IRS Issues Draft Basis Consistency Form

Winter 2016

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires the executor of an estate that is required to file an estate tax return to report to the Internal Revenue Service ("IRS"), and to each beneficiary receiving property from the estate, the estate tax value of the property, if the return is filed after July 31, 2015. The purpose of this reporting is to ensure consistency between the basis of assets reported on an estate tax return and, if such assets are later sold, donated, or gifted by the recipient beneficiary, the basis shown on that beneficiary's subsequent income or gift tax returns.

The IRS has released a draft Form 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent) and draft instructions, which can be found here[1]. This form will be used to make the required disclosures to the IRS and the estate's beneficiaries. The draft instructions raise more questions than answers. For example, it appears that an executor would be required to report to the relevant beneficiary and the IRS information regarding a beneficiary who receives cash, despite the fact that the basis of cash is the amount of cash. Additionally, the statutory requirements regarding the filing deadline (i.e., generally 30 days after the estate tax return is due or filed) are not consistent with a typical high-net-worth estate administration, as it is atypical for an executor to be prepared to make distributions within 30 days of filing the estate tax return.

Pursuant to Notice 2015-57, the due date of a Form 8971 required to be filed after July 31, 2015 and before February 29, 2016 is delayed until February 29, 2016. Executors of estates that are required to file an estate tax return with a due date after July 31, 2015 should be aware of this requirement; we will continue to monitor any developments.

Arnall Golden Gregory's Private Wealth practice attorneys have extensive experience in the preparation of estate tax returns. This complex process is not merely ministerial. It involves significant legal issues which are integral to determining federal estate tax liability and strategic decisions on appropriate ways to accurately present the assets of the estate. Please contact us if you have any questions.

1 https://apps.irs.gov/app/picklist/list/draftTaxForms.html;jsessionid=kY20hv8KCFsm575+TYdDkA__?value=8971&criteria=formNumber&submitSearch=Find

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