Form 8971 to a beneficiary. See instructions under *When To File*, above.

Column A

Number the items received by the beneficiary. Continue this numbering on page A-2 of the Schedule A Continuation Sheet, if necessary.

Column B

Include the name of the property transferred and any descriptive information. See the Instructions for Form 706, Form 706-NA, or Form 706-A, as applicable, for more information on details to be included by asset type or schedule. If the beneficiary acquired (or is expected to acquire) a joint interest, a fractional interest, or any other

interest in property which is less than 100 percent, indicate the percentage of the property the beneficiary will acquire.

Column D

Generally, the valuation date of property will be the decedent's date of death. If the estate elected to use an alternate valuation date, list the value of the property on the alternate valuation date. See section 2032 for additional guidance.

Column E

List the value reported on Form 706, Form 706-NA, or Form 706-A. If the value reported on a Schedule A that has already been filed with the IRS or provided to a beneficiary changes (as a result of the resolution of a valuation issue or otherwise), you must file a supplemental Form 8971 and associated Schedule(s) A with the IRS and provide an updated Schedule A to each affected beneficiary no later than 30 days after the adjustment.

Privacy Act and Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. Subtitle B and section 6109, and the regulations require you to provide this information.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose information from this form in certain circumstances. For example, we may disclose information to the Department of Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal non-tax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information, or providing false information, may subject you to penalties.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Reporting.....1 hr., 29 min.

Record Keeping2 hrs., 49 min.

Third Party Disclosure.....1 hr.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from www.irs.gov/formspubs/. Click on "More Information" and then on "Give us feedback." You can also send your comments to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File*.

Part III - Administrative, Procedural, and Miscellaneous

Date for Compliance with Consistent Basis Reporting Between Estate and Person Acquiring Property from Decedent

Notice 2016-19

SECTION 1: PURPOSE

On July 31, 2015, the President of the United States signed into law the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*, Public Law 114-41, 129 Stat. 443 (Act). Section 2004 of the Act added new sections 1014(f) and 6035. On August 21, 2015, the Treasury Department and the IRS issued Notice 2015-57, 2015-36 IRB 294. That notice delayed until February 29, 2016, the due date for any statements required under section 6035(a)(3)(A) to be provided before February 29, 2016. This notice provides that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016. This notice is being issued in order to provide executors and such other persons the opportunity to review the proposed regulations to be issued under sections 1014(f) and 6035 before preparing a Form 8971 and any Schedule A.

SECTION 2: BACKGROUND

Section 1014(f) provides rules requiring that the basis of certain property acquired from a decedent, as determined under section 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 section 6035.

Section 6035 imposes new reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes.

Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must furnish, both to the Secretary and to 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.

Section 6035(a)(2) provides that each person required to file a return under section 6018(b) must furnish, both to the Secretary and to 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 section 6035(a)(1).

Section 6035(a)(3)(A) provides that each statement required to be furnished under section 6035(a)(1) or (a)(2) is to 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 section 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.

Section 6035(b) authorizes the Secretary to prescribe such regulations as necessary to carry out section 6035. Section 7805(a) provides generally that the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. Section 7805(b)(2) provides that regulations may

apply retroactively if they are issued within 18 months of the date of the enactment of the statutory provision to which they relate.

SECTION 3: GUIDANCE

Statements required under sections 6035(a)(1) and (a)(2) to be filed with the IRS or furnished to a beneficiary before March 31, 2016, need not be filed with the IRS and furnished to a beneficiary until March 31, 2016. The Treasury Department and IRS recommend that executors and other persons required to file a return under section 6018 wait to prepare the statements required by section 6035(a)(1) and (a)(2) until the issuance of proposed regulations by the Treasury Department and the IRS addressing the requirements of section 6035. The Treasury Department and the IRS expect to issue proposed regulations under sections 1014(f) and 6035 very shortly.

SECTION 4: EFFECTIVE DATE

This notice is effective on February 11, 2016. This notice applies to executors of the estates of decedents and to other persons who are required under section 6018(a) or (b) to file a return if that return is filed after July 31, 2015.

DRAFTING INFORMATION

The principal author of this notice is Eliezer Mishory of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Theresa Melchiorre at (202) 317-6859 (not a toll-free call).