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## **Estate Basis Consistency Rules for Fiduciaries: Navigating Reporting Requirements and Distribution Strategies**

Avoiding Penalties, Determining Impact of Disclosure Rules on Estate and Beneficiaries,  
Making Post-Mortem Basis Adjustments

THURSDAY, OCTOBER 27, 2022

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Sarah N. Gaymon, CPA, Associate Director of Tax Services, **Berkowitz Pollack Brant**,  
West Palm Beach, FL

Neal B. Jannol, Attorney, **Law Offices of Neal B. Jannol**, Los Angeles, CA

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# **Estate Basis Consistency Rules for Fiduciaries: Navigating Reporting Requirements and Distribution Strategies**

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424-442-2100

# Strategies

- **Consistency Requirement**
- The consistency requirement affects basis.
- This in turn affects depreciation and amortization.
- Cost segregation study to accelerate depreciation.
- Also affects subsequent transfers.

## Strategies

- The Treasury states that Internal Revenue Code (“Code”) section 6035 reporting is intended to enable the IRS to monitor whether the basis claimed by an owner of the property is properly based on the final value of that property for estate tax purposes.

## Strategies

- The perceived abuse is that an estate reports a depressed value for a particular asset (for the purpose of reducing estate tax) while the beneficiary who subsequently disposes of the asset reports that there was a higher date of death value, which would result in a higher step-up in basis under IRC Section 1014(a) (for the purpose of reducing income tax).

## Strategies

- Treasury and IRS are attempting to eliminate some opportunities to circumvent the statute.
- The proposed regulations impose a requirement on a beneficiary of previously reported property.
- Fiduciaries may be receiving assets reported on a Form 8971.

# Strategies

- If a beneficiary transfers all or any portion of that property to a “related transferee” in a transaction in which the transferee's basis is determined in whole or in part with reference to the transferor's basis, the transferor must file with the IRS and furnish the IRS and the transferee a supplemental Schedule A documenting the new ownership of this property. Prop. Reg. § 1.6035-1(f).

## Strategies

- This creates a paper trail, under which a beneficiary who disposes of an asset to a related transferee, other than by sale for full and adequate consideration, will need to file another Schedule A with both the IRS and the transferee, as if he or she were an executor.

## Strategies

- “Related Transferee” is as defined in Code Section 2704(c)(2) and includes the beneficiary’s spouse, ancestor (or ancestor’s spouse), descendant (or descendant’s spouse), sibling (or sibling’s spouse), a controlled entity or any trust that’s grantor to the beneficiary.

# Strategies

- For beneficiaries that are trusts, estates or entities, it remains unclear what, if any, effect the Chapter 14 attribution rules may have on the expanded reporting requirement.
- For instance, does a trustee of a child's trust need to file a Schedule A upon distribution at the end of a trust administration?

# Strategies

- Note this in the cover letter to the beneficiaries accompanying the Schedule A.
- There is no time limit on the retransfer rules.
- The retransfer of property received from a decedent to a related transferee could occur decades after the original transfer, and still require the original transferee to file a Schedule A.

# Strategies

- It is also unclear whether a subsequent retransfer by the first transferee requires yet another Schedule A.
- Unless the final regulations clarify this point, it is best to assume that all retransfers to related parties with a carryover basis, in whole or in part, no matter how long after the original distribution from the decedent's estate or trust, must be reported on a new Schedule A filed.

## Strategies

- Is Property Deemed to Increase Estate Tax Liability?
- The consistent basis rule applies only to property the inclusion of which in the decedent's gross estate for Federal estate tax purposes increases the estate's actual Federal estate tax liability. Prop. Reg. § 1.1014-10(b)(1).

# Strategies

- State, local, or even foreign estate taxes imposed is immaterial.
- Applies to any other property the basis of which is determined in whole or in part by reference to the basis of such property (for example as the result of a like-kind exchange or involuntary conversion) that generates a tax liability under chapter 11 of subtitle B of the Code.

# Strategies

- Property obtained in a tax-free exchange for property to which Section 1014(f) applies also takes a mandatory basis under that subsection.
- Property that qualifies for a charitable or marital deduction under Section 2055, 2056, or 2056A, is excluded, because this property does not increase the Federal estate tax liability. Prop. Reg. § 1.1014-10(b)(2).

## Strategies

- The proposed regulations also exclude from the consistent basis rule property reported on an estate tax return if no estate tax was imposed upon the estate due to allowable credits (other than a credit for a prepayment of that tax). Prop. Reg. § 1.1014-10(b)(2).
- Also excluded is tangible personal property not required to be appraised.

# Strategies

- Thus, an estate that generates no estate tax because of the unified credit (applicable exclusion amount), has only modest amounts of tangible personal property, and deductible bequests, is not subject to consistent basis rule. Prop. Reg. § 1.1014-10(b)(3).
- However, it appears that, such an estate is still required to file Form 8971 and Schedule A.

# Strategies

- The proposed regulations provide that the filing requirements of Code section 6035 do not apply if the executor does not need to file an estate tax return under IRC section 6018.
- A portability Form 706 does not require the issuance of Form 8971.

# Strategies

- Thus, Proposed Regulation section 1.6035-1(a)(2) clarifies that Form 8971 does not have to be filed if an estate tax return is filed solely to make a portability election under Code section 2010(c)(5) or a generation-skipping transfer tax election or exemption allocation, where a federal estate tax return is not otherwise required under Code section 6018.

## Strategies

- "Final Value" of Property Received from a Decedent: How is Value Determined?
- Generally, the taxpayer's initial basis in property acquired from a decedent may not exceed the "final value" of the property. Prop. Reg. § 1.1014-10(a)(1).

## Strategies

- The “final value” of property received from a decedent is, in order of priority:
- (i) the value reported on the federal estate tax return, once the statute of limitations on assessment of deficiencies has expired without that value having been timely adjusted or contested by the IRS;

## Strategies

- (ii) otherwise, the value determined or specified by the IRS once the statute of limitations for assessment and for claim for refund or credit of estate tax have expired without that value having been timely contested;

## Strategies

- (iii) if neither of these rules apply, the value determined in an agreement, once that agreement is final and binding on all parties; or
- (iv) if none of these rules apply, the value determined by a court, once the court's determination is final. Prop. Reg. § 1.1014-10(c)(1).

# Strategies

- The IRS may specify a value for property by determining a value in the course of an audit, and if it determines a value different from the value reported, the final value is that value determined by the IRS, once that value can no longer be contested by the estate.
- If the value determined or specified by the IRS is timely contested by the estate, the final value is the value determined in an agreement that is binding on all parties, or the value determined by a court once the court's decision is final.

# Strategies

- Example. At D's death, D's gross estate includes a residence valued at \$300,000 encumbered by nonrecourse debt in the amount of \$100,000. Title to the residence is held jointly by D and C (D's child) with right of survivorship. D provided all the consideration for the residence and the entire value of the residence was included in D's gross estate under Code Section 2040. D's executor reports the value of the residence as \$200,000 on the estate tax return for D's estate and claims no other deduction for the debt.

# Strategies

- Schedule A reports the value of the residence as \$300,000. C sells the residence before the final value is determined for \$375,000 and claims a gain of \$75,000 on C's Federal income tax return.
- A court subsequently determines that the value of the residence was \$290,000 and the time for contesting this value in any court expires before the expiration of the statute of limitations for assessing C's income tax for the year in which the property was sold.

# Strategies

- The final value of the residence is \$290,000 and, because C claimed a basis in the residence that exceeds the final value, C may have a deficiency and underpayment. Prop. Reg. § 1.1014-10(e), Ex. 4.
- Beneficiaries should be warned about the consequences of a sale before final value is achieved.

# Strategies

- After-Discovered or Omitted Property
- The basis of property that is discovered after the filing of the Federal estate tax return or is otherwise omitted, which had it been reported would have generated a Federal estate tax liability, takes a different basis under the consistent basis rule, depending upon whether or not the statute of limitations on the estate tax return has expired.

# Strategies

- Where an estate tax return is filed, after-discovered or omitted property that is reported on a supplemental estate tax return filed before the expiration of the statute of limitation on assessment of deficiencies, takes an initial basis determined under the regular consistent basis rule. Prop. Reg. § 1.1014-10(c)(3)(i)(A).
- That was easy!

## Strategies

- Where an estate tax return is filed, after-discovered or omitted property that is not reported on a supplemental estate tax return filed before the expiration of the statute of limitation on assessment of deficiencies, takes a final value and initial basis of zero. Prop. Reg. § 1.1014-10(c)(3)(i)(B).
- The “zero basis” rule.

## Strategies

- Where an estate tax return should be filed but none has been filed, the basis of all property includible in the gross estate subject to the consistent basis requirement is zero, until the final value is determined, if it ever is determined. Prop. Reg. § 1.1014-10(c)(3)(ii).
- Another zero basis rule.

# Strategies

- Cash - if the statute of limitations has expired or no return was filed, how does one treat after-discovered or omitted cash that has a zero basis?
- Since cash always is supposed to take a basis equal to its face value, it is possible that the receipt of the cash would be taxed as ordinary income under the tax benefit rule.

# Strategies

- There appears to be no legal requirement that a supplemental estate tax return be filed to report after-discovered property.
- Is this penalizing executors for not filing a return that they do are not otherwise required to file.

# Strategies

- Executors may, however, want to consider the relative merit of filing a supplemental estate tax return and incurring an estate tax of 40 percent on the after-discovered assets, in exchange for a higher adjusted basis.
- If the estate is an audit candidate, the first question from the IRS is usually as to whether there are any other assets of the decedent not reported on the Form 706.
- The IRS usually finds such assets.

# Strategies

- In most cases, the tax cost of the lost basis will be less than 40 percent, but the additional estate taxes may be charged generally against the residue, while the tax savings from the higher basis will accrue only to the beneficiary who receives the after-discovered property.

# Strategies

- The zero basis rule poses a particular problem for executors of estates that are very near in value to the threshold amount for filing an estate tax return.
- If the assets are all marketable and there is no chance of an estate tax return being required, the executor need not file a return.



# Strategies

- But if there are assets whose value may be disputed, not filing a return could expose the beneficiaries to having a zero basis for all of the inherited assets.
- It may be better in such cases to file a return and report the values at below the filing threshold. That should avoid the zero basis risk.

# Strategies

- Property That Must be Reported on Form 8971 and Schedule A and Exceptions.
- Cash (perhaps also insurance proceeds?)
- “IRD” items (makes sense for retirement accounts – no basis, but what about promissory notes?)
- TPP not over \$3,000 each.
- Property sold by the Estate.

# Strategies

- ▶ **Special Rules for Beneficiaries**
- ▶ Proposed regulations § 1.6035-1(c)(1) provides that each beneficiary (including a beneficiary who is also the executor of the estate) who receives property to be reported on the estate's Information Return must receive a copy of the Statement reporting the property distributable to that beneficiary.

# Strategies

- ▶ Proposed § 1.6035-1(c)(2) provides that, if the beneficiary is a trust, estate, or business entity instead of an individual, the executor is to furnish the entity's Statement to the trustee, executor, or to the business entity itself, and not to the beneficiaries of the trust or estate or to the owners of the business entity.

# Strategies

- ▶ What if the executor cannot determine the exact distribution of the estate's property and the beneficiary of each property by the due date of the Information Return and the related Statements.

# Strategies

- ▶ This situation can arise, for example, when tangible personal property is to be distributed among a group of beneficiaries as that group determines, the residuary estate is distributable to multiple beneficiaries, or when multiple residuary trusts are to be funded.

# Strategies

- ▶ In response, proposed § 1.6035-1(c)(3) provides that, if by the due date the executor does not yet know what property will be used to satisfy the interest of each beneficiary, the executor is required to report on the Statement for each beneficiary all of the property that could be used to satisfy that beneficiary's interest.

# Strategies

- ▶ This results in the duplicate reporting of those assets on multiple Statements, but each beneficiary will have been advised of the final value of each property that may be received by that beneficiary and therefore will be able to comply with the basis consistency requirement, if applicable.

# Strategies

- ▶ Proposed § 1.6035-1(c)(4) provides that, if the executor is unable to locate a beneficiary by the due date of the Information Return, the executor is required to report that on that Information Return and explain the efforts taken to locate the beneficiary.
- ▶ If the executor subsequently locates the beneficiary, the executor is required to furnish the beneficiary with a Statement and file a supplemental Information Return with the IRS within 30 days of locating the beneficiary.

# Strategies

- ▶ If the executor is unable to locate a beneficiary and distributes the property to a different beneficiary who was not identified in the Information Return as the recipient of that property, the executor is required to file a supplemental Information Return with the IRS and furnish the successor beneficiary with a Statement within 30 days after distributing the property.

# Strategies

- Supplemental Information Return and Statement(s) – Effect of changed facts:
  - ▶ Such changes include, for example, the discovery of property that should have been, but was not, reported on the Federal estate tax return, a change in the value of property pursuant to an examination or litigation, or a change in the identity of the beneficiary to whom the property is to be distributed.

# Strategies

- ▶ Due date for the supplemental Information Return and each supplemental Statement is 30 days after: (i) The final value (within the meaning of proposed § 1.1014-10(c)(1)) of property is determined; (ii) the executor discovers that the information reported on the Information Return or Statement is otherwise incorrect or incomplete; or (iii) a supplemental Federal estate tax return is filed.

# Strategies

- ▶ Beneficiary filing obligation?
- ▶ The preamble to the proposed regulations states that Code section 6018(b) already requires that an executor who cannot make a complete return as to any part of the gross estate, must include on the return a description of that part of the gross estate and the name of every person holding a legal or beneficial interest in it. See Reg. § 20.6018-2.

# Strategies

- ▶ Upon notice from the IRS, any such person, such as a surviving joint tenant or other recipient who has better information than the executor regarding the basis or fair market value of the property received from a decedent, must make an estate tax return.
- ▶ Likewise, Code section 6035 requires that a Form 8971 and Schedule A be filed by any person required to file an estate tax return under Section 6018(b), so these rules extend to joint tenants and other recipients in such cases.

## Penalties

- Example 1. D's gross estate includes the contents of D's residence. The executor attaches to the required estate tax return a room-by-room itemization of household and personal effects, as required by the regulations under Section 2031. All articles are named specifically. Each room contains a number of articles, none of which has a value in excess of \$100. A value is provided for each named article.

# Penalties

- Included in the household and personal effects are a painting, a rug, and a clock, each of which has a value in excess of \$3,000. The executor obtains an appraisal from a disinterested, competent appraiser of recognized standing and ability, or a disinterested dealer in the class of personal property involved for the painting, rug, and clock, and attaches these appraisals to the estate tax return.
- The reporting requirements of Code Section 6035 apply only to the painting, rug, and clock. Prop. Reg. § 1.6035-1(b)(2), Ex. 1.

## Penalties

- Example 2. D's estate includes shares in C, a publicly traded company. After D's death but before the estate tax return is filed, C is acquired by T, another publicly traded company, for cash and stock of T, in a fully taxable exchange. The reporting requirements of Section 6035 do not apply to the new shares in T or the cash. Prop. Reg. § 1.6035-1(b)(2), Ex. 2.

## Recipient Penalties

- Duty of Consistency:
- Prior to Code section 1014(f) Courts imposed a duty of consistency where the executor and the beneficiary are the same person or in privity.
- Courts did not estop beneficiaries from arguing a different value than that reported on the estate tax return where such a close relationship did not exist.

## Recipient Penalties

- The consistent basis does not seem to apply to estates that are not themselves taxable (after application of the available credits), or to property the transfer of which qualifies for the estate tax marital or charitable deduction.

# Recipient Penalties

- Case Study:
- Fields Curtis v. Commissioner, T.C. Memo 2014-19:
- Facts:
- In 1991 petitioner purchased a residential apartment building for \$82,500.

## Recipient Penalties

- ▶ Condemnation Proceedings - In June 2006, the Los Angeles Unified School District initiated an eminent domain proceeding against petitioner to acquire the apartment building.

## Recipient Penalties

► On or about July 19, 2006, (1) the school district deposited \$610,000 into an account for petitioner as probable compensation for the taking of the apartment building, and (2) the superior court issued an order authorizing the school district to take possession of the apartment building on October 25, 2006.

## Recipient Penalties

- ▶ On October 24, 2006, the superior court entered a judgment in condemnation providing for the sale of the apartment building to the school district for \$720,000.
- ▶ Petitioner did not purchase replacement property within the meaning of IRC section 1033.

## Recipient Penalties

- ▶ The taxpayer did not report the sale on his 2006 income tax return. Not relevant to the basis issue, but the late reporting in 2007 did not help matters.
- ▶ If clients want to take credit for improvements or stepped-up basis not reported on Form 8971, I think they need to make a “dossier”.

## Recipient Penalties

► On a Form 4797, Sales of Business Property, attached to his 2007 amended return petitioner reported total gain of \$43,531 from the involuntary conversion of the apartment building. The Form 4797 calculated petitioner's total gain as follows:

# Recipient Penalties

► WORKSHEET:

<b>Gross sales price</b>	<b>\$720,000</b>
<b>Cost or other basis plus expense of sale</b>	770,687
<b>Depreciation</b>	94,218
<b>Adjusted basis</b>	676,469
<b>Total gain</b>	43,531

## Recipient Penalties

- The parties agreed that the amount petitioner realized from the involuntary conversion of the apartment building was \$720,000. The parties disagree, however, with respect to petitioner's adjusted basis in the apartment building. Respondent contends that petitioner had an adjusted basis in the apartment building of \$221,114 (improvement of only \$130,000). Petitioner contends that respondent's basis calculation is erroneous.

## Recipient Penalties

- The Commissioner bears the burden of production with respect to a taxpayer's liability for additions to tax and penalties and must produce sufficient evidence indicating that it is appropriate to impose the additions to tax or penalties. Once the Commissioner carries that burden, the taxpayer must come forward with persuasive evidence that the Commissioner's determination is incorrect or that the taxpayer had reasonable cause or substantial authority for the position.

## Recipient Penalties

- ▶ Petitioner offered testimony regarding various improvements that he made to the apartment building and several receipts and contracts for work on the property.
- ▶ “However, taken together, petitioner's testimony and documentary evidence fail to persuasively show that petitioner had a basis in the apartment building that is greater than the basis that respondent allowed or has conceded. Accordingly, we sustain respondent's revised basis calculation.”
- ▶ Takeaway – taxpayer has the burden of establishing her basis.

# Recipient Penalties

- Code Section 6662(b)(8) imposes a penalty on a taxpayer who reports a basis that exceeds the basis determined under Section 1014(f).
- The penalty under Section 6662 is equal to 20 percent of the portion of the underpayment attributable to the inconsistent basis reporting. See Code section § 6662(a).
- The consistent reporting requirement applies with respect to property with respect to which an estate tax return is filed after July 31, 2015

# Recipient Penalties

- Given the paper trail of a Form 8971, I do not believe there could be a strong “reasonable cause” case for a penalty waiver, but there are a number of cases that may (but very unlikely) be helpful by analogy.
- Any professional reporting “inherited” property basis must know to obtain the Form 8971.
- Failure to do so may be below the standard of practice.

# Recipient Penalties

- Code section 6664(c) provides that "no penalty shall be imposed . . . with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion."
- Factors the IRS considers include the taxpayer's experience, knowledge, education, and reliance on the advice of a tax advisor.
- Reliance on advice from a tax professional is obviously a point that many taxpayers use to try to avoid penalties.



# Estate Basis Consistency Rules for Fiduciaries: Navigating Reporting Requirements and Distribution Strategies

Presented by: Sarah Gaymon  
October 27, 2022

# Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- Who is required to file?
  - An executor of an estate or other person(s) required to file Form 706 or Form 706-NA 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.

# Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- **Form 8971 isn't required when:**
  - The gross estate plus adjusted taxable gifts is less than the basic exclusion amount;
  - Estate tax-related forms (for example, Forms 706-QDT, 706-CE, and 706-GS(D), other than those mentioned above are filed;
  - The estate tax return is filed solely to make an allocation or election respecting the generation-skipping transfer tax; or
  - The estate tax return is filed solely to elect portability of the deceased spousal exclusion amount (DSUE).

# Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- Form 8971 including attached schedule(s) A should be filed no later than the earlier of :
  - The date that is 30 days after the date on which Form 706 or Form 706-NA is required to be filed (including extensions) with the IRS; or
  - The date that is 30 days after the date Form 706 or Form 706-NA is filed with the IRS.
    - If the 706 is filed late, Form 8971 should be filed 30 30 days after the date of filing.
    - If the due date falls on a Saturday, Sunday, or legal holiday, the executor of an estate or other person(s) may file on the next business day

# Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- A beneficiary can be provided with Schedule A:
  - In person (individual beneficiary, to the trustee of a beneficiary trust or to the executor of a 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

# Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

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

# Update to Where To File Address for Form 8971

**File Form 8971 (including all Schedules(s) A) at the following address:**

Department of the Treasury  
Internal Revenue Service  
Stop 8307F  
7940 Kentucky Drive  
Florence, KY 41042-2915

**Do not use the “Where To File” address on the first page of the Instructions for Form 8971**

# EXAMPLE 1

- EXAMPLE 1 – PROPERTY DISTRIBUTION KNOWN

JOR EL, CLARK KENT'S FATHER PASSED AWAY ON JANUARY 1, 2021. AT THE TIME OF HIS DEATH, THE FOLLOWING ASSETS BECAME PART OF HIS ESTATE:

1. SUPERMAN'S HIDEAWAY, A PIECE OF REAL PROPERTY WITH A CLASSIFIED ADDRESS VALUED AT \$10,000,000
2. 75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996) WHICH HOLDS REAL ESTATE HE PURCHASED WITH HIS SON, CLARK KENT VALUED AT \$27,812,000.

JOR EL'S WILL LEAVES 6.61% TO LEX LUTHER, 6.61% LANA LANG, AND 43.39% TO BOTH CLARK KENT AND LOIS LANE.

# EXAMPLE 1

Form **8971**  
 (January 2016)  
 Department of the Treasury  
 Internal Revenue Service

**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](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

**Part I Decedent and Executor Information**

1 Decedent's name JOR EL	2 Decedent's date of death 01/01/2021	3 Decedent's SSN 123-45-6789
4 Executor's name (see instructions) LOIS LANE	5 Executor's phone no. 305-379-7000	6 Executor's TIN 569-85-9542
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) 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000		

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? ..... 4 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
LOIS LANE	569-85-9542	217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000	10/27/2021
CLARK KENT	100-23-4569	217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000	10/27/2021
LANA LANG	897-85-2345	217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000	10/27/2021
LEX LUTHER	999-65-8542	217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000	10/27/2021

# EXAMPLE 1

Estate of: JOR EL

123-45-6789

## Other PERSONAL REPRESENTATIVE

CLARK KENT  
217 SMALLVILLE CIRCLE  
SMALLVILLE, KS 10000  
TIN: 100-23-4569  
Phone: (305) 379-7000

# EXAMPLE 1

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box is this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name LOIS LANE	4 Beneficiary's TIN 569-85-9542
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  A 25% interest in:  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	2,500,000.
2	Form 706, Schedule F, item 1  A 50% interest in:  75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996)	Y	01/01/2021	13,906,000.

Some foreign beneficiaries may not be required to provide a TIN to the estate. If the foreign beneficiary isn't required to provide a TIN, enter "Not Required" in the TIN entry space.

An entry (Y or N) is required in this column for each asset. Indicate "Y" only if estate tax was generated and the asset contributed to the estate tax (for example, the asset wasn't subject to a marital or charitable deduction).

Use the same description in column B that the executor used for the property on the Form 706 or Form 706-NA. Include the schedule and item number where the property was reported on Form 706 or Form 706-NA.

# EXAMPLE 1

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box is this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name CLARK KENT	4 Beneficiary's TIN 100-23-4569
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  A 25% interest in:  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	2,500,000.
2	Form 706, Schedule F, item 1  A 50% interest in:  75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996)	Y	01/01/2021	13,906,000.

If the beneficiary acquired a joint interest, fractional interest, or any other interest in property which is less than 100% of the interest reported on the estate tax return, indicate the interest in the property the beneficiary will acquire.

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.

# EXAMPLE 1

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box is this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name LANA LANG	4 Beneficiary's TIN 897-85-2345
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  A 25% interest in:  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	2,500,000.

# EXAMPLE 1

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name LEX LUTHER	4 Beneficiary's TIN 999-65-8542
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	<p>The beneficiary has, will, or may receive the assets listed on this Schedule A.</p> <p>Form 706, Schedule A, item 1</p> <p>A 25% interest in:</p> <p>SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)</p>	Y	01/01/2021	2,500,000.

## Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- 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.

## Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- If the executor hasn't 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 may, be filed once the distribution to each such beneficiary has been made. (Although not required unless a there has been a change in value.)

## EXAMPLE 2

- EXAMPLE 2 – PROPERTY DISTRIBUTION UNKNOWN

JOR EL, CLARK KENT'S FATHER PASSED AWAY ON JANUARY 1, 2021. AT THE TIME OF HIS DEATH, THE FOLLOWING ASSETS BECAME PART OF HIS ESTATE:

1. SUPERMAN'S HIDEAWAY, A PIECE OF REAL PROPERTY WITH A CLASSIFIED ADDRESS VALUED AT \$10,000,000
2. 75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996) WHICH HOLDS REAL ESTATE HE PURCHASED WITH HIS SON, CLARK KENT VALUED AT \$27,812,000.

JOR EL'S WILL LEAVES 6.61% TO LEX LUTHER, 6.61% LANA LANG, AND 43.39% TO BOTH CLARK KENT AND LOIS LANE.

# EXAMPLE 2

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name LOIS LANE	4 Beneficiary's TIN 569-85-9542
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	10,000,000.
2	Form 706, Schedule F, item 1  75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996)	Y	01/01/2021	27,812,000.

# EXAMPLE 2

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name CLARK KENT	4 Beneficiary's TIN 100-23-4569
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	10,000,000.
2	Form 706, Schedule F, item 1  75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996)	Y	01/01/2021	27,812,000.

# EXAMPLE 2

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name LANA LANG	4 Beneficiary's TIN 897-85-2345
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	10,000,000.
2	Form 706, Schedule F, item 1  75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996)	Y	01/01/2021	27,812,000.

# EXAMPLE 2

Form 8971 (1-2016)

## 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](http://www.irs.gov/form8971).

Check box is this is a supplemental filing

### Part 1. General Information

1 Decedent's name JOR EL	2 Decedent's SSN 123-45-6789	3 Beneficiary's name LEX LUTHER	4 Beneficiary's TIN 999-65-8542
5 Executor's name LOIS LANE		6 Executor's phone no. (305) 379-7000	
7 Executor's address 217 SMALLVILLE CIRCLE SMALLVILLE, KS 10000			

### 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	The beneficiary has, will, or may receive the assets listed on this Schedule A.  Form 706, Schedule A, item 1  SUPERMAN'S HIDEAWAY (FOR SECURITY REASONS PROPERTY ADDRESS CANNOT BE MADE PUBLIC)	Y	01/01/2021	10,000,000.
2	Form 706, Schedule F, item 1  75% INTEREST IN SMALLVILLE PRIME REALTY, LLC (EIN: 89-0420996)	Y	01/01/2021	27,812,000.

## Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- The preparer of Form 706 is not automatically authorized to represent the estate before the IRS or to enter into any agreements with the IRS regarding the Form 8971 and attached Schedule(s) A.
- Form 2848, Power of Attorney and Declaration of Representative should be completed for a preparer to represent the estate before the IRS for these forms.

## Form 8971: Information Regarding Beneficiaries Acquiring Property From a Decedent

- A cash bequest acquired (or expected to be acquired) by a beneficiary is not considered reportable property for purposes of Form 8971/Schedule A.

# How should an executor distribute property?

- After resolving debts and paying taxes the executor should make distributions to the beneficiaries with instructions provided by the decedents, will or trust, or as dictated by the courts.

# How should an executor distribute property?

- Automatic transfers or named beneficiaries on assets which distributions are pre-determined should be considered first (such as 401Ks, life insurance policies, transfer on death accounts, joint property, community property etc.)
- Taxes, administration costs and debts should be settled. (Note: State law can control which debts have priority over other debts.)

# How should an executor distribute property?

- Specific bequests should be paid after known debts are paid. Some issues that can make this difficult:
  - State law takes priority (i.e. community property)
  - Asset must be sold to settle debt
  - Estate requires abatement
  - Estate requires ademption

# How should an executor distribute property?

- Estate abatement occurs when reductions are made to specific bequests due to a shortage of assets in the estate. (Example: If the estate is worth \$500,000 and there are several bequests that total \$1,000,000 each bequest would be reduced by 50%.)
- Estate ademption occurs when assets bequeathed are no longer in the decedent's estate. (Example: If the will leaves a specific painting to a beneficiary, but the painting was sold prior to the date of death.)

# How should an executor distribute property?

- Residuary distributions should be allocated and paid so that each beneficiary receives his or her share of the final estate value. Some issues that can make this difficult:
  - Disputes over specific items of property
  - Sentimental or “priceless” items
  - Illiquid assets
  - Loan receivables from beneficiaries

# How should an executor distribute property?

- When, a decedent dies with a beneficiary owing the decedent money, the executor, does not have legal authority to forgive the debt. Solutions to this distribution include:
  - The beneficiary can repay the estate the amount owed
  - The estate can distribute the loan as an "asset" to another beneficiary. (Payment and interest would be payable to this beneficiary.)
  - The estate can "distribute" the loan to the beneficiary that owes the debt as a portion of his or her inheritance. This results in a "deemed repayment". (EXAMPLE: If a beneficiary owes the estate \$350,000 and is entitled to \$500,000 in distributions from the estate, the executor can mark the debt repaid, and physically distribute only \$150,000 to that beneficiary.)

# Distribution Best Practices

- Prepare an inventory of all estate assets.
- Develop a plan of distribution and earmark assets to be distributed or sold.
- Keep track of distributions paid.
- Request a signed receipt from the beneficiary when distributions are made confirming that distributions were received.

# Income Tax Considerations For Estate Distributions

- Most executors have some flexibility when it comes to timing, amount, and the type of distribution made to beneficiaries.
- Timing of distributions can be a beneficial tool to minimize taxes for the estate and beneficiaries.
- When income is left in the estate, it is taxable to the estate, however, when distributions are made to residuary beneficiaries the income is generally taxable to the beneficiary (and deductible by the estate).
  - Estates and trusts are subject to the 37% income tax rate when their taxable income exceeds \$13,450 (for 2022) compared to individuals having higher income thresholds. Additionally, the preferred rate for long-term capital gains and qualified dividends is 20% for estates and trusts with taxable income exceeding \$13,700 (for 2022) compared to individuals not reaching this rate until their taxable income exceeds \$459,750 for singles and \$517,200 for married filing jointly (in 2022).
- Maximizing the number of the estate's tax years may be beneficial so that more income can be taxed at the individual rates. (NOTE: An estate cannot be unduly prolonged.)

# Income Tax Considerations For Estate Distributions

- **Planning for Net Investment Income Tax (NIIT)**
  - Individuals are not subject to the NIIT until their modified AGI reaches \$200,000 (if single) or \$250,000 (if married filing jointly), whereas estates are subject to NIIT if their undistributed net investment income and AGI exceeds the highest fiduciary income tax bracket for the year (\$13,450 in 2022)
  - The Jor El Estate earns \$100,000 interest income and net capital gains of \$200,000 for the current year. The executor has the authority to distribute income and principal to Jor El's son, Clark Kent, but makes no distributions. The Estate's modified AGI is \$300,000. In 2022, when the applicable threshold is \$13,450, the Estate will be subject to the net investment income tax (NIIT) of \$10,889  $[3.8\% \times (\$300,000 - \$13,450)]$ .
  - Variation: If the Estate distributes \$80,000 income to Clark, who is married and has less than \$250,000 income for the year, he will not be subject to the NIIT. The Estate's NIIT is \$7,849  $[3.8\% \times (\$220,000 - \$13,450)]$ . By making the distribution to Clark, the NIIT is reduced by \$3,040.

# Income Tax Considerations For Estate Distributions

- Specific bequests are not deductible by the estate or taxable to the beneficiary.
  - Jor El's will provides that \$25,000 is to be distributed to his grandson, within two years of his death. The estate has taxable DNI in the current year of \$200,000. In the current year, the executor pays the \$25,000 to Jor El's grandson. There were no other distributions in the current year.
  - Even though the estate had undistributed taxable income in the current year, there is no distribution deduction for any of the \$25,000 distributed to the grandson because it is a distribution of a specific bequest.

# Income Tax Considerations For Estate Distributions

- Utilizing the 65-day Election for Income Distributions Paid or Credited
  - Estates can elect to treat all, or part of an amount paid or credited to the beneficiary within the first 65 days following the close of the year as paid on the last day of the immediately prior tax year (IRC Sec. 663(b)).
  - This amount is limited to the greater of fiduciary accounting income or DNI for the immediately prior tax year, reduced by any amount actually paid, credited, or required to be distributed in the tax year.
  - This election allows the executor to determine the income of the estate for the year after it has ended and provides them with an opportunity to make distributions that can be treated as made before year end.
  - This creates opportunities to minimize the combined income tax and net investment income tax burden of the estate and the beneficiaries.

# Income Tax Considerations For Estate Distributions

- DNI is defined in IRC Sec. 643(a) as the taxable income of the estate with the following modifications:
  - No deduction is allowed for distributions made to the beneficiaries
  - No personal exemption deduction
  - Gains from the sale or exchange of capital assets owned by the estate or trust are excluded from DNI if they are allocated to principal and not distributed to a beneficiary or contributed to charity (IRC Sec. 643(a)(3))
  - Net capital losses are excluded except the portion netted against capital gains
  - Net tax-exempt interest is included in DNI (after the reduction for expenses allocated to tax exempt income)

# Income Tax Considerations For Estate Distributions

- There is no DNI adjustment for expenses related to Principal
  - Income beneficiaries receive the tax benefit for all principal expenses if the distribution is large enough to cause the beneficiaries to be taxed on total DNI (because DNI will be smaller as a result of the expenses).
  - If the estate makes no distributions to beneficiaries, the estate itself will get the tax benefit of deductions allocated to principal.

# Income Tax Considerations For Estate Distributions

- The Distribution Deduction is defined in Reg. 1.661(a)-2(a) as:
  - The amount of income for the tax year required to be distributed currently under the terms of the governing instrument or local law, plus
  - Other amounts properly paid or credited to, or required to be distributed to, the beneficiaries for the tax year, to the extent the total deduction does not exceed the taxable portion of distributable net income (DNI)
- Tier 1 distributions are considered before Tier 2 distributions.

# Income Tax Considerations For Estate Distributions

- **Planning for Distributions of Property**
  - Distributions of property (or cash) to beneficiaries are normally deductible to the estate and taxable to the beneficiaries to the extent of the estate's DNI
  - The amount distributed generally is the lesser of the property's adjusted basis or fair market value (FMV) (IRC Sec. 643(e)(2)).
  - Gain or loss normally is not recognized to the estate unless the distribution is in satisfaction of a pecuniary bequest.
  - An estate can elect to recognize gain on the appreciation following the decedent's date of death under IRC Sec. 643(e)(3). The election would be on the difference between FMV and basis.
  - NOTE: The related party rules disallow losses to the estate unless the property distribution is in satisfaction of a pecuniary bequest (IRC Sec. 267(b)(13)).

# Income Tax Considerations For Estate Distributions

- Property Distributions in Satisfaction of a Pecuniary Bequest or Right to Receive Other Property.
  - If property is distributed in satisfaction of a pecuniary bequest (a fixed dollar amount), gain or loss is recognized at the fiduciary level (Reg. 1.661(a)-2(f)).
  - Additionally, gain (but not loss) must be recognized by the estate if the distribution is in satisfaction of the right to receive specific property other than the property actually distributed (Reg. 1.661(a)-2(f) and IRC Sec. 267(b)(13)).
  - The transfer is treated as a cash distribution in an amount equal to the property's FMV, followed by a deemed sale of the property to the beneficiary for the cash. The beneficiary acquires a basis equal to the property's FMV on the date of the transfer (Reg. 1.1014-4(a)(3)).

# Income Tax Considerations For Estate Distributions

- Planning with installment sales
  - If an executor sells estate or trust property on the installment basis and then distributes the note to a beneficiary, the distribution of the note may be a taxable disposition that accelerates the gain recognized by the estate or trust.
  - If the installment note was obtained by the decedent before his or her death and was then distributed from the estate, the disposition does not accelerate the gain recognition (IRC Sec. 453B(c)). However, if the note is a self-canceling note (i.e., the balance is returned to the obligor of the note or canceled at the decedent's death), a taxable event occurs, and the estate must recognize the remaining gain (IRC Sec. 691(a)(5)).
  - If planning a distribution to a beneficiary close to the date of the sale, and the sale is likely to result in a significant recognized gain, the executor should consider distributing the asset (rather than the installment note) to the beneficiary prior to signing the sales contract. This allows the beneficiary to sell the asset on the installment basis and defer the gain.

# Income Tax Considerations For Estate Distributions

- **Planning with Income in Respect of a Decedent (IRD)**
  - Income in respect of a decedent (IRD) generally refers to gross income to which a decedent was entitled at the time of death but that was not included in his final return (or any prior return) under his regular method of accounting (Reg. 1.691(a)-1(b)). It is income that would have been taxable to the decedent if he or she had lived and received the income.
  - IRD is included in a decedent's gross estate (IRC Sec. 2031(a)). It is also included in the estate's gross income for income tax purposes in the year of receipt (IRC Sec. 691(a)(1)). The estate (or beneficiary who collects the IRD) is allowed an itemized deduction equal to the estate tax attributable to the IRD.
  - Estates should consider distributing the right to receive IRD to beneficiaries (or charities if allowed under the terms of the governing documents.)

# Thank You

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