

NEW FILING REQUIREMENTS FOR ESTATES (FORM 8971) IMPENDING DEADLINE!

By Stephen J. Olsen
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On July 31, 2015, HR 3236, Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the “Act”), was signed into law. Section 2004 of the Act enacted new Sections 1014(f) and 6035(a)(1) of the Internal Revenue Code of 1986, which require basis reporting of property acquired from a decedent. Earlier this week, the IRS released Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent, intended to implement this mandate. The form can be found [here](#). The instructions for the form can be found [here](#).

The instructions are fairly sparse, and leave a lot of open questions. We do know, however, that all estates required to file a Form 706 after July 31, 2015 are required to file a Form 8971. The normal due date would be the earlier of thirty days after the filing of a Form 706 or the due date of the Form 706. Notice 2015-57 has extended the due date for returns that were required to be filed before the promulgation of the form and instructions; however, that date has been extended only to **February 29, 2016** – less than four weeks away!

The reporting requirement may be extended to other estates, and the statute requires the Department of Treasury to issue regulations relating to situations other than when an estate must file the Form 706. The requirement is tied to being “required” to file a Form 706, so we currently believe that if an estate or beneficiary files simply for purposes of electing portability of the deceased unused spousal exemption that the Form 8971 will not be required, but we are not yet certain and that could change.

The Form 8971 provides both the IRS and the beneficiaries required information, including the value, of each interest in property reported on the estate tax return that is passed to the beneficiaries. The assets distributed, or expected to be distributed, to the beneficiary must be disclosed to the beneficiary. As distribution of assets will not have been made by the date of the Form 8971 and could substantially change prior to distribution, it is unclear how to report the information without providing each beneficiary a full list of all assets, whether or not the beneficiary will receive those assets.

It is important to note that failure to file the Form 8971 and the schedule A required to be provided to each beneficiary will result in penalties on the fiduciary. All executors and

other fiduciaries should review their filing dates, and contact their lawyers and accountants to discuss whether or not a Form 8971 is required.

More guidance is expected from the Department of Treasury and the IRS soon.

About Stephen J. Olsen

Stephen J. Olsen concentrates his practice in taxation, trust and estate planning and administration, business transactional matters, and business succession planning. Mr. Olsen received his law degree, cum laude, and his Master of Laws in Taxation (3.97 GPA) from Villanova University School of Law.

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