



IRS Notice 2016-19 Delays Due Date of Form 8971

02.19.2016

The IRS has once again delayed the due date for any statements required under §6035(a)(3)(A) of the Code. Under [Notice 2016-19](#), dated February 11, 2016 (the “Notice”), executors and other persons who must file or furnish a Form 8971 to the Service and to the beneficiaries of an estate before March 31, 2016 need not do so until that date. The reason for the time extension, the IRS notes, is to give those required to file the necessary statements an opportunity to review the proposed regulations that are forthcoming.

Background

On July 31, 2015, the President signed into law the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (P.L. 114-41), which added new §1014(f) and §6035 to the Code. More detail and discussion of these sections can be found [here](#). Essentially, §1014(f) and §6035 of the Code work together to eliminate discrepancies that may arise between how an estate values certain estate property for purposes of the estate tax and how the recipient of that property might report his or her basis in that property for income tax purposes. To eliminate these discrepancies, §6035 requires an executor of an estate to accurately report the value of such property to the IRS and to the recipient of that property. This effectively puts all parties on the same page with respect to the value of certain property acquired from the decedent.

On August 21, 2015, the IRS issued Notice 2015-57, delaying the filing due date of any statement required under §6035 until February 29, 2016. In December 2015, the IRS issued a draft Form 8971, which was created to facilitate the reporting under §1014(f) and §6035 of the Code. No instructions were issued with the draft, leading many taxpayers and tax professionals to speculate as to how the proposed regulations might address certain issues and concerns. A finalized version of Form 8971 with instructions was not issued until late January 2016. Now, under the Notice, the IRS has chosen to delay further all required filings under §6035 until March 31, 2016.

Issues and Guidance

The instructions accompanying Form 8971 did little to address important concerns voiced by taxpayers and tax professionals. For example, the instructions provide that an executor of an estate that, under §6018, is not required to file an estate tax return but that does so for the sole purpose of making an allocation or election with respect to the GST tax does not have to file Form 8971 and furnish Schedule A to the beneficiaries of the estate. There is no similar instruction for executors who are filing an estate tax return solely for making a portability election. While the IRS has advised tax return software providers informally that Form 8971 will not be required for portability returns, this has not been

confirmed officially. This concern, along with many others, likely will be addressed in the proposed regulations.

According to the Notice, the Department of Treasury and the IRS expect to issue proposed regulations under §1014(f) and §6035 “very shortly.” Executors and estate representatives are advised to wait to prepare Form 8971 and Schedule A until such proposed regulations have been issued.

Related People

- Adam Farnsworth – 804.420.6047 – afarnsworth@williamsmullen.com

Related Services

- Estate Planning: Private Client & Fiduciary Services