

Dated: March 2, 2016.

Chuck Rosenberg,

Acting Administrator.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-127923-15]

RIN 1545-BM97

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes. In addition, these proposed regulations provide guidance on the reporting requirements for executors or other persons required to file Federal estate tax returns. Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide transition relief to executors and other persons required to file or furnish certain statements. The text of those temporary regulations (TD 9757) published in the Rules and Regulations section of this issue of the **Federal Register** also serves as the text of the proposed regulations regarding the transition relief. These proposed regulations as well as TD 9757 published elsewhere in the Rules and Regulations section of this issue of this **Federal Register** affect executors or other persons who file estate tax returns after July 31, 2015. The proposed regulations also affect beneficiaries who acquire certain property from these estates, and subsequent transferees to whom beneficiaries transfer the property in transactions that do not result in the recognition of gain or loss for Federal income tax purposes.

DATES: Written or electronic comments and requests for a public hearing must be received by June 2, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-127923-15),

Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127923-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-127923-15).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Theresa M. Melchiorre, at (202) 317-6859; concerning submissions of comments or, to request a hearing, Regina Johnson, at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by *May 3, 2016*.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service (IRS), including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The reporting requirements in these proposed regulations are in § 1.6035-

1(a) and (d) and require executors and other persons required to file a return under section 6018 to furnish a statement to the IRS and to each beneficiary providing information regarding the value of the property the beneficiary acquires from the decedent. The IRS will use this information to determine whether the beneficiary (or transferee) reports a basis for that property that is consistent with the value of that property as finally determined for Federal estate tax purposes when the beneficiary (or transferee) depreciates the property, or sells, exchanges, or otherwise disposes of some or all of that property in transactions that result in the recognition of gain or loss for Federal income tax purposes.

The collection of information may vary depending on the property includible in the gross estate and the number of beneficiaries receiving the property. The following estimates are based on the information that is available to the IRS. A respondent may require more or less time, depending on the circumstances.

Estimated total annual reporting burden. The estimated total annual reporting burden per respondent is 5.31 hours.

Estimated annual number of respondents. The estimated annual number of respondents is 10,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Overview

On July 31, 2015, the President of the United States signed into law H.R. 3236, 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 enacted sections 1014(f), 6035, 6662(b)(8), 6662(k), 6724(d)(1)(D), and 6724(d)(2)(II) of the Internal Revenue Code (Code). This document contains proposed regulations that amend 26 CFR parts 1 and 301 under those Code provisions to achieve consistency between a recipient's basis in certain property acquired from a

decedent and the value of the property as finally determined for Federal estate tax purposes. This notice of proposed rulemaking also cross-references to temporary regulations (TD 9757) published in the Rules and Regulations section of this issue of the **Federal Register**, which provide transition relief to certain persons required to file or furnish statements under section 6035. This document also proposes to remove from 26 CFR part 1 regulations under former section 6035 as a result of the repeal of that Code provision in 2004.

2. Summary of New Statutory Framework

A. Section 1014(f)

Section 1014(f) imposes an obligation of consistency between the basis of certain inherited property and the value of that property for Federal estate tax purposes.

Section 1014(f)(1) provides that the basis of property acquired from a decedent cannot exceed that property's final value for purposes of the Federal estate tax imposed on the estate of the decedent, or, if the final value has not been determined, the value reported on a statement required by section 6035(a).

Section 1014(f)(2) provides that section 1014(f)(1) only applies to property the inclusion of which in the decedent's gross estate increased the estate's liability for the Federal estate tax (reduced by credits allowable against the tax).

Section 1014(f)(3) provides that, for purposes of section 1014(f)(1), the basis of property has been determined for Federal estate tax purposes if (A) the value of the property is shown on a return under section 6018 and that value is not contested by the Secretary before the expiration of the time for assessing the estate tax; (B) in a case not described in (A), the value is specified by the Secretary and that value is not timely contested by the executor of the estate; or (C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

B. Section 6035

Section 6035 requires the reporting, both to the IRS and the beneficiary, of the value of property included on a required Federal estate tax return.

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 estate, a statement identifying the value of each interest in the property as reported on the return and any other information as the Secretary may prescribe.

Section 6035(a)(2) provides that each person required to file a return under section 6018(b) must furnish to the Secretary and to each other person who holds a legal or beneficial interest in the property to which the return relates a statement identifying the information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that this statement is due no later than the earlier of (i) 30 days after the due date of the return under section 6018 (including extensions, if any) or (ii) 30 days after the date the return is filed. If there is an adjustment to the information required to be included on this statement, section 6035(a)(3)(B) requires the executor (or other person required to file the statement) to provide a supplemental statement to the Secretary and to each affected beneficiary no later than 30 days after the adjustment is made.

Section 6035(b) authorizes the Secretary to prescribe regulations to carry out section 6035, including regulations relating to (1) the application of this section to property to which no Federal estate tax return is required to be filed, and (2) situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or fair market value of the property.

C. Penalties Under Sections 6662, 6721, and 6722

Section 2004(c) of the Act added a new accuracy-related penalty for underpayments attributable to an inconsistent estate basis. See section 6662(b)(8).

Section 6662(k) provides that there is an inconsistent estate basis if the basis of property claimed on a return exceeds the basis as determined under section 1014(f).

Section 2004(c) of the Act adds statements under section 6035 to the list of information returns and payee statements subject to the penalties under section 6721 and section 6722, respectively. Specifically, the Act adds new paragraph (D) to section 6724(d)(1) to provide that the term *information return* means any statement required to be filed with the Secretary under section 6035. The Act also adds new paragraph (II) to section 6724(d)(2) to provide that the term *payee statement* means any statement required to be furnished under section 6035 (other than a statement described in section 6724(d)(1)(D)).

3. Notice 2015–57

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. The notice also stated that the Treasury Department and the IRS expect to issue additional guidance to assist taxpayers in complying with sections 1014(f) and 6035 and invited comments. The Treasury Department and the IRS received numerous comments in response to the notice and considered all comments in the drafting of the proposed regulations. The comments are discussed in more detail in this preamble.

4. Notice 2016–19

On February 11, 2016, the Treasury Department and the IRS issued Notice 2016–19, 2016–09 IRB 362. That notice provides that executors or 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.

Summary of Comments on Notice 2015–57 and Explanation of Provisions

1. Section 1014(f)(1)—Consistency of Basis With Estate Tax Return

The general rule of section 1014 is that the basis of property received from a decedent (or as a result of a decedent's death) is that property's fair market value on the decedent's date of death (or the alternate valuation date, if elected). Newly enacted section 1014(f)(1) provides that the basis of certain property acquired from a decedent cannot exceed that property's final value as determined for Federal estate tax purposes. If no final value has been determined when the taxpayer's basis in the property becomes relevant for Federal tax purposes, for example, to calculate depreciation or amortization, or to calculate gain or loss on the sale, exchange or disposition of the property, the taxpayer uses the value reported on the statement required by section 6035(a) (the fair market value reported on the Federal estate tax return) to determine the taxpayer's basis for Federal tax purposes.

Proposed § 1.1014–10(a)(1) provides that a taxpayer's initial basis in certain property acquired from a decedent may not exceed the *final value* of the property as that term is defined in § 1.1014–10(c). This limitation applies to the property whenever the taxpayer reports to the IRS a taxable event with respect to the property (for example, depreciation or amortization) and continues to apply until the property is sold, exchanged, or otherwise disposed of in one or more transactions that result

in the recognition of gain or loss for Federal income tax purposes. The property for this purpose includes any other property the basis of which is determined in whole or in part by reference to the basis of the property acquired from the estate or as a result of the death of the decedent (for example as the result of a like-kind exchange or involuntary conversion).

2. Effect of Other Provisions of the Code That Govern Basis

Section 6662(b)(8) imposes an accuracy-related penalty on the portion of any underpayment of tax required to be shown on a return that is attributable to an *inconsistent estate basis*. Under newly enacted section 6662(k), an inconsistent estate basis arises if the basis of property claimed on a return exceeds its final value as determined under section 1014(f).

Commenters have expressed concern that section 1014(f) and section 6662(k) appear to prohibit otherwise permissible adjustments to the basis of property as a result of post-death events. In response, proposed §§ 1.1014–10(a)(2) and 1.6662–8(b) clarify that sections 1014(f) and 6662(k) do not prohibit adjustments to the basis of property as a result of post-death events that are allowed under other sections of the Code, and provide that such basis adjustments will not cause a taxpayer to violate the provisions of section 1014(f) or section 6662(k) on the date of sale, exchange, or disposition. The proposed regulations interpret sections 1014(f) and 6662(k) to require only that the beneficiary's initial basis of the inherited property cannot exceed the final value of the property for Federal estate tax purposes. Adjustments to the basis of the inherited property permitted by other sections of the Code as a result of post-death events (for example, depreciation or amortization, or a sale, exchange, or disposition of the property) will not cause the taxpayer's basis in the property on the date of a taxable event with respect to the property to be treated as exceeding the final value of the property. As a result, there cannot be an underpayment attributable to an inconsistent estate basis arising from these basis adjustments, and the accuracy-related penalty under section 6662(b)(8) cannot apply solely as a result of these basis adjustments.

3. Section 1014(f)(2)—Property That Increases Estate Tax Liability

The consistent basis requirement of section 1014(f)(1) applies only to property the inclusion of which in the decedent's gross estate for Federal estate tax purposes increases the Federal estate

tax liability payable by the decedent's estate. Proposed § 1.1014–10(b) defines this property as property includible in the gross estate under section 2031, as well as property subject to tax under section 2106, that generates a Federal estate tax liability in excess of allowable credits. The proposed regulations specifically exclude all property reported on a Federal estate tax return required to be filed by section 6018 if no Federal estate tax is imposed upon the estate due to allowable credits (other than a credit for a prepayment of that tax). In cases where Federal estate tax is imposed on the estate, the proposed regulations exclude property that qualifies for a charitable or marital deduction under section 2055, 2056, or 2056A because this property does not increase the Federal estate tax liability. In addition, the proposed regulations exclude any tangible personal property for which an appraisal is not required under § 20.2031–6(b) (relating to the valuation of certain household and personal effects) because of its value. Thus, if any Federal estate tax liability is incurred, all of the property in the gross estate (other than that described in the preceding two sentences) is deemed to increase the Federal estate tax liability and is subject to the consistency requirement of section 1014(f).

4. Section 1014(f)(3)—Final Value of Property Acquired From a Decedent

Section 1014(f)(3) provides that, for purposes of section 1014(f)(1), the *final value* of property has been determined for Federal estate tax purposes if: (A) The value is reported on a Federal estate tax return filed with the IRS and is not contested by the IRS before the period of limitation on assessment expires; (B) the value is specified by the IRS and is not timely contested by the executor of the estate; or (C) the value is determined by a court or pursuant to a settlement agreement with the IRS.

Proposed § 1.1014–10(c)(1) defines the *final value* of property that is reported on a Federal estate tax return filed with the IRS. That value is the value reported on the Federal estate tax return once the period of limitations on assessment for adjusting or contesting that value has expired. The IRS may specify a value for the property by determining a value in the course of carrying out its responsibilities under section 7803(a)(2). If the IRS determines a value different from the value reported, the final value is the 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 determination is final.

Proposed § 1.1014–10(c)(2) provides that the recipient of property to which the consistency requirement applies may not claim a basis in excess of the value reported on the statement required to be furnished under section 6035(a) (the value shown on the Federal estate tax return) if the taxpayer's basis in the property is relevant for any purpose under the Internal Revenue Code before the final value of that property has been determined under proposed § 1.1014–10(c)(1). However, under section 1014(f)(1), basis cannot exceed the property's final value. Therefore, proposed § 1.1014–10(c)(2) provides that, if the final value is determined before the period of limitation on assessment expires for any Federal income tax return of the recipient on which the taxpayer's basis is relevant and the final value differs from the initial basis claimed with respect to that return, a deficiency and an underpayment may result.

5. After-Discovered or Omitted Property

Commenters requested that the regulations clarify how the consistent basis requirement applies to property that is discovered after the filing of the Federal estate tax return or is otherwise omitted from that return. If this property would have generated a Federal estate tax liability if it had been reported on the Federal estate tax return that was filed with IRS, proposed § 1.1014–10(c)(3)(i) provides two different results based upon whether the period of limitation on assessment has expired for the Federal estate tax imposed on the estate. Proposed § 1.1014–10(c)(3)(i)(A) provides that, if the executor reports the after-discovered or omitted property on an estate tax return filed before the expiration of the period of limitation on assessment of the estate tax, the final value of the property is determined under proposed § 1.1014–10(c)(1) or (2). Alternatively, proposed § 1.1014–10(c)(3)(i)(B) provides that, if the after-discovered or omitted property is not reported before the period of limitation on assessment expires, the final value of the after-discovered or omitted property is zero.

Finally, to address situations in which no Federal estate tax return was filed, proposed § 1.1014–10(c)(3)(ii) provides that the final value of all property includible in the gross estate subject to the consistent basis requirement is zero until the final value is determined under proposed § 1.1014–10(c)(1) or (2).

6. Definition of Executor for Purposes of Sections 1014(f) and 6035

The proposed regulations adopt the definition of the term *executor* found in section 2203 applicable for Federal estate tax purposes and expand it to include a person required to file a return under section 6018(b).

7. Requirement To Provide Information Return and Statement(s) Under Section 6035

The proposed regulations define the term *Information Return* as the Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, which includes a copy of a Schedule A (Statement) for each person who has received or will receive property from the estate or by reason of the decedent's death.

Proposed § 1.6035-1(a)(1) provides that an executor who is required to file a Federal estate tax return also is required to file an Information Return with the IRS to report the final value of certain property, the recipient of that property, and other information prescribed by the Information Return and the related instructions. The executor also is required to furnish a Statement to each beneficiary who has acquired (or will acquire) property from the decedent or by reason of the death of the decedent to report the property the beneficiary has acquired (or will acquire) and the final value of that property.

8. Circumstances Under Which No Information Return or Statement(s) Is Required Under Section 6035

Commenters expressed concern that the section 6035 filing requirements might extend to a return filed by an estate solely to make the portability election under section 2010(c)(5), or a generation-skipping transfer tax election or exemption allocation. The proposed regulations provide that the filing requirements of section 6035 do not apply to such returns because these returns are not required by section 6018.

9. Property To Be Reported on an Information Return and Statement(s)

Commenters requested that the regulations clarify the types of property to be reported on the Information Return and one or more Statements. In response, proposed § 1.6035-1(b) defines the property to be reported on an Information Return and Statement(s) as all property included in the gross estate for Federal estate tax purposes with four exceptions: Cash (other than coins or paper bills with numismatic value); income in respect of a decedent; those items of tangible personal

property for which an appraisal is not required under § 20.2031-6(b); and property that is sold or otherwise disposed of by the estate (and therefore not distributed to a beneficiary) in a transaction in which capital gain or loss is recognized.

10. Beneficiaries

Proposed § 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. 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.

Commenters requested guidance on how to comply with the section 6035 reporting requirements when the executor cannot determine the exact distribution of the estate's property and thus the beneficiary of each property by the due date of the Information Return and the related Statements. This situation can arise, for example, when tangible personal property defined in § 20.2031-6 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. 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. 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.

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. 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.

11. Due Date for Information Return and Statements

Proposed § 1.6035-1(d)(1) provides that the executor is required to file the Information Return with the IRS, and is required to furnish each beneficiary with that beneficiary's Statement, on or before the earlier of the date that is 30 days after the due date of the Federal estate tax return (including extensions actually granted, if any), or the date that is 30 days after the date on which that return is filed with the IRS. In response to comments, proposed § 1.6035-1(d)(2) provides a transition rule for any Federal estate tax return that was due on or before July 31, 2015, but that is filed after July 31, 2015. In this case, the due date of the Information Return and all Statements is 30 days after the date on which the return is filed. Otherwise, as commenters noted, the due date for the Information Return and Statement(s) may be prior to the effective date of section 6035.

12. Supplemental Information Return and Statement(s)

Proposed § 1.6035-1(e)(1) and (2) generally requires a supplemental Information Return and corresponding supplemental Statement(s) upon a change to the information required to be reported on the Information Return or a Statement that causes the information as reported to be incorrect or incomplete. 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 (except as provided by proposed § 1.6035-1(e)(3)(B)) a change in the identity of the beneficiary to whom the property is to be distributed (for example, pursuant to a death, disclaimer, bankruptcy, or otherwise).

Proposed § 1.6035-1(e)(3) provides that a supplemental Information Return and Statement(s) may be filed, but they are not required, to correct an inconsequential error or omission within the meaning of § 301.6722-1(b) or to specify the actual distribution of assets previously reported as being available to satisfy the interests of

multiple beneficiaries in the situation described in proposed § 1.6035-1(c)(3).

Proposed § 1.6035-1(e)(4) provides that the 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. However, at the suggestion of a commenter, if these events occur prior to the distribution to the beneficiary of probate property or of the property of a revocable trust, a supplemental Information Return or Statement is not due until 30 days after the property is distributed. This is likely to be approximately the same time when the executor would provide the beneficiary with information as to changes, if any, to the basis of the property that have occurred since the decedent's death and prior to the distribution. Because that basis adjustment information is not part of what is required to be reported under section 6035, however, if the executor chooses to provide that basis adjustment information on the Schedule A provided to the beneficiary, the basis adjustment information must be shown separately from the final value required to be reported on the beneficiary's Statement.

13. Subsequent Transfers

As discussed earlier in this preamble, section 6035(a)(2) imposes a reporting requirement on the executor of the decedent's estate and on any other person required to file a return under section 6018. The purpose of this reporting is 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. The Treasury Department and the IRS are concerned, however, that opportunities may exist in some circumstances for the recipient of such reporting to circumvent the purpose of the statute (for example, by making a gift of the property to a complex trust for the benefit of the transferor's family).

Accordingly, pursuant to the regulatory authority granted in section 6035(b)(2), the proposed regulations require additional information reporting by certain subsequent transferors in limited circumstances. Specifically, proposed § 1.6035-1(f) provides that, with regard to property that previously was reported or is required to be reported on a Statement furnished to a recipient, when the recipient distributes or transfers (by gift or otherwise) all or

any portion of that property to a related transferee, whether directly or indirectly, in a transaction in which the transferee's basis for Federal income tax purposes is determined in whole or in part with reference to the transferor's basis, the transferor is required to file and furnish with the IRS and the transferee, respectively, a supplemental Statement documenting the new ownership of this property. This proposed reporting requirement is imposed on each such recipient of the property. For purposes of this provision, a related transferee means any member of the transferor's family as defined in section 2704(c)(2), any controlled entity (a corporation or any other entity in which the transferor and members of the transferor's family, whether directly or indirectly, have control within the meaning of section 2701(b)(2)(A) or (B)), and any trust of which the transferor is a deemed owner for income tax purposes.

In the event such transfer occurs before a final value is determined within the meaning of proposed § 1.1014-10(c), the transferor must provide the executor with a copy of the supplemental Statement filed with the IRS and furnished to the transferee reporting the new ownership of the property. When a final value is determined, the executor will then provide a supplemental Statement to the new transferee instead of to the transferor. The supplemental Statements are due no later than 30 days after the transferor distributes or transfers all or a portion of the property to the transferee.

14. Surviving Joint Tenants or Other Recipients Under Section 6035(b)(2)

Section 6035(b)(2) authorizes the IRS to prescribe regulations relating to situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or fair market value of the property received by reason of the decedent's death. Section 6018(b) addresses these situations. Section 6018(b) generally requires that, if the executor is unable to make a complete return as to any part of the gross estate of the decedent, the executor 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. Upon notice from the Secretary, any such person must in like manner make a return as to this part of the gross estate. Section 6035(a)(2) and these proposed regulations require a person required to file a return under section 6018(b) to file an Information Return with the IRS and

to furnish the Statement(s) to each beneficiary of that property. Therefore, the Treasury Department and the IRS have determined that no additional regulations applicable only to surviving joint tenants or other recipients are necessary for this purpose.

15. Removal of Regulations Under Former Section 6035

The *American Jobs Creation Act of 2004* (Pub. L. 108-357, 118 Stat. 1418) (Jobs Act) repealed former section 6035, effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which the tax years of foreign corporations end. Prior to repeal, former section 6035 set forth information reporting requirements for certain United States persons that were officers, directors, or 10-percent shareholders of a foreign personal holding company. Section 1.6035-1 (TD 8573), § 301.6035-1 (TD 6498), § 1.6035-2 (TD 8028), and § 1.6035-3 (TD 8028) (collectively, the FPHC regulations) provide guidance on the information reporting required under former section 6035, as in effect prior to amendment by the *Tax Equity and Fiscal Responsibility Act of 1982* (Pub. L. 97-248, 96 Stat. 328), and prior to its repeal by the Jobs Act.

This document proposes to withdraw the FPHC regulations. However, the FPHC regulations referenced above contained in 26 CFR parts 1 and 301, revised as of April 1, 2015, continue to apply for taxable years of foreign corporations beginning on or before December 31, 2004, and for taxable years of United States shareholders in which former section 6035 applies with or within which the tax years of foreign corporations end.

16. Request for New Process

One commenter requested the creation of a process to allow an estate beneficiary to challenge the value reported by the executor. There is no such process under the Federal law regarding returns described in section 6018. The beneficiary's rights with regard to the estate tax valuation of property are governed by applicable state law. Accordingly, the proposed regulations do not create a new Federal process for challenging the value reported by the executor.

Proposed Effective/Applicability Date

Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, these proposed regulations will apply to property acquired from a decedent or by reason

of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at <http://www.irs.gov>.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule primarily affects individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although it is anticipated that there may be an incremental economic impact on executors that are small entities, including entities that provide tax and legal services that assist individuals in preparing tax returns, any impact would not be significant and would not affect a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be

scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Theresa M. Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1014–10 also issued under 26 U.S.C. 1014(f).
Section 1.6035–1 also issued under 26 U.S.C. 6035(a).
Section 1.6035–2 also issued under 26 U.S.C. 6035(a).

■ **Par. 2.** Section 1.1014–10 is added to read as follows:

§ 1.1014–10 Basis of property acquired from a decedent must be consistent with Federal estate tax return.

(a) *Consistent basis requirement*—(1) *In general.* The taxpayer's initial basis in property described in paragraph (b) of this section may not exceed the property's final value within the meaning of paragraph (c) of this section. This requirement applies whenever the taxpayer reports a taxable event with respect to the property to the Internal Revenue Service (IRS) (for example depreciation or amortization) and continues to apply until the property is sold, exchanged, or otherwise disposed of in one or more transactions that result in the recognition of gain or loss for Federal income tax purposes, regardless of whether the owner on the date of the sale, exchange, or disposition is the

same taxpayer who acquired the property from the decedent or as a result of the decedent's death.

(2) *Subsequent basis adjustments.* The final value within the meaning of paragraph (c) of this section is the taxpayer's initial basis in the property. In computing at any time after the decedent's date of death the taxpayer's basis in property acquired from the decedent or as a result of the decedent's death, the taxpayer's initial basis in that property may be adjusted due to the operation of other provisions of the Internal Revenue Code (Code) governing basis without violating paragraph (a)(1) of this section. Such adjustments may include, for example, gain recognized by the decedent's estate or trust upon distribution of the property, post-death capital improvements and depreciation, and post-death adjustments to the basis of an interest in a partnership or S corporation. The existence of recourse or non-recourse debt secured by property at the time of the decedent's death does not affect the property's basis, whether the gross value of the property and the outstanding debt are reported separately on the estate tax return or the net value of the property is reported. Therefore, post-death payments on such debt do not result in an adjustment to the property's basis.

(b) *Property subject to consistency requirement*—(1) *In general.* Property subject to the consistency requirement in paragraph (a)(1) of this section is any property that is includable in the decedent's gross estate under section 2031, any property subject to tax under section 2106, and 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 (chapter 11) on the decedent's estate in excess of allowable credits, except the credit for prepayment of tax under chapter 11.

(2) *Exclusions.* For purposes of paragraph (b)(1) of this section, property that qualifies for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A, respectively, does not generate a tax liability under chapter 11 and therefore is excluded from the property subject to the consistency requirement in paragraph (a)(1) of this section. For purposes of paragraph (b)(1) of this section, tangible personal property for which an appraisal is not required under § 20.2031–6(b) is deemed not to generate a tax liability under chapter 11 and therefore also is excluded from the property subject to

the consistency requirement in paragraph (a)(1) of this section.

(3) *Application.* For purposes of paragraph (b)(1) of this section, if a liability under chapter 11 is payable after the application of all available credits (other than a credit for a prepayment of estate tax), the consistency requirement in paragraph (a)(1) of this section applies to the entire gross estate (other than property excluded under paragraph (b)(2) of this section) because all such property contributes to the liability under chapter 11 and therefore is treated as generating a tax liability under chapter 11. If, however, after the application of all such available credits, no tax under chapter 11 is payable, the entire gross estate is excluded from the application of the consistency requirement.

(c) *Final value*—(1) *Finality of estate tax value.* The final value of property reported on a return filed pursuant to section 6018 is its value as finally determined for purposes of the tax imposed by chapter 11. That value is—

(i) The value reported on a return filed with the Internal Revenue Service (IRS) pursuant to section 6018 once the period of limitations for assessment of the tax under chapter 11 has expired without that value having been timely adjusted or contested by the IRS,

(ii) If paragraph (c)(1)(i) of this section does not apply, the value determined or specified by the IRS once the periods of limitations for assessment and for claim for refund or credit of the tax under chapter 11 have expired without that value having been timely contested;

(iii) If paragraphs (c)(1)(i) and (ii) of this section do not apply, the value determined in an agreement, once that agreement is final and binding on all parties; or

(iv) If paragraphs (c)(1)(i), (ii), and (iii) of this section do not apply, the value determined by a court, once the court's determination is final.

(2) *No finality of estate tax value.* Prior to the determination, in accordance with paragraph (c)(1) of this section, of the final value of property described in paragraph (b) of this section, the recipient of that property may not claim an initial basis in that property in excess of the value reported on the statement required to be furnished under section 6035(a). If the final value of the property subsequently is determined under paragraph (c)(1) of this section and that value differs from the value reported on the statement required to be furnished under section 6035(a), then the taxpayer may not rely on the statement initially furnished under section 6035(a) for the value of the property and the taxpayer may have

a deficiency and underpayment resulting from this difference.

(3) *After-discovered or omitted property*—(i) *Return under section 6018 filed.* In the event property described in paragraph (b)(1) of this section is discovered after the estate tax return under section 6018 has been filed or otherwise is omitted from that return (after-discovered or omitted property), the final value of that property is determined under section (c)(3)(i)(A) or (B) of this section.

(A) *Reporting prior to expiration of period of limitation on assessment.* The final value of the after-discovered or omitted property is determined in accordance with paragraph (c)(1) or (2) of this section if the executor, prior to the expiration of the period of limitation on assessment of the tax imposed on the estate by chapter 11, files with the IRS an initial or supplemental estate tax return under section 6018 reporting the property.

(B) *No reporting prior to expiration of period of limitation on assessment.* If the executor does not report the after-discovered or omitted property on an initial or supplemental Federal estate tax return filed prior to the expiration of the period of limitation on assessment of the tax imposed on the estate by chapter 11, the final value of that unreported property is zero. See *Example 3* of paragraph (e) of this section.

(ii) *No return under section 6018 filed.* If no return described in section 6018 has been filed, and if the inclusion in the decedent's gross estate of the after-discovered or omitted property would have generated or increased the estate's tax liability under chapter 11, the final value, for purposes of section 1014(f), of all property described in paragraph (b) of this section is zero until the final value is determined under paragraph (c)(1) or (2) of this section. Specifically, if the executor files a return pursuant to section 6018(a) or (b) that includes this property or the IRS determines a value for the property, the final value of all property described in paragraph (b) of this section includible in the gross estate then is determined under paragraph (c)(1) or (2) of this section.

(d) *Executor.* For purposes of this section, *executor* has the same meaning as in section 2203 and includes any other person required under section 6018(b) to file a return.

(e) *Examples.* The following examples illustrate the application of this section.

Example 1. (i) At D's death, D owned 50% of Partnership P, which owned a rental building with a fair market value of \$10 million subject to nonrecourse debt of \$2

million. D's sole beneficiary is C, D's child. P is valued at \$8 million. D's interest in P is reported on the return required by section 6018(a) at \$4 million. The IRS accepts the return as filed and the time for assessing the tax under chapter 11 expires. C sells the interest for \$6 million in cash shortly thereafter.

(ii) Under these facts, the final value of D's interest is \$4 million under paragraph (c)(1)(i) of this section. Under section 742 and § 1.742-1, C's basis in the interest in P at the time of its sale is \$5 million (the final value of D's interest (\$4 million) plus 50% of the \$2 million nonrecourse debt). Following the sale of the interest, C reports taxable gain of \$1 million. C has complied with the consistency requirement of paragraph (a)(1) of this section.

(iii) Assume instead that the IRS adjusts the value of the interest in P to \$4.5 million, and that value is not contested before the expiration of the time for assessing the tax under chapter 11. The final value of D's interest in P is \$4.5 million under paragraph (c)(1)(ii) of this section. Under section 742 and § 1.742-1, C claims a basis of \$5.5 million at the time of sale and reports gain on the sale of \$500,000. C has complied with the consistency requirement of paragraph (a)(1) of this section.

Example 2. (i) At D's death, D owned (among other assets) a private residence that was not encumbered. D's sole beneficiary is C. D's executor reports the value of the residence on the return required by section 6018(a) as \$600,000 and pays the tax liability under chapter 11. The IRS timely contests the reported value and determines that the value of the residence is \$725,000. The parties enter into a settlement agreement that provides that the value of the residence for purposes of the tax imposed by chapter 11 is \$650,000. Pursuant to paragraph (c)(1)(iii) of this section, the final value of the residence is \$650,000.

(ii) Several years later, C adds a master suite to the residence at a cost of \$45,000. Pursuant to section 1016(a), C's basis in the residence is increased by \$45,000 to \$695,000. Subsequently, C sells the residence to an unrelated third party for \$900,000. C claims a basis in the residence of \$695,000 and reports a gain of \$205,000 (\$900,000 – \$695,000). C has complied with the consistency requirement of paragraph (a)(1) of this section.

Example 3. (i) The facts are the same as in *Example 2* but, after the expiration of the period for assessing the tax imposed by chapter 11, the executor discovers property that had not been reported on the return required by section 6018(a) but which, if reported, would have generated additional chapter 11 tax on the entire value of the newly discovered property. Pursuant to paragraph (c)(3)(i)(B) of this section, C's basis in the residence of \$695,000 does not change, but the final value of the additional unreported property is zero.

(ii) Alternatively, assume that no return was required to be filed under section 6018 before discovering the additional property (and none in fact was filed) but, after the application of the applicable credit amount, D's taxable estate including the unreported

property would have been \$200,000. Pursuant to paragraph (c)(3)(ii) of this section, the final value of all property included in D's gross estate that is described in paragraph (b) of this section is zero until the executor files an estate tax return with the IRS pursuant to section 6018 or the IRS determines a value for the property. In either of those events, the final value of property described in paragraph (b) of this section reported on the return is determined in accordance with paragraph (c)(1) or (c)(2) of this section.

Example 4. (i) 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 daughter) with rights of survivorship. D provided all the consideration for the residence and the entire value of the residence was included in D's gross estate. The executor reports the value of the residence as \$200,000 on the return required by section 6018 filed with the IRS for D's estate and claims no other deduction for the debt. The statement required by section 6035 reports the value of the residence as \$300,000. C sells the residence before the final value is determined under paragraph (c)(1) of this section for \$375,000 and claims a gain of \$75,000 on C's Federal income tax return.

(ii) 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 period for assessing C's income tax for the year of C's sale of the property. The final value of the residence is \$290,000 pursuant to paragraphs (c)(1)(iv) and (c)(2) of this section. Because C claimed a basis in the residence that exceeds the final value, C may have a deficiency and underpayment.

(f) *Effective/applicability date.* Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, this section will apply to property acquired from a decedent or by reason of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

■ **Par. 3.** Section 1.6035-1 is revised to read as follows:

§ 1.6035-1 Basis information to persons acquiring property from decedent.

(a) *Required Information Return and Statement(s)*—(1) *In general.* An executor (defined in paragraph (g)(1) of this section) required to file a return under section 6018 for an estate must file an Information Return (defined in paragraph (g)(2) of this section) with the Internal Revenue Service (IRS) to report the value of certain property (described in paragraph (b)(1) of this section) included in the decedent's gross estate for purposes of the tax imposed by

chapter 11 of subtitle B of the Internal Revenue Code (chapter 11) and other information prescribed by the Information Return and the instructions thereto. The value to be reported is the final value of the property as described in § 1.1014-10(c). This executor also must furnish a Statement (defined in paragraph (g)(3) of this section) to each beneficiary who has (or will) acquire, whether from the decedent or by reason of the death of the decedent, property reported on the Information Return to identify the property the beneficiary is to receive and to report the value of that property and other information prescribed by the Statement and instructions thereto. The Information Return and each Statement are required to be filed and furnished by the date provided in paragraph (d) of this section. If, after the Information Return and Statement are filed and furnished, there are certain changes in the final value and/or the recipient of property as described in paragraph (e) or (f) of this section, the executor must file a supplemental Information Return with the IRS and furnish a supplemental Statement to the beneficiary. Subsequent transfers of all or a portion of property previously reported (or required to be reported) on the Information Return required by paragraph (a) of this section, in transactions in which the transferee acquires the property with the transferor's basis, require additional reporting as described in paragraph (f) of this section.

(2) *Exception.* Paragraph (a)(1) of this section applies only to the executor of an estate required by section 6018 to file an estate tax return. Accordingly, notwithstanding § 20.2010-2(a)(1), the executor does not have to file or furnish the Information Return or Statement(s) referred to in paragraph (a)(1) of this section if the executor is not required by section 6018 to file an estate tax return for the estate, even if the executor does file such a return for other purposes, e.g., to make a generation-skipping transfer tax exemption allocation or election, to make the portability election under section 2010(c)(5), or to make a protective filing to avoid any penalty if an asset value is later determined to cause a return to be required or otherwise.

(b) *Property for which reporting is required*—(1) *In general.* The property to which the reporting requirement under paragraph (a)(1) of this section applies is all property reported or required to be reported on a return under section 6018. This includes, for example, any other property whose basis is determined in whole or in part by reference to that

property (for example as the result of a like-kind exchange or involuntary conversion). Of the property of a deceased nonresident non-citizen, this includes only the property that is subject to U.S. estate tax; similarly, this includes only the decedent's one-half of community property. Nevertheless, the following property is excepted from the reporting requirements—

(i) Cash (other than a coin collection or other coins or bills with numismatic value);

(ii) Income in respect of a decedent (as defined in section 691);

(iii) Tangible personal property for which an appraisal is not required under § 20.2031-6(b); and

(iv) Property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section.

Example 1. Included in D's gross estate are the contents of his residence. Pursuant to § 20.2031-6(a), the executor attaches to the return required by section 6018 filed for D's estate a room by room itemization of household and personal effects. All articles are named specifically. In each room a number of articles, none of which has a value in excess of \$100, are grouped. A value is provided for each named article. 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. Pursuant to § 20.2031-6(b), the executor obtains an appraisal from a disinterested, competent appraiser(s) of recognized standing and ability, or a disinterested dealer(s) in the class of personalty involved for the painting, rug, and clock. The executor attaches these appraisals to the estate tax return for D's estate. Pursuant to paragraph (b)(1)(iii) of this section, the reporting requirements of paragraph (a)(1) of this section apply only to the painting, rug, and clock.

Example 2. Included in D's estate are shares in C, a publicly traded company. Shortly after D's death but prior to the filing of the estate tax return for D's estate, C is acquired by T, also a publicly traded company. For the shares in C includible in D's estate, the estate receives new shares in T and cash in a fully taxable transaction. Pursuant to paragraph (b)(1)(iv) of this section, the reporting requirements of paragraph (a)(1) of this section do not apply to the new shares in T or the cash.

(c) *Beneficiaries*—(1) *In general.* As provided in paragraph (a)(1) of this section, the executor must furnish to each beneficiary (including a beneficiary who is also an executor) receiving property that must be reported on the Information Return filed with the IRS, the Statement containing the required information regarding that

beneficiary's property. For purposes of this provision, the beneficiary of a life estate is the life tenant, the beneficiary of a remainder interest is the remainderman(men) identified as if the life tenant were to die immediately after the decedent, and the beneficiary of a contingent interest is a beneficiary, unless the contingency has occurred prior to the filing of the Form 8971. If the contingency subsequently negates the inheritance of the beneficiary, the executor must do supplemental reporting in accordance with paragraph (e) of this section to report the change of beneficiary.

(2) *Beneficiary not an individual.* If the beneficiary is a trust or another estate, the executor must furnish the beneficiary's Statement to the trustee or executor of the trust or estate, rather than to the beneficiaries of that trust or estate. If the beneficiary is a business entity, the executor must furnish the Statement to the entity. However, see paragraph (f) of this section for additional reporting requirements in the event the trust, estate, or entity transfers all or a portion of the property in a transaction in which the transferee acquires the basis of the trust, estate, or entity.

(3) *Beneficiary not determined.* If, by the due date provided in paragraph (d) of this section, the executor has not determined what property will be used to satisfy the interest of each beneficiary, the executor must report on the Statement for each such beneficiary all of the property that the executor could use to satisfy that beneficiary's interest. Once the exact distribution has been determined, the executor may, but is not required to, file and furnish a supplemental Information Return and Statement as provided in paragraph (e)(3) of this section.

(4) *Beneficiary not located.* An executor must use reasonable due diligence to identify and locate all beneficiaries. If the executor is unable to locate a beneficiary by the due date of the Information Return provided in paragraph (d) of this section, the executor must so report on that Information Return and explain the efforts the executor has taken to locate the beneficiary and to satisfy the obligation of reasonable due diligence. If the executor subsequently locates the beneficiary, the executor must furnish the beneficiary with that beneficiary's Statement and file a supplemental Information Return with the IRS within 30 days of locating the beneficiary. A copy of the beneficiary's Statement must be attached to the supplemental Information Return. 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 must file a supplemental Information Return with the IRS and furnish the substitute beneficiary with that beneficiary's Statement within 30 days after the property is distributed. See paragraph (e)(1) of this section. A copy of the substitute beneficiary's Statement must be attached to the supplemental Information Return.

(d) *Due dates*—(1) *In general.* Except as provided in § 1.6035–2T, the executor must file the Information Return with the IRS, and must furnish to each beneficiary the Statement with regard to the property to be received by that beneficiary, on or before the earlier of—

(i) The date that is 30 days after the due date of the estate tax return required by section 6018 (including extensions, if any), or

(ii) The date that is 30 days after the date on which that return is filed with the IRS.

(2) *Transition rule.* If the due date of an estate tax return required to be filed by section 6018 is on or before July 31, 2015, but the executor does not file the return with the IRS until after July 31, 2015, then the Information Return and Statement(s) are due on or before the date that is 30 days after the date on which the estate tax return is filed, except as provided in § 1.6035–2T.

(e) *Duty to supplement.*—(1) *In general.* In the event of any adjustment to the information required to be reported on the Information Return or any Statement as described in paragraph (e)(2) of this section, the executor must file a supplemental Information Return with the IRS including all supplemental Statements and furnish a corresponding supplemental Statement to each affected beneficiary by the due date described in paragraph (e)(4) of this section.

(2) *Adjustments requiring supplement.* Except as provided in paragraph (e)(3) of this section, an adjustment to which the duty to supplement applies is any change to the information required to be reported on the Information Return or Statement that causes the information as reported to be incorrect or incomplete. Such changes include, for example, the discovery of property that should have been (but was not) reported on an estate tax return described in section 6018, 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 (pursuant to a death, disclaimer, bankruptcy, or otherwise). Such changes also include the

executor's disposition of property acquired from the decedent or as a result of the death of the decedent in a transaction in which the basis of new property received by the estate is determined in whole or in part by reference to the property acquired from the decedent or as a result of the death of the decedent (for example as the result of a like-kind exchange or involuntary conversion). Changes requiring supplement pursuant to this paragraph (e)(2) are not inconsequential errors or omissions within the meaning of § 301.6722–1(b) of this chapter.

(3) *Adjustments not requiring supplement*—(i) *In general.* A supplemental Information Return and Statement may but they are not required to be filed or furnished—

(A) To correct an inconsequential error or omission within the meaning of § 301.6722–1(b) of this chapter, or

(B) To specify the actual distribution of property previously reported as being available to satisfy the interests of multiple beneficiaries in the situation described in paragraph (c)(3) of this section.

(ii) *Example.* Paragraph (e)(3)(i)(B) of this section is illustrated by the following example.

Example 1. D's Will provided for D's residuary estate to be distributed to D's three children (E, F, and G). D's residuary estate included stock in a publicly traded company (X), a personal residence, and three paintings. On the due date of the Information Return and Statement required by paragraph (a)(1) of this section, D's executor had not yet determined which property each child would receive from D's residuary estate in satisfaction of that child's bequest. In accordance with paragraph (c)(3) of this section, D's executor reported on the Information Return filed with the IRS and on each child's own Statement that E, F, and G each might receive an interest in the stock in X, the personal residence, and the three paintings. Several months later, the executor determined that E would receive the stock in X, F would receive the residence, and G would receive the paintings. Paragraph (e)(3)(i)(B) of this section provides that the executor may but is not required to file a supplemental Information Return with the IRS and furnish supplemental Statements to E, F, and G to accurately report which beneficiary received what property.

Example 2. D's Will provided that D's jewelry and household effects (personalty) are to be distributed among D's three children (E, F, and G) as determined by E, F, and G. In accordance with paragraph (c)(3) of this section, D's executor reports on the Information Return filed with the IRS and on each child's own Statement each item of personalty other than items described in paragraph (b)(1)(iii) of this section. Several months later, E, F, and G determine who is to receive each item of personalty. Paragraph (e)(3)(i)(B) of this section provides that the

executor may but is not required to file a supplemental Information Return with the IRS and furnish supplemental Statements to E, F, and G to accurately report which beneficiary received which item(s) of personality.

(4) *Due date of supplemental reporting*—(i) *In general.* Except as provided in paragraph (e)(4)(ii) of this section, the supplemental Information Return must be filed and each supplemental Statement must be furnished on or before 30 days after—

(A) The final value within the meaning of § 1.1014–10(c)(1) is determined;

(B) The executor discovers that the information reported on the Information Return or Statement is otherwise incorrect or incomplete, except to the extent described in paragraph (e)(3)(i) of this section; or

(C) A supplemental estate tax return under section 6018 is filed reporting property not reported on a previously filed estate tax return pursuant to § 1.1014–10(c)(3)(i). In this case, a copy of the supplemental Statement provided to each beneficiary of an interest in this property must be attached to the supplemental Information Return.

(ii) *Probate property or property from decedent's revocable trust.* With respect to property in the probate estate or held by a revocable trust at the decedent's death, if an event described in paragraph (e)(4)(i)(A), (B), or (C) of this section occurs after the decedent's date of death but before or on the date the property is distributed to the beneficiary, the due date for the supplemental Information Return and corresponding supplemental Statement is the date that is 30 days after the date the property is distributed to the beneficiary. If the executor chooses to furnish to the beneficiary on the Statement information regarding any changes to the basis of the reported property as described in § 1.1014–10(a)(2) that occurred after the date of death but before or on the date of distribution, that basis adjustment information (which is not part of the requirement under section 6035) must be shown separately from the final value required to be reported on that Statement.

(f) *Subsequent transfers.* If all or any portion of property that previously was reported or is required to be reported on an Information Return (and thus on the recipient's Statement or supplemental Statement) is distributed or transferred (by gift or otherwise) by the recipient in a transaction in which a related transferee determines its basis, in whole or in part, by reference to the recipient/transferor's basis, the recipient/

transferor must, no later than 30 days after the date of the distribution or other transfer, file with the IRS a supplemental Statement and furnish a copy of the same supplemental Statement to the transferee. The requirement to file a supplemental Statement and furnish a copy to the transferee similarly applies to the distribution or transfer of any other property the basis of which is determined in whole or in part by reference to that property (for example as the result of a like-kind exchange or involuntary conversion). In the case of a supplemental Statement filed by the recipient/transferor before the recipient/transferor's receipt of the Statement described in paragraph (a) of this section, the supplemental Statement will report the change in the ownership of the property and need not provide the value information that would otherwise be required on the supplemental Statement. In the event the transfer occurs before the final value is determined within the meaning of proposed § 1.1014–10(c), the transferor must provide the executor with a copy of the supplemental Statement filed with the IRS and furnished to the transferee in order to notify the executor of the change in ownership of the property. When the executor subsequently files any Return and issues any Statement required by paragraphs (a) or (e) of this section, the executor must provide the Statement (or supplemental Statement) to the new transferee instead of to the transferor. For purposes of this provision, a related transferee means any member of the transferor's family as defined in section 2704(c)(2), any controlled entity (a corporation or any other entity in which the transferor and members of the transferor's family (as defined in section 2704(c)(2)), whether directly or indirectly, have control within the meaning of section 2701(b)(2)(A) or (B)), and any trust of which the transferor is a deemed owner for income tax purposes. If the transferor chooses to include on the supplemental Statement provided to the transferee information regarding any changes to the basis of the reported property as described in § 1.1014–10(a)(2) that occurred during the transferor's ownership of the property, that basis adjustment information (which is not part of the requirement under section 6035) must be shown separately from the final value required to be reported on that Statement.

(g) *Definitions.* For purposes of this section, the following terms are defined as follows—

(1) *Executor* has the same meaning as in section 2203 and includes any other person required under section 6018(b) to file a return.

(2) *Information Return* means the Form 8971, including each beneficiary's Statement as defined in paragraph (g)(3) of this section required to be furnished, or any successor form issued by the IRS for this purpose.

(3) *Statement* means the payee statement described as Schedule A of the Information Return furnished to a beneficiary or any successor form or schedule issued by the IRS for this purpose.

(h) *Penalties*—(1) *Failure to timely file complete and correct Information Return.* For provisions relating to the penalty provided for failure to file an Information Return required by section 6035(a)(1) on or before the required filing date, failure to include all of the required information on an Information Return, or the filing of an Information Return that includes incorrect information, see section 6721 and the regulations thereunder. See section 6724 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to timely furnish correct Statements.* For provisions relating to the penalty provided for failure to furnish a Statement required by section 6035(a)(2) on or before the prescribed date, failure to include all of the required information on a Statement, or the filing of a Statement that includes incorrect information, see section 6722 and the regulations thereunder. See section 6724 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

(i) *Effective/applicability date.* Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, this section will apply to property acquired from a decedent or by reason of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

■ **Par. 4.** Section 1.6035–2 is added to read as follows:

§ 1.6035–2 Transition relief.

[The text of proposed § 1.6035–2 is the same as the text of § 1.6035–2T published elsewhere in this issue of the **Federal Register**.]

§ 1.6035–3 [Removed]

■ **Par. 5.** Section 1.6035–3 is removed.

■ **Par. 6.** Section 1.6662–8 is added to read as follows:

§ 1.6662–8 Inconsistent estate basis reporting.

(a) *In general.* Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax required to be shown on a return that is attributable to an inconsistent estate basis.

(b) *Inconsistent estate basis.* In accordance with section 6662(k), there is an *inconsistent estate basis* to the extent that a taxpayer claims a basis, without regard to the adjustments described in § 1.1014–10(a)(2), in property described in paragraph (c) of this section that exceeds that property's final value as determined under § 1.1014–10(c).

(c) *Applicable property.* The property to which this section applies is property described in § 1.1014–10(b) that is reported or required to be reported on a return required by section 6018 filed after July 31, 2015.

(d) *Effective/applicability date.* Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, this section will apply to property described in § 1.1014–10(b) acquired from a decedent or by reason of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 7.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 8.** Section 301.6721–1 is amended by removing the word “or” at the end of paragraph (g)(2)(x), removing the period and adding “; or” at the end of paragraph (g)(2)(xi), and adding paragraph (g)(2)(xii).

The addition reads as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(g) * * *

(2) * * *

(xii) Section 6035 (relating to basis of property acquired from decedents).

* * * * *

■ **Par. 9.** Section 301.6722–1 is amended by removing the word “or” at the end of paragraph (d)(2)(xxxiii), removing the period and adding a semi-colon in its place followed by the word “or” at the end of paragraph

(d)(2)(xxxiv), and adding paragraph (d)(2)(xxxv).

The addition reads as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(2) * * *

(xxxv) Section 6035 (relating to basis of property acquired from decedents).

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB30

Financial Crimes Enforcement Network; Withdrawal of Notice of Proposed Rulemaking Regarding Banca Privada d'Andorra

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws FinCEN's notice of proposed rulemaking seeking to impose the fifth special measure regarding Banca Privada d'Andorra (“BPA”), pursuant to Section 311 of the USA PATRIOT Act (“Section 311”), codified at 31 U.S.C. 5318A. Because of material subsequent developments that have mitigated the money laundering risks associated with BPA, FinCEN has determined that BPA is no longer a primary money laundering concern that warrants the implementation of a special measure under Section 311. Elsewhere in this issue of the **Federal Register**, FinCEN is publishing a withdrawal of the related finding regarding BPA.

DATES: The notice of proposed rulemaking is withdrawn as of March 4, 2016.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767–2825.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,

Public Law 107–56 (“the USA PATRIOT Act”). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (“BSA”), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (“Section 311”) grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and financial agencies to take certain “special measures” to address the primary money laundering concern. The special measures enumerated under Section 311 are prophylactic safeguards that defend the U.S. financial system from money laundering and terrorist financing. FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. To that end, special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and information reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows the Director to prohibit or impose conditions on the opening or maintaining of correspondent or payable-through accounts by covered U.S. financial institutions.

II. The Finding and Notice of Proposed Rulemaking

On March 13, 2015, FinCEN provided notice in the **Federal Register** that it had found Banca Privada d'Andorra (“BPA”), a bank headquartered in Andorra, to be of primary money laundering concern.¹ Based on the finding, FinCEN also published on March 13, 2015 a notice of proposed rulemaking (“NPRM”) proposing the imposition of the fifth special measure with respect to BPA, and invited public

¹ 80 FR 13,464 (Mar. 13, 2015).