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Form 8971: The Basics

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**The information presented today
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SBSE – Estate and Gift Tax



Basics of the New Rules and Form 8971

- IRC 1014(f) imposes the obligation of consistency
- IRC 6035 requires the reporting to the IRS and to the beneficiaries
- Form 8971 and Schedule A are used to meet the filing obligations
- Failure to meet these filing obligations may be subject to penalties

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Purpose of Form 8971

- Surface Transportation and Veterans Health Care Choice Improvement Act of 2015
 - Requires an executor* required to file Form 706 or 706-NA
 - To file Form 8971 and Schedules A
- Each beneficiary gets only his/her Schedule A (not others' forms nor the F8971)
- Certain property received by a beneficiary may be subject to a consistency requirement (initial basis in the hands of the beneficiary may not be higher than the final estate tax value)



Who Must File Form 8971– IRC 6035

- An executor of an estate or other person(s) required to file Form 706 or Form 706-NA under sections 6018(a) and 6018(b),
 - if the return is filed after July 2015, and whether or not that form is filed timely,
 - 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.
- See the Instructions for Form 706 or Form 706-NA, for more information on the filing requirement for those forms.



When Is Form 8971 Not Required?

Form 8971 isn't required when:

- The gross estate plus adjusted taxable gifts is less than the basic exclusion amount (2016 = \$5.45M; 2017 = \$5.49M);
- The estate tax return is filed solely to elect portability of the deceased spousal exclusion amount (DSUE).
- Estate tax-related forms, other than those mentioned above, are filed (e.g., Forms 706-QDT, 706-CE, and 706-GS(D)); or
- The estate tax return is filed solely to make an allocation or election respecting the generation-skipping transfer tax



When to File Form 8971

Form 8971 (including all attached Schedule(s) A) must be filed with the IRS and only the Schedule A is to be provided to the beneficiary listed on that Schedule A, 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 first Form 706 or Form 706-NA is filed both after the form's due date (including extensions) and after July 2015, the Form 8971 and Schedule(s) A are due 30 days after the filing date.

Form 8971 is a separate filing requirement from the estate's Form 706 or 706-NA, and should not be attached to the respective estate tax return. Form 8971 and attached Schedule(s) A must be filed with the IRS, separate from any and all other tax returns filed by the estate.

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Which Property is Subject to the Basis Consistency Rules?

- See IRC 1014(f)

The consistent basis requirement of IRC 1014(f) 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 (i.e., generates an estate tax).

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What is Required to be Provided by IRC 6035?

Prop. Reg. § 1.6035-1(a)(1) provides that

- an executor who is required to file a Form 706 also is required to file a Form 8971 with the IRS to report the "final value" of certain property, the recipient of that property, and other information prescribed by the Form 8971 and the related instructions.

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What Property is Reported on F8971 and Schedule A

Prop. Reg. § 1.6035-1(b) defines the property to be reported on a Form 8971 and Schedule(s) A as all property included in the gross estate for Federal estate tax purposes when a Form 706 is required to be filed by IRC 6018(a) or (b), with four exceptions:

- cash (other than coins or paper bills with numismatic value);
- income in respect of a decedent (as defined in IRC 691);
- 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.

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Who are Beneficiaries?

- Who is a beneficiary?
- What if the beneficiary is not an individual?
 - Prop. Reg. 1.6035-1(c)(2).
- What if the property the beneficiary is to receive has not been determined?
 - Prop. Reg. 1.6035-1(c)(3).
- What if the beneficiary cannot be located?
 - Prop. Reg. 1.6035-1(c)(4).

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What About Supplemental Forms?

- When are supplemental forms (F8971 and/or Schedule A) required?
- When are supplemental forms due?
- What about reporting for probate property or property from a decedent's revocable trust?

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Which Adjustments Don't Require a Supplemental Filing?

A supplemental Form 8971 and Schedule(s) A **may be but are not required to be filed or furnished** in the following situations:

- To correct an inconsequential error or omission within the meaning of Reg. § 301.6722-1(b); or
- To specify the actual distribution of property previously reported as being available to satisfy the interests of multiple beneficiaries in the situation described in Prop. Reg. § 1.6035-1(c)(3) [beneficiary not determined].
 - For examples, see Prop. Reg. § 1.6035-1(e)(3).

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Rules for Subsequent Transfers

Prop. Reg. § 1.6035-1(f) provides that—

- with regard to property that previously was reported or is required to be reported on a Schedule A 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 Schedule A documenting the new ownership of this property.

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Related Income Tax Rules

- See IRC 1014(f) and Prop. Reg. § 1.1014-10.
- Key points:
 - The final value for estate tax purposes is the *initial* basis in the hands of the beneficiary.
 - Under the current regulations, omitted property or after-discovered property gets a zero basis if the property is not reported on a Form 706 before the expiration of the statute.

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Internal Revenue Service
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