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Consistent Basis Reporting Between Estates and Persons Acquiring Property from Decedent

Consistent tax basis reporting by the executor of an estate on the federal estate tax return (IRS Form 706) and the beneficiaries of the estate on their individual income tax returns (IRS Form 1040) will be required under section 2004 of H.R. 3236, *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), which was signed into law on July 31, 2015.

Previously, the values reported on the federal estate tax return were “deemed” to be the fair market values of the property passing from the decedent for the purpose of determining the income tax basis for the property under IRC §1014 (Treas. Reg. 1.1014-3(a)), but it was not an absolute requirement that the same values be used for federal estate tax and income tax purposes, and there were no specific reporting requirements or specific penalties for applying inconsistent values. H.R. 3236 adds a new subsection 1014(f), which states that the basis of property acquired from a decedent cannot exceed the value finally determined for estate tax purposes, new section 6035, requiring basis reporting by persons required to file estate tax returns, and adds inconsistent basis reporting to the list of actions for which a 20% accuracy-related penalty is imposed under IRC §6662.

New IRC §6035 requires executors of estates and other persons who are required to file returns under IRC §6018(a) or 6018(b) to now furnish the IRS and the estate’s beneficiaries with statements reporting the value of estate assets, within 30 days of the estate tax return’s due date. These new statements are added to the definition of “information return” and “payee statement” under IRC §6724(d), making failure to furnish them subject to penalty under IRC §6721 and §6722.

Although these new provisions apply to property for which an estate tax return is filed after the date of enactment, according to Notice 2015-57, effective on Aug. 21, 2015, and Notice 2016-27, effective on March 23, 2016, the IRS has now postponed the due date for any statement that IRC §6035 requires to be filed with the IRS and estate beneficiaries before June 30, 2016, until June 30, 2016, to allow the Service time to issue guidance addressing the requirements of IRC §6035.

On March 4, 2016, the Treasury Department and the IRS published temporary and proposed regulations under sections 1014(f) and 6035. TD 9757, 81 FR 11431; REG-127923-15, 81 FR 11486.

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