

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 301**

[TD 9991]

RIN 1545-BM97

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final rule.

SUMMARY: This document contains final regulations that provide guidance on the statutory 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, the final regulations provide guidance on the statutory requirements that executors and other persons provide basis information to the IRS and to the recipients of certain property. The final regulations regarding the statutory consistent basis requirement affect recipients of property acquired from a decedent if the inclusion of the value of the property in the decedent's gross estate increases the Federal estate tax liability. The final regulations regarding the statutory basis reporting requirements affect executors and other persons required to file an estate tax return based on the value of the decedent's gross estate and the amount of decedent's lifetime adjusted taxable gifts, as well as trustees making in-kind distributions of property initially acquired from a decedent that was subject to the statutory basis reporting requirements.

DATES: *Effective date:* These regulations are effective on September 17, 2024.*Applicability dates:* For dates of applicability, see §§ 1.1014-1(d), 1.1014-10(f), 1.6035-1(j), and 1.6662-9(c).**FOR FURTHER INFORMATION CONTACT:** Concerning section 1014(f), Donna Douglas at 202-317-6859; concerning section 6035, Karen Wozniak at 202-317-6844 (not toll-free numbers).**SUPPLEMENTARY INFORMATION:****Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 1014(f) and 6035 of the Internal Revenue Code (Code) relating to the statutory consistent basis requirement and basis reporting requirements, and amendments to the

Procedure and Administration Regulations (26 CFR part 301) under sections 6721 and 6722 of the Code relating to the applicable penalties for failure to comply with the statutory basis reporting requirements.

1. General Statutory Background and Enactment of the 2015 Act

Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (2015 Act), Public Law 114-41, 129 Stat. 443, 454 (July 31, 2015), enacted sections 1014(f), 6035, 6662(b)(8), 6662(k), 6724(d)(1)(D), and 6724(d)(2)(II) of the Code to require 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. Section 1014(f) sets forth the consistent basis requirement, while the procedural rules in sections 6035, 6662, and 6724 set forth the applicable reporting requirements, penalties, and definitions. On March 23, 2018, section 104 of Division U of the Consolidated Appropriations Act, 2018, Public Law 115-141, 132 Stat. 348, 1170, made a technical correction to the definition of the term *inconsistent estate basis* under section 6662(k) of the Code, retroactive to the original date of enactment of the 2015 Act. The technical correction modified the definition to take into account, for purposes of the accuracy-related penalty imposed under section 6662 of the Code, that the basis of property determined under section 1014(f) is only the initial basis of such property. Thus, nothing in section 1014(f) prevents post-death basis adjustments pursuant to other sections of the Code.

2. Existing Regulatory and Administrative Guidance Under Sections 1014(f) & 6035

On March 4, 2016, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (81 FR 11486) a notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations (REG-127923-15). The proposed regulations would provide guidance on the consistent basis requirement under section 1014(f) applicable to recipients of certain property from a decedent and the reporting requirements under section 6035 applicable to executors and other persons required to file an estate tax return. Section 1.6035-2 of the proposed regulations (proposed § 1.6035-2) cross-references temporary regulations under § 1.6035-2T (TD 9757), published in the **Federal Register**

(81 FR 11431) on the same day, which provide transitional relief on the due date for filing the information return required by section 6035 (Information Return) and furnishing the statement(s) required by section 6035 (Statement(s)). Specifically, the temporary regulations extended the due date for filing and furnishing the required Information Return and Statement(s) to March 31, 2016.¹

On March 23, 2016, in response to requests from the public for an additional extension of time for filing and furnishing the required Information Return and Statement(s), the Treasury Department and the IRS issued Notice 2016-27, 2016-15 IRB 576, extending the due date for both to June 30, 2016. On December 2, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 86953) final regulations (TD 9797) confirming the extension until June 30, 2016, to file and furnish the required Information Return and Statement(s).

3. Public Hearing and Comments

On June 27, 2016, the Treasury Department and the IRS held a public hearing on the proposed regulations. In addition to the comments received at the hearing, the Treasury Department and the IRS received approximately thirty written comments on the proposed regulations. The written comments are available for public inspection at <https://www.regulations.gov> or upon request.

After consideration of all of the comments, the Treasury Department and the IRS are adopting the proposed regulations with certain revisions. These revisions substantially reduce the burden on both the IRS and taxpayers and increase administrability of the proposed rules. The revisions include (1) removing the zero basis rule for unreported property; (2) adopting a suggested interpretation of the term *acquiring* for purposes of section 6035(a)(1) and thereby modifying the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date; (3) eliminating the subsequent transfer reporting requirement for all beneficiaries other than trustees; and (4) excepting additional types of property interests from the consistent basis requirements and the reporting requirements under section 6035. In addition, a number of requested technical changes have been made to

¹ Prior extensions of the due dates to file and furnish the required Information Return and Statement(s) were set forth in Notice 2015-57, 2015-36 IRB 24, and Notice 2016-19, 2016-09 IRB 362.

the proposed regulations. Besides the changes made in response to comments, non-substantive revisions have been made to clarify the language and improve the organization of the proposed regulations. The public comments and revisions are discussed in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

1. Section 1014(f)—Consistent Basis Requirement

A. Proposed § 1.1014–10(a)(1): Consistent Basis Requirement—In General

Section 1014(f)(1) provides that the basis of certain 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 required Statement. This statutory rule is referred to as the *consistent basis requirement*. Section 1.1014–10 of the proposed regulations (proposed § 1.1014–10) includes proposed rules that would implement the consistent basis requirement.

Proposed § 1.1014–10(a)(1) provides that a taxpayer's initial basis in certain property acquired from a decedent may not exceed the property's final value for estate tax purposes within the meaning of proposed § 1.1014–10(c). Proposed § 1.1014–10(a)(1) additionally provides that the consistent basis requirement applies whenever the taxpayer reports a taxable event to the IRS with respect to the property and continues to apply until the entire 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.

The final regulations retain the rule in proposed § 1.1014–10(a)(1) incorporating the consistent basis requirement as it applies if a final value has been determined. However, proposed § 1.1014–10(a)(1) is revised in the final regulations to incorporate the consistent basis requirement as it applies if no final value has been determined (previously addressed in proposed § 1.1014–10(c)(2)). Proposed § 1.1014–10(a)(1) additionally is revised in the final regulations to explain that the property subject to the consistent basis requirement is referred to as

consistent basis property, which now is described in § 1.1014–10(c)(1) of the final regulations.

A commenter inquired whether the judicial doctrine of the duty of consistency continues to apply if the consistent basis requirement applies to property. For a discussion of the judicial doctrine of the duty of consistency, see *Van Alen v. Commissioner*, T.C. Memo, 2013–235 (Oct. 2013) and *Janis v. Commissioner*, 461 F.3d 1080 (9th Cir. 2006). The final regulations do not limit the arguments that may be applicable under case law, including the judicial doctrine of the duty of consistency in appropriate cases.

With regard to the rule describing the duration of the consistent basis requirement in proposed § 1.1014–10(a)(1), several comments were received. Commenters asserted, and the Treasury Department and the IRS agree, that the consistent basis requirement should not continue to apply to property that is sold at a price that is equal to its basis because this sale is a recognition event even though no gain or loss is recognized. Other commenters asserted, and the Treasury Department and the IRS agree, that the consistent basis requirement should not continue to apply to property once that property is included in the gross estate of another decedent. Finally, commenters questioned whether substituted property obtained in an exchange under section 1031 of the Code (that is, a like-kind exchange) is subject to the consistent basis requirement.

Accordingly, the rule in proposed § 1.1014–10(a)(1) describing the duration of the consistent basis requirement, which is moved to § 1.1014–10(a)(3) of the final regulations, is revised to clarify that the consistent basis requirement applies until the entire property is sold, exchanged, or otherwise disposed of in a recognition transaction for income tax purposes (whether or not any amount of gain or loss is actually recognized) or the property becomes includible in another decedent's gross estate. Under this rule, because a like-kind exchange is not a recognition event for income tax purposes, substituted property obtained in such a transaction is subject to the consistent basis requirement until the owner's basis in every portion of the substituted property no longer is related, in whole or in part, to the final value of the property that was acquired from the decedent.

B. Proposed § 1.1014–10(a)(2): Subsequent Basis Adjustments

Proposed § 1.1014–10(a)(2) provides that the final value of consistent basis

property is the taxpayer's initial basis in the property. Proposed § 1.1014–10(a)(2) further confirms that, in computing 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 Code provisions that govern basis without violating the consistent basis requirement. Proposed § 1.1014–10(a)(2) also gives examples of such adjustments, such as 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 an S corporation (as defined in section 1361(a)(1) of the Code). Proposed § 1.1014–10(a)(2) states that 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, the proposed regulations state that post-death payments on recourse or non-recourse debt secured by property do not result in an adjustment to the property's basis.

Section 1.1014–10(a)(2) of the final regulations maintains the rule identifying the initial basis of consistent basis property if a final value has been determined, as well as the rule and examples regarding acceptable adjustments to initial basis. However, proposed § 1.1014–10(a)(2) is revised in the final regulations by identifying the initial basis of consistent basis property during the period before the final value of such property is determined and by moving the rule regarding recourse and non-recourse debt secured by property to § 1.1014–10(b)(3)(i) of the final regulations.

The rule regarding recourse and non-recourse debt secured by property is addressed separately in the final regulations in order to address more specifically, in response to comments, the effect of recourse and non-recourse debt on the initial basis of consistent basis property. A commenter requested that the final regulations clarify that, if the decedent's estate includes property subject to non-recourse debt and the executor reports the value of the property on the decedent's estate tax return as the value of the property less the debt (the net value or equity of redemption value), then the final value of the property is nevertheless the gross value of the property undiminished by the debt. The Treasury Department and the IRS adopt this suggestion in

§ 1.1014–10(b)(3)(i) of the final regulations, which provides that the final value or, if applicable, the reported value, of property subject to recourse or non-recourse debt is determined based on the gross value of that property undiminished by debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the property or separately reports the gross value of the property and claims an estate tax deduction for the outstanding debt.

Another commenter requested that the final regulations clarify whether the existence of recourse or non-recourse debt on partnership property reduces the final value of a partnership interest includible in the decedent's gross estate. The existence of recourse or non-recourse debt on partnership property relates to the value of the partnership and the gross value of a decedent's partnership interest, determinations of which are outside the scope of these final regulations. Accordingly, this request is not adopted. However, the Treasury Department and the IRS note that, with respect to a deceased partner having a loan secured by a partnership interest, the same rule in § 1.1014–10(b)(3)(i) of the final regulations will apply so that the final value of the partnership interest is the gross value of the partnership interest undiminished by the debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the partnership interest or separately reports the gross value of the partnership interest and claims an estate tax deduction for the outstanding debt.

C. Proposed § 1.1014–10(b)(1): Property Subject to Consistency Requirement—In General

Section 1014(f)(2) provides that the consistent basis requirement applies only to property whose inclusion in the decedent's gross estate increased the estate tax liability. Based on this rule, proposed § 1.1014–10(b)(1) provides that the property subject to the consistent basis requirement is any property includible in the decedent's gross estate under section 2031 of the Code, any property subject to tax under section 2106 of the Code, 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 an involuntary conversion) that generates an estate tax liability in excess of allowable credits, except for the credit for prepayment of estate tax.

This rule is maintained in § 1.1014–10(c)(1)(i) of the final regulations with certain modifications in response to

comments. First, the final regulations, in § 1.1014–10(c)(1)(i)(A), include the preliminary criterion for the applicability of the consistent basis requirement in section 1014(f)(1) that only property to which section 1014(a) applies is consistent basis property. Second, the Treasury Department and the IRS have corrected the final regulations to reflect that section 2103 of the Code, not section 2106, defines the gross estate for purposes of the estate tax on the estate of a nonresident non-citizen. The correction is found in the definition of the term *included property* in § 1.1014–10(d)(4) of the final regulations, which term is referenced in § 1.1014–10(c)(1)(i)(B) of the final regulations. Finally, the Treasury Department and the IRS have corrected the final regulations in §§ 1.1014–10(c)(1)(i)(C) and 1.1014–10(d)(5) to remove the reference to the prepayment of estate tax as a credit, because an estate tax prepayment is not an identified credit but instead is a payment of estate tax.

Commenters inquired whether the allowable credits referenced in proposed § 1.1014–10(b)(1) include credits provided under treaties. One commenter inquired whether, in order to treat the prorated unified credit under section 2102(b)(3) of the Code as an allowable credit, the executor is required to attach a Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, to the nonresident non-citizen decedent's Form 706–NA, *United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States*. In response to these comments, § 1.1014–10(d)(5) of the final regulations defines the term *allowable credits* to include both credits against the estate tax allowable by any section of the Code and credits against the estate tax allowable by any treaty obligation of the United States, provided that the estate qualifies for the credit and complies with all applicable rules for claiming the credit, including filing all necessary forms or statements.

With regard to the applicability date of the consistent basis requirement to property, commenters requested clarification on whether the filing after July 31, 2015, of an estate tax return supplementing an estate tax return filed on or before that date would subject any of the assets in the decedent's gross estate to the consistent basis requirement. Other commenters requested clarification on whether the filing on or before July 31, 2015, of an estate tax return that was due after July 31, 2015, would subject any of the assets in the decedent's gross estate to the

consistent basis requirement. In response to these comments, § 1.1014–10(c)(1)(ii) of the final regulations clarifies that neither the supplementing of an estate tax return after July 31, 2015, nor a due date of an estate tax return after July 31, 2015, causes property to be subject to the consistent basis requirement if an estate tax return was filed on or before July 31, 2015.

D. Proposed § 1.1014–10(b)(2): Exclusions

Proposed § 1.1014–10(b)(2) provides that property that qualifies for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A of the Code does not generate a tax liability under chapter 11 of the Code (chapter 11) and therefore is excluded from the property subject to the consistent basis requirement. Proposed § 1.1014–10(b)(2) further provides that tangible personal property for which an appraisal is not required under § 20.2031–6(b) of the Estate Tax Regulations (26 CFR part 20) is deemed not to generate a tax liability under chapter 11 and therefore also is excluded from the property subject to the consistent basis requirement.

With regard to the exclusion for property qualifying for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A, multiple commenters sought clarification on whether property qualifying for only a partial marital or charitable deduction is subject to the consistent basis requirement. In the case of property qualifying for only a partial marital or charitable deduction, the property increases the estate tax liability to the extent that it does not qualify for a marital or charitable deduction and, therefore, the property is subject to the consistent basis requirement. In such a case, applying the consistent basis requirement only to the partial interest not qualifying for a deduction is impractical and incompatible with the uniform basis rules under § 1.1014–4 of the Income Tax Regulations. Accordingly, § 1.1014–10(c)(2)(xi) of the final regulations identifies only wholly deductible property, under any of sections 2055, 2056, 2056A, 2106(a)(2) and (3), as property not subject to the consistent basis requirement. Partially deductible property (property that qualifies for only a partial marital or charitable deduction) is outside the scope of this rule and, therefore, is consistent basis property subject to the consistent basis requirement. Some examples of property qualifying for only a partial marital or charitable deduction, and, therefore, not excepted from the consistent basis requirement, are: (1) a charitable remainder trust, a charitable

lead trust, or a pooled income fund; (2) a trust subject only to a partial QTIP election under section 2056(b)(7); and (3) property divided between the decedent's surviving spouse and a charity if the sum of the deductions for the two interests given to those recipients is less than the value of the property included in the value of the gross estate.

With regard to the exclusion for tangible personal property, § 1.1014–10(c)(2)(ix) of the final regulations retains as an exception to the consistent basis requirement tangible personal property for which an appraisal is not required under § 20.2031–6(b). However, in response to a comment, these items are described in the final regulations as household and personal effects, rather than as tangible personal property, to conform more closely with § 20.2031–6(b).

Multiple commenters advocated for additional exclusions from the consistent basis requirement either because certain property is not subject to the consistent basis requirement under the plain language of the statute or because certain property, in the commenters' views, should be excepted from the consistent basis requirement by the exercise of regulatory authority. In response, § 1.1014–10(c)(2) of the final regulations provides a list of property that is identified as property excepted from or not subject to the consistent basis requirement. A particular property may be described in more than one item on that list.

One commenter suggested that the final regulations confirm that the consistent basis requirement applies only to property to which section 1014(a)(1) through (3) applies, as only such property has a basis that is adjusted to the property's Federal estate tax value as a result of the decedent's death. Specifically, the commenter requested that the final regulations provide that, if the basis of property is not determined under section 1014(a)(1) through (3), then the property is not subject to the consistent basis requirement. Under such a provision, the commenter concluded that the following property would be excluded from the consistent basis requirement: (1) property subject to a conservation easement resulting from the section 2031(c) election (the subject of section 1014(a)(4)); (2) income in respect of a decedent (IRD) (the subject of section 1014(c)); (3) DISC stock (the subject of section 1014(d)); (4) pre-death gifts of appreciated property (the subject of section 1014(e)); (5) stock in a passive foreign investment company (PFIC) by reason of section 1291(e)(1); and (6)

annuities subject to section 72 (the subject of section 1014(b)(9)(A)). Section 1014(f)(1) applies the consistent basis requirement to all property to which section 1014(a) applies. The Treasury Department and the IRS agree that section 1014(b)(9)(A), (c), and (e) describes property not subject to section 1014(a), and therefore property that does not acquire a new basis based in any way on the Federal estate tax value of that property. Stock of a PFIC subject to section 1296(i) also is property not subject to section 1014(a), but only if the basis of such stock is its adjusted basis in the hands of the decedent immediately before the decedent's death. Accordingly, § 1.1014–10(c)(2)(x) of the final regulations clarifies that such interests are not subject to the consistent basis requirement.

However, the adjustments to the basis of property to be made pursuant to section 1014(a)(4) and (d) and otherwise under section 1291(e)(1), do not make section 1014(a), and therefore section 1014(f), inapplicable to the property described in those sections. In each of these cases, the property's Federal estate tax value is a factor used in determining the property's basis under these sections. Thus, the consistent basis requirement applies to the property described in these sections, even though the basis of the property may differ from the Federal estate tax value of the property.

Several commenters requested confirmation that certain property is not subject to the consistent basis requirement because the value of that property is not included in the decedent's gross estate for Federal estate tax purposes. For instance, a commenter requested confirmation that the consistent basis requirement does not apply to property the basis of which is adjusted in a manner similar to section 1014(a) on the occurrence of a taxable termination that occurs on a person's death pursuant to section 2654(a)(2). Such property generally becomes subject to the generation-skipping transfer tax on the death of a trust beneficiary and, as long as the property is not includible in a person's gross estate for Federal estate tax purposes, it is not property to which section 1014(a) applies. Other commenters requested confirmation that the consistent basis requirement does not apply to a surviving spouse's interest in community property to which section 1014(b)(6) applies because, although this property is deemed to have been acquired from the decedent and thus is subject to section 1014(a), such property is not includible in the decedent's gross estate for estate tax purposes. The

Treasury Department and the IRS agree with the commenters that, in both cases, the property is not subject to the consistent basis requirement because it is not property includible in the gross estate. Accordingly, § 1.1014–10(c)(2)(xii) and (xiii) of the final regulations clarify that such interests are not subject to the consistent basis requirement.

Finally, in addition, § 1.1014–10(c)(2) of the final regulations excepts certain types of property whose basis generally does not differ from the property's face value, such as United States dollars and certain equivalents.

E. Proposed § 1.1014–10(b)(3): Application

Proposed § 1.1014–10(b)(3) provides that, if an estate tax liability is payable after the application of all available credits (other than a credit for a prepayment of estate tax), the consistent basis requirement applies to the entire gross estate (other than property excluded by proposed § 1.1014–10(b)(2)) because all such property contributes to the estate tax liability and therefore is treated as generating an estate tax liability. Proposed § 1.1014–10(b)(3) clarifies that if, 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. The final regulations in § 1.1014–10(c)(1)(ii) adopt the substance of this proposed rule with minor language changes.

F. Proposed § 1.1014–10(c)(1): Final Value—Finality of Estate Tax Value

Proposed § 1.1014–10(c)(1) provides that the final value of property reported on an estate tax return is its value as finally determined for purposes of the estate tax. Proposed § 1.1014–10(c)(1) further provides that the finally determined value is (i) the value reported on a return filed with the IRS pursuant to section 6018 of the Code once the period of limitations for assessment of the estate tax has expired without that value having been timely adjusted or contested by the IRS, (ii) if the preceding rule in (i) 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 estate tax have expired without that value having been timely contested, (iii) if the preceding rules in (i) and (ii) do not apply, the value determined in an agreement, once that agreement is final and binding on all parties, or (iv) if the preceding rules in (i), (ii), or (iii) do not apply, the value determined by a court, once the court's determination is final.

The rules in proposed § 1.1014–10(c)(1) are adopted in redesignated § 1.1014–10(b)(1) of the final regulations, with certain clarifications and other changes. First, § 1.1014–10(b)(1)(ii) of the final regulations omits the reference to the period of limitations on credit or refund, which makes the rules defining the “final value” of consistent basis property in the final regulations more consistent with the rules defining a final determination for gift tax purposes. This is appropriate because both regulatory definitions are based on similar statutory language. Second, the final regulations in § 1.1014–10(d)(1) add a definition of the term *contested* to clarify that an executor cannot contest the IRS’s determination of value with only a “protective” statement generally contesting the IRS’s determination of value. The challenge must be specific to a particular item of property, rather than a general objection that would provide no meaningful information respecting the value of the property at issue. Thus, the challenge must put at issue the value of property by providing to the IRS a written statement that identifies the specific property, states that the executor does not accept as correct the value determined or specified by the IRS, and provides the executor’s claimed value for the property as determined in accordance with the requirements of section 2031, the regulations thereunder, and other applicable guidance. In cases in which the value of property is contested, the final value will be determined either by agreement between the executor and the IRS, as described in § 1.1014–10(b)(1)(iii) of the final regulations, or by litigation, as described in § 1.1014–10(b)(1)(iv) of the final regulations.

G. Proposed § 1.1014–10(c)(2): No Finality of Estate Tax Value

Proposed § 1.1014–10(c)(2) of the proposed regulations provides that, prior to the determination of the final value of property subject to the consistent basis requirement, the recipient of that property may not claim an initial basis in excess of the value reported on the required Statement. Proposed § 1.1014–10(c)(2) further provides that, if the final value of the property subsequently is determined (under proposed § 1.1014–10(c)(1)) and that value differs from the value reported on the required Statement, then the taxpayer may not rely on the required Statement initially furnished for the value of the property and the taxpayer may have a deficiency and underpayment resulting from this difference. The Treasury Department

and the IRS received several comments on these proposed rules.

One commenter opined that the proposed regulations unfairly hold a beneficiary responsible for not using the final value to determine initial basis if the beneficiary sells property before its final value is determined. The commenter asserted that, in any event, if the final value of property is determined after its sale, any accuracy-related penalty imposed under section 6662 should be waived if the beneficiary acted in good faith. Similarly, commenters requested confirmation that no income tax deficiency would result if the final value of the property is determined after the expiration of the period of limitations on assessment applicable to the beneficiary’s income tax return.

If a beneficiary uses the value reported on the required Statement to calculate gain or loss on the sale of property, the beneficiary is using the value reported on the estate tax return. This may or may not be the final value of the consistent basis property as determined under section 1014(f)(3). Nevertheless, section 1014(f)(1)(A) provides specifically that, in the case of property the final value of which has been determined, the beneficiary’s initial basis is limited to that final value. It would be inconsistent with the language of the statute to fail to provide that an income tax deficiency and underpayment may result if a value exceeding the final value is used to determine initial basis.

Accordingly, the final regulations, in redesignated § 1.1014–10(b)(2), maintain the rules in proposed § 1.1014–10(c)(2), and add several clarifying provisions. Section 1.1014–10(b)(2)(i) of the final regulations clarifies that the reported value is the value reported on the Statement required under § 1.6035–1 or, if supplemented, on the most recent supplement to that Statement. That section further clarifies that the value from any Statement that reports either a value from an estate tax return filed after the expiration of the period of limitations on assessment applicable to that return, or a value for property not reported on the estate tax return, is not a reported value. In effect, before a final value is determined, the value reported on the estate tax return controls. This rule recognizes that section 1014(f)(3) requires an assessment process to determine the final value of property. The IRS cannot assess tax on property reported only on the required Information Return or required Statement(s) because these constitute only information returns and payee statements as defined in section

6724(d)(1)(D) and (d)(2)(II), respectively. Section 1.1014–10(b)(2)(ii) of the final regulations clarifies that an income tax deficiency can result if the final value of property is determined before the expiration of the period of limitations on assessment for an income tax return that reports a taxable event with regard to the property. Section 1.1014–10(b)(2)(ii) of the final regulations also includes a reference to section 6664 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

H. Proposed § 1.1014–10(c)(3): After-Discovered or Omitted Property

Proposed § 1.1014–10(c)(3) provides basis rules for property that is discovered after the filing of the estate tax return or otherwise is omitted from the estate tax return. Proposed § 1.1014–10(c)(3)(i)(A) provides that, if the executor reports the after-discovered or omitted (unreported) property on an estate tax return filed before the expiration of the period of limitations 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 unreported property is not reported before the period of limitations on assessment expires, the final value of that property is zero. Finally, to address situations in which no 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). Because the application of proposed § 1.1014–10(c)(3)(i)(B) or § 1.1014–10(c)(3)(ii) results in the beneficiary having an initial basis of zero in unreported property, these proposed provisions are collectively referred to as the *zero basis rule*.

Comments received on the zero basis rule generally fall into two categories: those relating to the statutory interpretation of section 1014(f) and the authority to impose the zero basis rule; and those relating to the practical effects of the zero basis rule. With respect to the former, many commenters contended that section 1014(f), by its terms, applies only to property that is reported on an estate tax return. Therefore, the commenters concluded that the basis of unreported property, as determined under section 1014(a), is not limited by the consistent basis requirement in section 1014(f). Commenters further contended that section 1014(f)(4) limits the regulatory authority of the Treasury Department

and the IRS to providing exceptions to the application of the consistent basis requirement, and that expanding the consistent basis requirement to address unreported property is beyond the scope of this regulatory authority. Some commenters contended that the Code does not support a regulatory interpretation that denies at least a carryover basis for an inherited asset.

Commenters commenting on the practical effects of the zero basis rule contended that the rule is onerous, unduly harsh, and unfair. Commenters noted that a beneficiary receiving unreported property in many cases will not be the executor or other person having the responsibility to report the property and the beneficiary may have no ability to compel the executor to report the property on the return. Yet, under the zero basis rule, the beneficiary receiving unreported property will have an increased tax burden due to the denial of basis, whether determined under section 1014(a) (fair market value on the decedent's date of death) or, in the alternative, a carry-over basis of the decedent's adjusted basis in the property. Commenters noted that unreported property is more likely to arise by inadvertent omission from the estate tax return or as a result of being undiscovered, rather than willful omission. Therefore, except in the case of willful omission by a beneficiary who is the executor or other person responsible to report the property, commenters contended that the zero basis rule is unduly harsh and unfair because it creates a 100 percent taxable gain on the sale of the property by the beneficiary.

The Treasury Department and the IRS do not agree that providing a zero basis rule for unreported property is beyond its regulatory authority for implementing the congressional mandate of section 1014(f). See section 7805(a) and, more specifically, section 1014(f)(3)(B) (referencing the ability of the IRS to specify the value of property not reported on a return required by section 6018). However, the Treasury Department and the IRS recognize that such a rule primarily impacts the recipients of unreported property, who may have had no knowledge of or involvement in the failure to report the property for Federal estate tax purposes, but, nevertheless, have an increased tax burden under the rule.

The Treasury Department and the IRS additionally recognize that, under applicable State law, an executor is personally accountable to discharge its fiduciary duty to seek out and collect every asset and to acquire possession of

the property of the decedent. See 31 a.m. Jur. 2d *Executors and Administrators* § 369 (2018); *Eger v. Eger*, 314 NE2d 394 (Ohio App. 1974); *Matter of Deutsch*, 114 A.D.2d 413, 493 N.Y.S 884 (2d Dep't 1985). Further, the Treasury Department and the IRS recognize that, in the absence of a zero basis rule for unreported property, existing Federal tax enforcement mechanisms under subtitle F of the Code, including criminal liability, serve to deter willful nonreporting of property on the estate tax return. See, e.g., section 6651(a)(3) of the Code for a potential addition to tax; sections 6662(a), (g), and (h), 6663, 6721, and 6722 of the Code for potential accuracy-related, fraud, and other penalties; section 6501(c)(1) and (2), and (e)(2) of the Code for potential exceptions to the general three-year period of limitations on assessment; and sections 7203, 7206, and 7207 of the Code for potential criminal liability and penalties.

In view of these considerations, the final regulations do not include the zero basis rule. Instead, § 1.1014–10(c)(1)(i) of the final regulations clarifies that the consistent basis requirement applies only to *included property*, a term that is defined in § 1.1014–10(d)(4) of the final regulations to refer to property, the value of which is included in the value of the decedent's gross estate, as defined in section 2031 or 2103. Section 1.1014–10(d)(4) of the final regulations explains that this refers to property whose value is reported on an estate tax return or otherwise is included in the total value of the gross estate so that a final value is or will be determined for that property under chapter 11.

Consequently, the basis of property acquired or passed from a decedent that is not reported on an estate tax return and not otherwise included in the gross estate generally is determined under section 1014(a), without regard to the rules of section 1014(f). The rule identifying property subject to the consistent basis requirement in § 1.1014–10(c)(1)(i) of the final regulations, together with the definition of the term *included property* in § 1.1014–10(d)(4) of the final regulations, is sufficient to clarify the scope of the consistent basis requirement, and therefore these final regulations do not include a specific rule on the basis of unreported property.

I. Proposed § 1.1014–10(d): Executor

Proposed § 1.1014–10(d) provides that, for purposes of proposed § 1.1014–10, the term *executor* has the same meaning as in section 2203 of the Code and includes any other person required under section 6018(b) to file a return. In

response to comments or as needed for clarity, proposed § 1.1014–10(d) is expanded in the final regulations to define several additional terms for purposes of § 1.1014–10, including the terms *contested*, *estate tax liability*, *included property*, *allowable credits*, and *United States dollars*.

J. Proposed § 1.1014–10(e): Examples

Proposed § 1.1014–10(e) provides four examples to illustrate the application of proposed § 1.1014–10. In general, the examples illustrate rules applicable to the final value of property, subsequent basis adjustments, and reliance on a required Statement. In particular, one example illustrates the application of the zero basis rule on the final value of unreported property.

Section 1.1014–10(e) is revised in the final regulations by reordering the examples and adding headings to provide clarity. Because the zero basis rule from proposed § 1.1014–10(c)(3) is not included in the final regulations, § 1.1014–10(e) is further revised in the final regulations by removing the example illustrating the zero basis rule. Finally, § 1.1014–10(e) is revised in the final regulations by adding examples to illustrate rules regarding the duration of the consistent basis requirement, the meaning of included property that is subject to the consistent basis requirement, and the treatment of partially deductible property that is subject to the consistent basis requirement.

K. Applicability Date

Proposed § 1.1014–10(f) provides that, upon publication of the Treasury Decision adopting these rules as final in the **Federal Register**, § 1.1014–10(f) of the final regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose estate tax return is filed after July 31, 2015. The final regulations revise the applicability date of § 1.1014–10(f) of the proposed regulation consistent with section 7805(b)(1). Accordingly, § 1.1014–10(f) of the final regulations does not reference the July 31, 2015, effective date of section 1014(f), and provides instead that § 1.1014–10 of the final regulations applies to property described in § 1.1014–10(c)(1) of the final regulations that is acquired from a decedent or by reason of the death of a decedent if the decedent's estate tax return is filed after the date of publication of these final regulations in the **Federal Register**.

L. Comments Requesting New Process for Beneficiary To Challenge Value

Several commenters expressed concern that beneficiaries have no input in the determination of final value even if they believe the estate tax return reports an incorrect or understated value. These commenters posited that binding a beneficiary's initial basis to the final value may deprive the beneficiary of due process. Consequently, they requested a procedure through which a beneficiary may challenge the determination of final value. Some commenters suggested that the procedure allow the beneficiary an opportunity to provide evidence of a different date-of-death value at the time of examination by the IRS of the beneficiary's income tax return (on which a taxable event with respect to the property is reported).

The Treasury Department and the IRS considered and briefly responded to a request to create a new process for challenging the value reported by the executor in part 16 of the Summary of Comments on Notice 2015-57 and Explanation of Provisions section of the preamble of the proposed regulations. In the proposed regulations, the Treasury Department and the IRS declined to create a new Federal process for challenging the value reported by the executor. Administrability and other concerns weigh against creating a new Federal process for challenging the value reported by the executor. Specifically, this would leave the IRS in the same position it held prior to the enactment of section 1014(f). During that time, the IRS was forced to litigate valuation issues with a beneficiary, often years after relevant market information had ceased to be available, and/or after having previously litigated the same valuation issue with the estate. In addition, regarding the suggestion to create a procedure to allow the beneficiary to provide evidence of value at the time of examination by the IRS of the beneficiary's income tax return, such a procedure would be contrary to the statutory rule in section 1014(f)(1) limiting the basis of property within its scope to the property's final value for Federal estate tax purposes or, otherwise, to the value reported on a required Statement.

In response to the commenters' concerns, however, the Treasury Department and the IRS are considering issuing guidance in the future that grants a beneficiary of property subject to the consistent basis requirement the opportunity to provide certain credible evidence of value. Out of administrability concerns, the Treasury

Department and the IRS further anticipate such an opportunity might be available only during some limited period of time and only if the credible evidence of value indicates that the reported value represents a substantial understatement of value.

2. Section 6035—Required Information Return(s) and Statement(s)

Section 1.6035-1 of the proposed regulations (proposed § 1.6035-1) includes proposed rules that would address the statutory basis reporting requirements under section 6035 applicable to executors and other persons required to file an estate tax return. As noted in part 3 of the Background section of this preamble, the Treasury Department and the IRS made amendments to the proposed rules that substantially reduce burden and increase administrability for both taxpayers and the IRS. In particular, the final regulations (1) adopt a suggested interpretation of the term *acquiring* in section 6035(a)(1), thereby modifying the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date, (2) eliminate the subsequent transfer reporting requirement for all beneficiaries other than trustees, and (3) except additional types of property interests from the reporting requirements under section 6035. These and other amendments to proposed § 1.6035-1 are laid out in a reorganized final regulation.

A. Overview of Reporting Requirements

The final regulations under section 6035 add an overview paragraph in § 1.6035-1(a) to clarify the relationship between the reporting requirements under section 6035 and the consistent basis requirement applicable to certain beneficiaries under section 1014(f).

B. Applicability of Section 6035 Reporting Requirements

In order to provide greater clarity, the final regulations set forth in separate paragraphs the provisions governing the applicability of the section 6035 reporting requirements and the rule for the identification of the persons included as executors who are subject to them.

i. General Rules Regarding Applicability of Section 6035 Reporting Requirements

Section 1.6035-1(b)(1) sets forth the rule in section 6035(a)(1) and proposed § 1.6035-1(a)(2) that only executors of an estate who are required to file an estate tax return (referred to as a *required estate tax return*) under section 6018 are subject to the reporting

requirements under section 6035. In addition, § 1.6035-1(b)(1) sets forth the rule that the reporting requirements apply only in the case of a required estate tax return that is filed after July 31, 2015, and sets forth the rule in proposed § 1.6035-1(a)(2) that the reporting requirements do not apply if no estate tax return is required to be filed under section 6018 even if the executor files an estate tax return for other purposes, including without limitation to make a generation-skipping transfer tax exemption allocation or election, a portability election, or a protective filing to avoid a penalty if an asset value is later determined to cause a return to be required or otherwise.

Section 1.6035-1(b)(1) of the final regulations also clarifies that whether an estate tax return is a required estate tax return depends on the date of death value of property includible in the decedent's gross estate, the amount of adjusted taxable gifts, and the applicable filing threshold under section 6018(a), so that an election made under section 2032 or 2032A of the Code to determine the value of property includible in the gross estate in accordance with either of those respective provisions is not relevant to the determination of whether a return is a required estate tax return. See section 6018(a) and § 20.6018-1(a).

Some commenters inquired whether the reporting requirements apply in the event estate tax returns are filed before August 1, 2015, if either the due date for the return is after July 31, 2015, or the executor files a supplement to the return after July 31, 2015. Section 1.6035-1(b)(1) of the final regulations provides that the reporting requirements do not apply if a required estate tax return is filed on or before July 31, 2015, even if the due date of the return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015.

ii. Executors Subject to the Section 6035 Reporting Requirements

Section 1.6035-1(b)(2) of the final regulations defines the term *executor* consistent with the definition of that term in proposed § 1.6035-1(g)(1), but includes further explanation in response to comments. One commenter noted the possibility that more than one person may be considered an executor for purposes of section 2203(a) and § 20.2203-1 and asked for clarification of the filing requirements in that situation. The commenter posited a scenario in which an executor who is appointed, qualified, and acting on behalf of the estate (an appointed executor) files an estate tax return, but

is unable to make a complete return as to a trust the value of which is includible in the gross estate of the decedent. In that case, the trustee of that trust, upon notice from the IRS, is required to file a return reporting the trust property and the value thereof. See section 6018(b) and § 20.6018-2. In response, the final regulations provide that each person required to file a return is subject to the section 6035 reporting requirements, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that person. The commenter also suggested clarifying the application of the section 6035 reporting requirements if no executor is appointed but multiple persons are in actual or constructive possession of property of the decedent. Under the final regulations, each person in actual or constructive possession of property of the decedent is an executor and is subject to the section 6035 reporting requirements, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that executor. Finally, the commenter suggested clarifying the application of the reporting requirements in the case of successor or co-executors. While all co-executors are responsible for the reporting, it is sufficient for only one of the co-executors to file the Information Return and to furnish the Statement(s).

Commenters questioned who is required to comply with the reporting requirements if a qualified revocable trust makes a section 645 election and there is a probate estate. Under section 645, the trustee of a qualified revocable trust and an appointed executor (if any) may elect to treat the trust as part of the estate for income tax purposes. The section 645 election relates only to the income tax liability of a qualified revocable trust. Therefore, the section 645 election, by itself, does not affect whether the trustee of a qualified revocable trust is an executor within the meaning of § 1.6035-1(b)(2). The expanded definition of the term executor in § 1.6035-1(b)(2) of the final regulations adequately clarifies who is subject to the reporting requirements.

C. Required Information Return and Statements

Section 1.6035-1(c) of the final regulations incorporates modifications to the rules applicable to an executor's duty to file the required Information Return (defined in § 1.6035-1(c)(1) of the final regulations) and furnish each required Statement (defined in § 1.6035-1(c)(2) of the final regulations) and the due dates for the satisfaction of

those duties. The modifications reflect the adoption of comments relating to an executor's duty to furnish Statements to beneficiaries who have not acquired property before the due date (or earlier filing date) of the estate tax return.

i. Furnishing Statements to Beneficiaries Reporting Property the Beneficiaries Have Not Yet Acquired

Section 6035(a)(1) requires the executor to furnish Statements to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes. Section 1.6035-1(c)(2) of the final regulations defines *Statement* consistent with proposed § 1.6035-1(g)(3) and requires an executor to furnish a Statement to each beneficiary who acquires certain property. Section 1.6035-1(c)(2) of the final regulations clarifies that the value the executor reports on that Statement is the value of the property as reported on the estate tax return required to be filed with the IRS.

Proposed § 1.6035-1(d)(1), relying on the language of section 6035(a)(3)(A), requires that Statements be provided to all beneficiaries on or before the earlier of the date that is 30 days after the due date of the estate tax return or the date that is 30 days after the date the estate tax return is filed with the IRS. If, by this due date, the executor has not determined what property will be used to satisfy the interest of each beneficiary, proposed § 1.6035-1(c)(3) requires executors to report on the Statement for each beneficiary all of the property that the executor could use to satisfy that beneficiary's interest. Proposed § 1.6035-1(c)(3) further provides that, once the exact distribution has been determined, the executor may, but is not required to, file and furnish a supplemental Information Return and Statement.

The Treasury Department and the IRS received numerous comments objecting to this proposed rule. Commenters noted, and the Treasury Department and the IRS agree, that proposed § 1.6035-1(c)(3) would result in duplicate reporting because a single item of property (or interest in the property) would be reported on the Statement of several beneficiaries, even though some of these beneficiaries will never receive an interest or a partial interest in that property. According to commenters, this duplicate reporting may confuse beneficiaries by leading them to expect to receive all of the property reported on the Statements furnished to them. In addition, commenters have contended that this duplicate reporting is burdensome and may violate a

decedent's or beneficiary's right to privacy, possibly resulting in conflicts and litigation among beneficiaries with competing interests in the estate.

Commenters offered various suggestions for revising the rule for property not acquired before the due date of the required reporting under section 6035. One commenter suggested that, in lieu of the rule requiring an executor to identify specific property the beneficiary may receive from the estate, the final regulations should permit executors to furnish Statements indicating that a beneficiary is to receive either (1) a certain percentage of the estate's property or (2) property valued at a certain dollar amount. Under this suggested alternative, the executor then would be required to file a supplemental Information Return and furnish a supplemental Statement within 30 days after the executor distributes the property to the beneficiary.

Most commenters requested that the IRS extend the time for furnishing Statements to beneficiaries to allow executors more time to distribute property or to determine which property will go to which beneficiary. One commenter suggested that the proper interpretation of the language in section 6035(a)(1) requiring an executor to furnish a Statement "to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes" is that it does not include beneficiaries until they have received an interest in particular property. The commenter supported this recommendation by pointing out that the meaning of the word "acquiring" in the Code generally means already received. The commenter identified sixty-four other sections of the Code in which the word "acquiring" appears and noted that, in only two of those sections, does "acquiring" refer to an event that has not yet occurred. The commenter also pointed to the description of earlier legislative proposals using identical language in which the descriptions refer to the beneficiary "receiving" the property or the "recipients" of an interest. The commenter reasoned that section 6035(a) requires the reporting of the value (as reported on the estate tax return) to the beneficiary acquiring that property, which assumes that the property has already been identified by having been received by the beneficiary. In addition, the commenter suggested, in effect, that this interpretation of the statutory language would not violate the statute's prohibition of any delay in reporting to a recipient beyond the determination of that value because

reporting triggered by the beneficiary's receipt of the property would still provide the required valuation notice to the recipient as soon as the recipient would have reason to use that information. The commenter also noted that section 6035(b) authorizes the Secretary to prescribe regulations as necessary to carry out section 6035, and stated the commenter's belief that this authority is sufficient to allow the creation of a due date for Statements based on the date property is acquired by a beneficiary.

The commenter suggested two alternatives for the due date for furnishing Statements reporting the value of property that has not been acquired or received by the beneficiary by the due date of the Information Return: 30 days after distribution of the property to the beneficiary or January 31 of the year following the year of distribution of the property to the beneficiary. The commenter acknowledged that the first alternative appears to be consistent with the 30-day concepts found in section 6035(a)(3) (due on or before 30 days after the estate tax return due date or 30 days after the estate tax return is filed, if filed before the due date, and, in the case of an adjustment, 30 days after the adjustment is made), but the potential of multiple due dates during a single year would be burdensome on both taxpayers and the IRS. The commenter suggested that a due date of January 31 of the year following distribution would minimize those burdens while nevertheless ensuring that every beneficiary acquiring property from the decedent would have the information necessary for filing a timely income tax return reporting a sale or other relevant event regarding this property.

One commenter requested that, if the final regulations create a due date for furnishing Statements that is based on the date property is acquired by a beneficiary, then executors nevertheless have the option of furnishing all required Statements with the Information Return. Under this suggestion, if an executor determines that it would be less burdensome, an executor would have the option to furnish a Statement to a beneficiary even if the beneficiary has not yet acquired the property.

The Treasury Department and the IRS are sympathetic to the various concerns raised by the commenters. Many estates subject to the section 6035 reporting requirements are complex and will require a period of time well beyond the estate tax return filing due date to determine the appropriate distributions of property to beneficiaries. In light of

these concerns, the final regulations adopt a suggested interpretation of the term *acquiring* in section 6035(a)(1) that modifies, and reduces the burden of, the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date (or earlier filing date). With regard to property the beneficiaries acquire after the estate tax return due date, the Treasury Department and the IRS agree with the commenters that a due date for furnishing Statements to such beneficiaries that is after the acquisition of property would have several benefits. It would eliminate the potential confusion and lack of privacy that could result from giving each beneficiary a Statement showing all of the property that could be used to satisfy their respective bequests. It also would be consistent with the understanding of the Treasury Department and the IRS of the intent of section 6035 to provide accurate, timely, and useful information to beneficiaries and the IRS. After consideration of the comments, the Treasury Department and the IRS conclude that it is appropriate to interpret the term *acquiring* consistent with its most common meaning and consistent with the discretionary authority granted in section 6035(b) to provide a due date, which is after the acquisition of property, for furnishing Statements to beneficiaries who acquire property after the due date (or earlier filing date) of the decedent's estate tax return.

With regard to what the due date for Statements with regard to this property should be, the Treasury Department and the IRS conclude that a due date of January 31 of the year following acquisition by the beneficiary of this property is the most administrable and least burdensome alternative. This alternative is the most administrable and least burdensome because a January 31 due date would allow an executor to file the supplemental Information Return on an annual basis with copies of all Statements furnished to beneficiaries acquiring property in any given year, rather than having to file multiple supplemental Information Returns each year on a Statement-by-Statement basis as each Statement is furnished to a beneficiary within 30 days of acquisition.

Accordingly, § 1.6035-1(c)(3) of the final regulations provides that the due date for furnishing a Statement to a beneficiary who acquired property on or before the due date or earlier filing of the estate tax return is 30 days after the due date or earlier filing of the estate tax return. The due date for furnishing a Statement to a beneficiary who acquires

property at a later date is January 31 of the calendar year following the year of acquisition. Section 1.6035-1(c)(4) of the final regulations provides that a beneficiary acquires property when title vests in the beneficiary or when the beneficiary otherwise has sufficient control over or connection with the property that the beneficiary is able to take action related to the property for which basis is relevant for Federal income tax purposes. Depending upon the particular property and how it was titled at the decedent's death, this could occur at the moment of death, or upon distribution by the executor or a trustee.

The Treasury Department and the IRS further agree that providing executors the option of furnishing all Statements within 30 days of filing the estate tax return, regardless of whether all assets by then have been acquired by the beneficiaries, may reduce the burden associated with these reporting requirements and is reasonable if an executor has cause to believe that a beneficiary will acquire certain property. However, in the event that a different beneficiary acquires that property, requiring supplemental reporting ensures that beneficiaries receive the information they need to satisfy the consistent basis requirement of section 1014(f) and otherwise. Accordingly, § 1.6035-1(c)(5) of the final regulations provides an option to furnish Statement(s) prior to the acquisition of property by a beneficiary. Under this rule, an executor may satisfy the requirement to furnish a Statement to a beneficiary acquiring property from the decedent or by reason of the death of the decedent by furnishing the Statement prior to the beneficiary's acquisition of the property, but only if the executor has reason to believe that the beneficiary in fact will acquire the property. The Statement must identify the property the beneficiary is expected to acquire as well as the value of that property and other information prescribed by the Statement and the instructions. A Statement described in this paragraph also must include information with respect to property that has been acquired by that beneficiary as required under § 1.6035-1(c)(2) of the final regulations. Also, under the rule in § 1.6035-1(c)(5) executors are required to update the beneficiary information on a supplemental Information Return and Statement if, after satisfying the requirements for this optional reporting, the property is acquired by a different beneficiary.

ii. Explanation of Provisions Regarding the Required Information Return and Statement(s)

In light of the due date set forth in the final regulations for the furnishing of Statements with regard to property acquired by a beneficiary after the due date or earlier filing of the estate tax return, § 1.6035-1(c) of the final regulations makes coordinating changes in the description of the Information Return and the due dates of that return and of any required supplements to the Information Return.

In particular, § 1.6035-1(c)(1) of the final regulations defines *Information Return* consistent with proposed § 1.6035-1(g)(2), with one exception, and requires an executor to file the Information Return by the due date set forth in § 1.6035-1(c)(3) of the final regulations. The one change is that the required attachments to the Information Return include only a copy of each Statement reporting the value of property acquired by a beneficiary on or before the due date or earlier filing of the Federal estate tax return, and a copy of each Statement (if any) reporting the value of property that has not by then been acquired by a beneficiary as described in § 1.6035-1(c)(5) of the final regulations (the option to furnish Statement(s) prior to the acquisition of property by a beneficiary). The Information Return must be timely filed even if there are no Statements (as described in the preceding sentence) required to be attached to that return.

As discussed in part 2.C.i. of this Summary of Comments and Explanation of Revisions, a Statement reporting the value of property acquired by a beneficiary subsequent to the due date or earlier filing date of the estate tax return must be furnished to the beneficiary on or before January 31 of the calendar year following the date of that acquisition. Under § 1.6035-1(c)(3)(ii) of the final regulations, a copy of each Statement due by that January 31, along with a copy of each Statement (if any) provided to beneficiaries in advance of their receipt of property as permitted under § 1.6035-1(c)(5) of the final regulations, must be attached to a supplemental Information Return filed with the IRS on or before that same January 31. Section 1.6035-1(c)(3)(iii) of the final regulations confirms the transition rule in proposed § 1.6035-1(d)(2), with an updated reference to § 1.6035-2 of the final regulations. Finally, § 1.6035-1(c)(6) of the final regulations includes an example illustrating the application of § 1.6035-1(c) of the final regulations.

Several commenters requested that a six-month extension of time (distinct from the automatic six-month extension of time for filing the estate tax return) be permitted for filing and furnishing the Information Return and Statements in order to allow the executor sufficient time to accurately determine which assets will be used to satisfy the interests of the various beneficiaries. The due date set forth in the final regulations for furnishing Statements to beneficiaries with regard to property they acquire after the estate tax return due date adequately addresses the concern identified by the commenters. Therefore, this suggestion is not adopted.

D. Duty To Supplement

i. Duty To Supplement and Changes Requiring Supplemental Reporting

Section 1.6035-1(d)(1) of the final regulations sets forth the rules in proposed § 1.6035-1(e)(1) that impose a supplemental reporting obligation (both to the IRS and to the beneficiary) on an executor if a change to the information required to be reported on the Information Return or Statement (or supplement to either) causes the information as reported to be incorrect or incomplete. Several examples of adjustments requiring supplemental reporting are identified in proposed § 1.6035-1(e)(2), and several comments were received with regard to these examples. In response to these comments, some of the examples listed in § 1.6035-1(d)(2) of the final regulations differ from those proposed, and the final regulations clarify some of the other examples of adjustments.

Section 1.6035-1(d)(2)(i) of the final regulations sets forth the rule in proposed § 1.6035-1(e)(2) imposing a duty to supplement upon the executor's receipt, discovery, or acquisition of information that changes the beneficiary to whom the property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise). However, the rule is clarified in the final regulations to provide more detail in response to comments. Commenters asked how an executor is to comply with the reporting requirements under section 6035 if all of the required beneficiary information is not available to the executor, for instance, if the beneficiary cannot be located or the beneficiary is a trust not as yet established. The final regulations describe the requirements in these circumstances and include the requirement to supplement the required reporting to update the beneficiary information when it becomes available

to an executor. See § 1.6035-1(d) and (g) of the final regulations. Accordingly, § 1.6035-1(d)(2)(i) of the final regulations includes, as a change requiring supplemental reporting, the discovery of any information that corrects or completes other beneficiary information originally reported.

In response to comments, § 1.6035-1(d)(2)(ii) of the final regulations clarifies the rule in proposed § 1.6035-1(e)(2) providing that a change in the value of property pursuant to an examination or litigation is a change requiring supplemental reporting. One commenter asked for clarification as to whether supplemental reporting is required if, during examination or litigation, a settlement with the IRS increases the estate tax liability but the increase is not related to a particular property. Another commenter requested confirmation that only an adjustment in value that represents the final value for Federal estate tax purposes gives rise to a duty to supplement. With respect to the first comment, the Treasury Department and the IRS observe that a settlement of estate tax liability typically is related to an adjustment to the value of particular, identified property includible in the gross estate, a claimed deduction or credit, gift tax paid within three years before death, adjusted taxable gifts, or gift tax paid and/or payable. If a settlement does not change the value of particular, identified property, the settlement does not impact the final value of the estate's property and is not a change requiring supplemental reporting with respect to that specific property. With respect to the second comment, an adjustment representing the final value for estate tax purposes undoubtedly gives rise to the statutory duty to supplement. In addition, an adjustment to value on a supplemental estate tax return becomes the reported value for purposes of section 6035(a)(1) and § 1.1014-10(b)(2) of the final regulations. Therefore, reporting a different value on a supplemental estate tax return also comes within the scope of an executor's duty to supplement. In response to these comments, § 1.6035-1(d)(2)(ii) of the final regulations clarifies that both a final determination of value of property for Federal estate tax purposes that differs from the value identified on a Statement or supplement to a Statement and an executor's reporting of a change in value on a supplemental estate tax return give rise to a duty to supplement.

Commenters objected to the rule in proposed § 1.6035-1(e)(2) providing that the discovery of unreported property is a change requiring supplemental reporting; they suggested that this is an

impermissible broadening of the estate tax filing requirement. In response, the final regulations instead provide that it is only the supplementing of an estate tax return, to report the value of previously unreported property, that triggers a duty to supplement the reporting under section 6035, and not the mere discovery of unreported property. Consistent with the definition of *included property* in §§ 1.1014–10(d)(4) and 1.6035–1(e)(1) of the final regulations, § 1.6035–1(d)(2)(iii) of the final regulations sets forth the rule that property that is included in a decedent's gross estate, either by the filing of an estate tax return, a supplemental estate tax return, or pursuant to an examination by the IRS or otherwise, will give rise to a duty to supplement if the fair market value of that property was not previously reported on the estate tax return or is changed.

The rule in proposed § 1.6035–1(e)(2) relating to a change in the property to be acquired by a beneficiary is updated in the final regulations to conform with the reporting requirements in the final regulations for property not acquired by a beneficiary before the due date or earlier filing date of the estate tax return. Section 1.6035–1(d)(2)(iv) of the final regulations provides that a change requiring supplemental reporting includes an executor's disposition of property 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 final value of 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). However, § 1.6035–1(d)(2)(iv) of the final regulations also imposes a duty to supplement if an executor furnishes a Statement to a beneficiary prior to the beneficiary's acquisition of property pursuant to the optional reporting afforded under § 1.6035–1(c)(5) of the final regulations and the beneficiary ultimately acquires property different than that identified on that Statement.

ii. Changes Not Requiring Supplemental Reporting

Section 1.6035–1(d)(3)(i) of the final regulations adopts the rule in proposed § 1.6035–1(e)(3)(i)(A) excluding from the duty to supplement changes to correct an inconsequential error or omission. However, the rule in proposed § 1.6035–1(e)(3)(i)(B) excluding from the duty to supplement a change in the distribution of property from that previously reported is omitted from the final regulations because it relates only to the proposed reporting requirements for property not acquired

by a beneficiary before the estate tax return due date. The reporting requirements for such property have been modified in the final regulations.

Section § 1.6035–1(d)(3)(ii) of the final regulations provides an exception to the duty to supplement for a change in value as the result of an event described in section 2032A(c)(1) that triggers an additional estate tax liability with regard to property for which a special use election was made, including a beneficiary's election to increase the beneficiary's basis in that property under section 1016(c) in response to that event. Although such an election by a beneficiary does result in a change in value under the rule in § 1.1014–10(b)(3)(ii), the qualified heir is in a better position than the executor to know this information, so no supplemental reporting is required of the executor. A commenter requested an example illustrating the adjustment to basis if there is a disposition of property subject to section 2032A under section 2032A(c)(1). Because an example would serve the purpose of illustrating the workings of section 1016(c), rather than the reporting requirements under section 6035, the Treasury Department and the IRS decline to include such an example in these regulations under section 6035.

Section 1.6035–1(d)(3)(iii) of the final regulations adopts the suggestion of a commenter by excepting from the duty to supplement any post-death or other adjustment to the basis of property made pursuant to sections of the Code other than section 1014(f). The executor generally is required to provide only supplemental Statements that show a change in the identification, value, or recipient of property as reported on the estate tax return. Therefore, section 6035 does not require the reporting of adjustments in basis attributable to the operation of Code sections other than section 1014(f). That commenter also suggested that the final regulations provide a uniform method for reporting post-death adjustments to the beneficiary if the executor chooses to do so. The Treasury Department and the IRS understand that an executor may choose to furnish a beneficiary information regarding changes to basis that occur pursuant to Code sections other than section 1014(f). If the executor does so, and if the executor chooses to use the Statement to provide that information, that information must be shown separately from the information required to be reported on the beneficiary's Statement.

Finally, § 1.6035–1(d)(3)(iv) of the final regulations provides an exception to the duty to supplement for any other

change that is identified as requiring no supplemental reporting under this section in guidance published in the future in the **Federal Register** or in the Internal Revenue Bulletin.

iii. Due Date of Supplemental Reporting

The rules in proposed § 1.6035–1(e)(4)(i) relating to the due date for supplemental reporting are updated in the final regulations to align with the modified reporting requirements in the final regulations. Section 1.6035–1(d)(4) of the final regulations provides that supplemental reporting is due on or before 30 days after the date on which information becomes available to the executor from which the executor can conclude that a change to the earlier reporting is required to be supplemented in accordance with these final regulations. Section 1.6035–1(d)(4) of the final regulations clarifies that, for changes occurring as a result of supplementing the estate tax return, the date on which that information becomes available to the executor is the filing date of the supplement to that return and, for changes occurring as a result of a determination of final value, that date is the date a value becomes the final value under § 1.1014–10(b)(1) of the final regulations. In the case of property not acquired by a beneficiary before the due date or earlier filing date of the estate tax return, § 1.6035–1(d)(4) of the final regulations provides that, for property for which a Statement has not been provided to the beneficiary pursuant to the option to furnish Statements prior to the acquisition of property by a beneficiary in § 1.6035–1(c)(5) of the final regulations, the due date of any required supplemental reporting may be delayed until the due date for supplemental reporting for subsequently-acquired property in § 1.6035–1(c)(3)(ii) of the final regulations.

iv. Duration of Duty To Supplement

Commenters inquired whether the executor's duty to file supplemental Information Returns and furnish supplemental Statements is limited in time. In response, § 1.6035–1(d)(5) of the final regulations is added to provide, in effect, that the duty to supplement is limited to changes that occur on or before the later of a beneficiary's acquisition of the property or the determination of the final value of the property under § 1.1014–10(b)(1) of the final regulations.

v. Illustration of Duty To Supplement

Section 1.6035–1(d)(6) was added to the final regulations to provide examples to illustrate the application of

the rules regarding the duty to supplement as provided in § 1.6035-1(d) of the final regulations.

E. Property for Which Reporting Is Required

Proposed § 1.6035-1(b)(1) provides in part that the property to which the section 6035 reporting requirements apply is all property reported or required to be reported on an estate tax return required under section 6018. The reporting requirements also apply to any other property the basis of which is determined in whole or in part by reference to the property described in the preceding sentence (for example, as the result of a like-kind exchange or an involuntary conversion).

As discussed in part 1.H of this Summary of Comments and Explanation of Revisions, the final regulations do not include the proposed zero basis rule for unreported property to which numerous commenters objected. Therefore, the final regulations narrow the scope of property for which reporting is required as compared to the rule in proposed § 1.6035-1(b)(1) that would have subjected all property reported or required to be reported on an estate tax return under section 6018. Section 1.6035-1(e)(1) of the final regulations provides that only property whose value is included in the value of a decedent's gross estate for Federal estate tax purposes (and any other property the basis of which is determined, in whole or in part, by reference to the basis of such included property) is subject to the section 6035 reporting requirements. Section 1.6035-1(e)(1) of the final regulations defines the term *included property* consistently with the definition of that term in § 1.1014-10(d)(4) of the final regulations to mean property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Section 1.6035-1(e)(1) of the final regulations further clarifies that included property does not include property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate as finally determined for Federal estate tax purposes.

Some commenters suggested that property subject to reporting should be limited to property to which the consistent basis requirement of section 1014(f) applies. While both sections 6035 and 1014(f) apply with respect to property includible in a decedent's gross estate only if an executor is required to file an estate tax return under section 6018, section 1014(f)(2) limits the application of the consistent basis requirement to property whose

inclusion in the gross estate increases the estate tax liability for the estate. Section 6035 includes no similar limitation and, therefore, applies to a broader universe of property than section 1014(f), and it applies whether or not any estate tax must be paid. Therefore, this comment is not adopted.

Another commenter sought clarification as to whether property for which a marital or charitable deduction is claimed is property for which reporting is required. Property that qualifies, in whole or in part, for a marital or charitable deduction for which a deduction is claimed is *included property* as that term is defined in § 1.6035-1(e)(1) of the final regulations. Accordingly, as § 1.6035-1(e)(1) of the final regulations also clarifies, such property is subject to reporting. Consequently, the executor is required to file an Information Return and to furnish Statements if the value of the estate is sufficient to require the filing of an estate tax return, even if no estate tax is due as a result of a charitable and/or marital deduction.

Some commenters had questions about the application of the reporting requirements to community property. Proposed § 1.6035-1(b)(1) provides that the reporting requirements are limited to only the decedent's one-half interest in community property. Commenters asked for confirmation that the reporting requirements do not apply to the surviving spouse's one-half interest in community property that is subject to section 1014(b)(6). Under section 1014(b)(6), the spouse's interest also is deemed to have been acquired from the decedent and thus is subject to the basis adjustment under section 1014(a). However, section 1014(a) and section 6035 are different. The spouse's interest is not includible in the decedent's gross estate and thus is not required to be reported on the estate tax return. Accordingly, § 1.6035-1(e)(1) of the final regulations sets forth the rule that the reporting requirements do not apply to the surviving spouse's interest in community property.

Some commenters asked whether there is a reporting requirement if the executor makes a non pro rata division and distribution of community property authorized by applicable State law. *See*, for example, West's Ann. Cal. Prob. Code sections 100(b) and 101(b). Under applicable State law, an executor may distribute the surviving spouse's interest in community property (property belonging to the surviving spouse, in which the decedent has no interest includible under section 2033) to a beneficiary other than the surviving spouse to satisfy a bequest. In lieu of the

surviving spouse's interest in the community property, the executor may distribute to the surviving spouse all or any part of decedent's interest in other property includible in the gross estate. The executor's distribution does not convert property included in the gross estate into property not included in the estate and, therefore, does not eliminate the applicability of the reporting requirements with regard to the property distributed to the surviving spouse. Accordingly, § 1.6035-1(e)(1) of the final regulations identifies, as property subject to reporting, property included in the decedent's gross estate that is distributed to a decedent's surviving spouse in lieu of the surviving spouse's interest in community property pursuant to State law.

Section 1.6035-1(e)(2) of the final regulations adds two examples to illustrate property subject to reporting under section 6035.

F. Excepted Property Requiring Only Limited Reporting

The proposed regulations under § 1.6035-1(b)(1) list four types of property proposed to be excepted from the reporting requirements: (i) cash (other than a coin collection or other bills or coins 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.

Many commenters suggested additions or modifications to this list of exceptions. In response, the list in proposed § 1.6035-1(b)(1) is expanded in redesignated § 1.6035-1(f)(2) of the final regulations. A particular property included in the decedent's gross estate may qualify under more than one of these exceptions. In addition, § 1.6035-1(f)(1) of the final regulations explains the reporting requirements applicable to property described in § 1.6035-1(f)(2) of the final regulations, referred to as *excepted property*, and § 1.6035-1(f)(4) of the final regulations provides examples of excepted property and illustrates the reporting requirements applicable to this property. A discussion of the comments and responses to the comments follows.

i. Limited Reporting of Excepted Property

Some commenters noted that it is unclear whether an executor is subject to any reporting requirements under

section 6035 if all distributions from the estate are of property excepted from the reporting requirements by proposed § 1.6035–1(b)(1). For example, commenters questioned whether an executor is subject to any reporting requirements under section 6035 if the executor has liquidated (or will liquidate) the estate so that all distributions will be made in cash. In response, § 1.6035–1(f)(1) of the final regulations clarifies that included property is subject to more limited reporting if the property is *excepted property* (as identified in § 1.6035–1(f)(2)(i) through (xiv) of the final regulations). Specifically, the requirement to file an Information Return with the IRS pursuant to § 1.6035–1(c)(1) of the final regulations remains the same even if all property is excepted property. However, in the case of excepted property, an executor is required only to disclose on the Information Return that some or all of the property included in the decedent's gross estate is excepted from the full reporting requirements pursuant to § 1.6035–1(f)(2) of the final regulations; an executor is not required to identify the excepted property or to provide a Statement to a beneficiary with regard to excepted property.

ii. Exceptions for Cash and Other Property

Proposed 1.6035–1(b)(1)(i) excepts cash (other than a coin collection or other bills or coins with numismatic value) from the reporting requirements under section 6035. To provide more precision and clarity, § 1.6035–1(f)(2)(i) of the final regulations replaces the exclusion for cash with an exclusion for United States dollars. *United States dollars* are defined in § 1.6035–1(f)(3) of the final regulations as the official currency of the United States. For purposes of section 6035, the term United States dollars includes physical bills and coins if the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills or coins typically do not have a value equal to their face value.

Many commenters requested that the exception for cash in the proposed regulations be expanded to include cash equivalents. In response to these comments, § 1.6035–1(f)(2) of the final regulations expands the list of excepted property to include property the value of which is equal to its face value and that either is expressed in United States dollars or will be paid in United States dollars. This excepted property

includes: (1) United States dollar-denominated demand deposits; (2) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit); (3) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars; and (4) Federal, State, and local tax refunds and other refunds payable in United States dollars. Certificates of deposit are excepted property because their Federal estate tax value generally equals their face value plus interest accrued to the date of death. Similarly, shares in money market funds are excepted property under the final regulations.

A commenter suggested that notes having a Federal estate tax value equal to the outstanding principal balance of the note should be considered a cash equivalent. Another commenter suggested that such notes should be excepted because the disposition of such property will never be a recognition event. The Treasury Department and the IRS decline to adopt these suggestions because notes have basis and the face value of the note may not always equal the final value of the note for Federal estate tax purposes. See § 20.2031–4. However, if a note is forgiven in full by the decedent at death, the underlying indebtedness is discharged and no property having basis remains for distribution to a beneficiary. Accordingly, excepted property also includes notes that are forgiven in full by the decedent at death, whether or not denominated in United States dollars.

In further response to the aforementioned comments as well as additional comments received regarding property qualifying for limited reporting under the cash exception, the Treasury Department and the IRS note that the following items do not fall within the list of excepted property in § 1.6035–1(f)(2) of the final regulations: (1) currency other than in United States dollars; (2) any payments not made in United States dollars; (3) life insurance policies not paid in United States dollars, and life insurance policies payable to a beneficiary in United States dollars annually or at some other interval for a period of time after the decedent's death; (4) notes (other than an installment obligation subject to section 453) that the decedent did not forgive in full upon the decedent's death, whether or not expressed in United States dollars; (5) U.S. Savings bonds; and (6) accounts receivable (unless such property consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691 (IRD)). This property

generally has basis, its value generally may not equal its face value and, accordingly, this property is not excepted from the reporting requirements in the final regulations. For the same reasons, digital assets as defined in section 6045(g)(3)(D), including virtual currency² or cryptocurrency, do not fall within the list of excepted property set forth in § 1.6035–1(f)(2) of the final regulations. Consistent with all of the above, the list of excepted property is expanded and clarified in § 1.6035–1(f)(2) of the final regulations. With respect to future modifications to property qualifying as excepted property, § 1.6035–1(f)(2)(xiv) of the final regulations provides that excepted property will include any other property that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin.

The Treasury Department and the IRS note that certain beneficiaries in receipt of included property may have a basis in that property different from the value of that property as expressed in United States dollars, and therefore may have to convert the final value of that property into a currency other than United States dollars in order to determine their initial basis in that property. Such a beneficiary includes a qualified business unit (within the meaning of section 989) of a person that has a functional currency other than the United States dollar. See sections 985 through 989 for rules regarding the functional currency of a qualified business unit.

iii. Exception for Household and Personal Effects

Proposed 1.6035–1(b)(1)(iii) excepts from the reporting requirements tangible personal property for which an appraisal is not required under § 20.2031–6(b). Section 20.2031–6(b) requires an appraisal if the decedent's household and personal effects include articles having marked artistic or intrinsic value with a total value in excess of \$3,000. In response to a comment, these items are described in the final regulations as household and personal effects, rather than as tangible personal property, to conform more closely with § 20.2031–6(b).

Commenters asked whether the \$3,000 threshold applies to each article

² Virtual currency is defined for Federal income tax purposes as a digital representation of value that functions as a medium of exchange, a unit of account, or a store of value other than the United States dollar or a foreign currency. See Notice 2014–21, 2014–16 I.R.B. 938; Rev. Rul. 2019–24, 2019–44 I.R.B. 1004. Some digital assets are referred to as virtual currency or cryptocurrency.

or to the collective value of all the tangible personal property includible in the gross estate. In addition, one commenter asked how to allocate the final value of articles of household and personal effects appraised as a single set or group if the estate distributes parts of that set or group among different beneficiaries (for example, the gross estate includes a 24-piece silver flatware set with a final value of \$4,000, and the set is divided between two beneficiaries). The commenter suggested that the executor be given the authority to use any reasonable method to allocate the final value (and thus the basis) of the parts of the set or group among the beneficiaries. Finally, commenters noted that the \$3,000 threshold amount found in § 20.2031-6(b) has remained static since 1958 and asked that it be increased.

The Treasury Department and the IRS understand the need for clarity on how to apply the exception in the proposed regulations for tangible personal property. However, addressing this issue in the final regulations necessarily would impact determinations of whether an appraisal is required under § 20.2031-6(b) and how to allocate the value of estate property among beneficiaries. These issues, including any change to the threshold amount under § 20.2031-6(b), are more appropriately addressed in guidance under section 2031 related to the valuation of household and personal effects. Accordingly, § 1.6035-1(f)(2)(ix) of the final regulations preserves the exception and does not address the commenters' questions.

iv. Exceptions for Property Whose Basis Is Unrelated to the Federal Estate Tax Value of the Property

Because section 1014(a) does not apply to the right to income in respect of a decedent as defined in section 691 (IRD), the Federal estate tax value of IRD does not affect its basis in the hands of the beneficiary acquiring that property. Accordingly, proposed § 1.6035-1(b)(1)(ii) excepts IRD from the reporting requirements. The Treasury Department and the IRS deem it appropriate in the final regulations to more generally except from full section 6035 reporting requirements property having a basis that is determined without reference to the property's Federal estate tax value, including IRD. A beneficiary receiving such property has no need to receive a Statement providing the Federal estate tax value of such property. Several types of IRD are listed separately in the regulations. These assets, such as individual retirement accounts (IRAs), may have an

IRD component and a non-IRD component of basis. The following paragraphs discuss comments relating to reporting exceptions or suggested exceptions for property having a basis that is determined without reference to the property's Federal estate tax value.

Multiple commenters sought clarification on whether certain IRD property having a basis component is excepted from the full section 6035 reporting requirements, particularly in the case of certain retirement plans, annuities, installment obligations, and interests in passthrough entities holding an item of IRD.

With regard to annuity contracts subject to section 72 and installment obligations subject to section 453, commenters suggested that the final regulations clarify that, despite having a basis component, such property be excepted because no basis adjustment occurs with respect to such property at the decedent's death. The Treasury Department and the IRS agree and, accordingly, such property is identified in § 1.6035-1(f)(2)(xi) of the final regulations as examples of property having a basis that is determined without reference to the property's Federal estate tax value. For the same reason, § 1.6035-1(f)(2)(xi) of the final regulations also includes, as an example of such excepted property, any amounts received under an annuity contract, such as a lump sum payment paid to terminate an annuity contract or a death benefit paid under an annuity contract.

Multiple commenters sought clarification as to whether IRAs and other retirement plans and deferred compensation plans come within the IRD exception in the proposed regulations. Commenters noted that, in certain scenarios, a decedent will have basis in such an account or plan, in addition to IRD. One commenter asserted that the reporting typically required for these accounts or plans outside of the section 6035 reporting requirements is sufficient and suggested adding an exception to the final regulations so that the section 6035 reporting requirements will not apply to property in or distributions from retirement plans (whether or not tax-deferred). Such property, when acquired from a decedent, generally has a basis that is determined without reference to the property's Federal estate tax value. Therefore, distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, are included as examples of property coming within the exception from full reporting in § 1.6035-1(f)(2)(xi) of the final regulations.

In other instances in which property consists only in part of a right to receive IRD, such as an interest in a passthrough entity that holds an interest constituting IRD, commenters sought clarification on the scope of the IRD exception to section 6035 reporting. In most cases, the basis of such property is determined under section 1014(a), even though the basis under section 1014(a) may be adjusted to account for the items of IRD. Because the Federal estate tax value of such property is relevant to the determination of the recipient's basis in the property, such property does not come within the exception for property having a basis determined without reference to the property's Federal estate tax value in § 1.6035-1(f)(2)(xi) of the final regulations. That exception is limited to property that consists entirely of IRD.

Finally, in response to other requests for clarification, appreciated property described in section 1014(e) that is acquired by a decedent within 1 year of death, for which basis is not adjusted under section 1014(a), also is included as an example of property coming within the exception from full reporting in § 1.6035-1(f)(2)(xi) of the final regulations.

v. Exceptions for Property Sold, Exchanged, or Disposed of Prior to Distribution

Proposed § 1.6035-1(b)(1)(iv) excepts 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. Commenters asserted that this exception as proposed suggests that the reporting requirements would continue to apply to property sold, exchanged, or otherwise disposed of by the estate if no gain or loss is recognized because the sales price equals the estate's basis in the property. Commenters suggested, and the Treasury Department and the IRS agree, that the reporting requirements should not apply to property disposed of in a recognition transaction for the estate for income tax purposes, whether or not gain or loss is recognized, because the basis of this property is no longer related to the property's Federal estate tax value. The Treasury Department and the IRS also agree with commenters that, for purposes of the reporting required under section 6035, it is irrelevant whether any gain or loss the estate recognizes is capital or ordinary. The final regulations under § 1.6035-1(f)(2)(x) include these clarifying changes. In addition, in response to requests for additional clarification, § 1.6035-1(f)(2)(x)(A) through (E) of the

final regulations include examples of excepted property pursuant to this rule as follows: (1) property distributed in satisfaction of a pecuniary bequest on which the estate recognizes any gain or loss pursuant to § 1.661(a)-2(f); (2) property for which an election under section 643(e)(3) has been made for the estate to recognize any gain or loss; (3) interests in business entities that are redeemed for United States dollars prior to distribution to a beneficiary; (4) property disposed of in a transaction described in section 267(a) and (b)(13), which disallows a loss from the sale or exchange of property, directly or indirectly, between the executor and the beneficiary of the estate, except in a sale or exchange in satisfaction of a pecuniary bequest; and (5) property subject to the mark to market accounting method at the time of distribution from the estate or from the decedent's revocable trust.

Similarly, § 1.6035-1(f)(2)(xii) of the final regulations excepts bonds to the extent that they are redeemed by the issuer for United States dollars prior to being distributed to a beneficiary so that any gain or loss is recognized by the estate.

vi. Exception for Property Included in the Gross Estate of a Beneficiary

A commenter suggested that an exception to the reporting requirements should apply if the beneficiary of property acquired from a decedent dies shortly after that decedent and that property then is included in the deceased beneficiary's gross estate. In this case, the deceased beneficiary does not need a Statement identifying the value of that property because the basis of that property will be determined as of the beneficiary's date of death, thus independently of the determination of the final value of that property in the decedent's estate. Accordingly, § 1.6035-1(f)(2)(xiii) of the final regulations identifies property included in the gross estate of a beneficiary who died before the due date of the Information Return as excepted property subject to only limited reporting.

vii. Publicly Traded Securities

Two commenters suggested that publicly traded securities should be excepted from the reporting requirements, both to reduce burden and because § 1.6045A-1(b)(8) already requires basis reporting for certain publicly traded securities. This suggestion is not adopted in the final regulations because, while § 1.6045A-1(b)(8) requires basis reporting between brokers if certain securities are transferred, it does not always require

reporting to the IRS and the beneficiary. It would be burdensome for both taxpayers and the IRS to distinguish between those covered securities and others, including shares held in certificate form, for purposes of complying with these reporting requirements. Further, the information to be transferred between brokers might not always be the final value of the security for Federal estate tax purposes. Additional detailed information regarding the reporting of securities requested by commenters may be provided in forms and instructions.

viii. Other

One commenter requested a reporting exception for property transferred to a charity or nonresident who is not a citizen of the U.S. (nonresident noncitizen) based on the assumption that charities and nonresident noncitizens have no need for basis information. Basis information for such property is relevant in certain circumstances, such as for the computation of the excise tax on a private foundation, and, therefore, this suggestion is not adopted.

G. Identification of Beneficiaries

The proposed regulations under § 1.6035-1(c)(1) describe the reporting requirements as they apply to different beneficiaries, including a beneficiary who is also an executor, a beneficiary of a life estate, a beneficiary of a remainder interest and a beneficiary of a contingent interest. Proposed § 1.6035-1(c)(2) describes the reporting requirements as they apply to a beneficiary that is a trust, estate, or other entity. Proposed § 1.6035-1(c)(3) describes the reporting requirements applicable if the beneficiary of particular included property has not been identified by the due date of the required reporting. Finally, proposed § 1.6035-1(c)(4) describes the reporting requirements applicable if a beneficiary cannot be located by the executor.

As discussed in part 2.C.i. of this Summary of Comments and Explanation of Revisions, many commenters objected to the proposed reporting requirements under § 1.6035-1(c)(3) that would have applied in the case of an executor who has not determined what property will be used to satisfy the interest of each beneficiary by the due date of the Information Return. The section 6035 reporting requirements have been modified in § 1.6035-1(c) of the final regulations to address the concerns of the commenters. However, additional comments were received on the other beneficiary provisions in proposed § 1.6035-1(c). A discussion of

these comments and responses to these comments, as well as a discussion of certain clarifying changes made in § 1.6035-1(g) of the final regulations, follows.

i. Definition of Beneficiaries

Section 1.6035-1(g)(1) of the final regulations defines the term *beneficiary* to refer to a person who acquires (or will acquire) property subject to reporting described in § 1.6035-1(e) of the final regulations. A beneficiary may be an individual (including one who is the executor as well as a beneficiary), the estate of a deceased individual who survived the decedent, a trust (referred to as a *beneficiary trust*), or an entity other than a trust, including without limitation a business entity or an organization described in section 501(c).

ii. Beneficiary Trust

Proposed § 1.6035-1(c)(2) directs that, if the beneficiary is a trust, estate, or other entity, the executor is to furnish the beneficiary's Statement to the trustee of the trust or similar representative of the estate or other entity, rather than to the beneficiaries or other owners of that trust or other entity. This provision generated several comments. Some commenters questioned whether the Statement should be given to the trustee or to the trust's beneficiary. They noted that, because there are many different types of trusts and varying circumstances, an inflexible rule is not necessarily appropriate in this context. For instance, some trusts terminate at death or shortly thereafter and the trustee distributes the trust property in kind, while other trusts continue in existence for many generations. In some cases, it may be unclear when a trust terminates because an existing trust may be decanted or divided into several trust shares or different trusts. Some trusts are for the benefit of only one beneficiary, such as a marital trust, but other trusts may be for a class of different beneficiaries. In addition, sometimes, the executor may not be able to get information about the provisions or beneficiaries of an inter vivos trust, although the trust property is includible in the decedent's gross estate for Federal estate tax purposes.

After consideration of the comments, the Treasury Department and the IRS agree that there are circumstances under which it would be appropriate for an executor to furnish the Statement to the trustee of a beneficiary trust and different circumstances warranting the furnishing of the Statement directly to the trust beneficiary(s). Section 6035 contemplates that the Statement will be

received by a person or entity that is likely to engage in an income tax recognition event with respect to the property. A trust that terminates at the death of the decedent or shortly thereafter is unlikely to have such an event, unlike a trust that continues for many years. Any rule attempting to distinguish between these different circumstances would be both complex and likely to fail to address the entire universe of possibilities.

Accordingly, in order to respond to the comments, and to avoid undue complexity in regulations, the Treasury Department and the IRS conclude that it is appropriate to adopt a flexible rule for identifying the beneficiary to whom the executor must furnish the Statement in the case of a beneficiary trust. Section 1.6035-1(g)(2)(i) of the final regulations provides that the executor must furnish the Statement to the trustee, rather than to the beneficiaries of the trust, but allows the executor instead to furnish the Statement directly to the beneficiaries of the trust, with a copy to the trustee, if the executor reasonably believes that it is unlikely that the trust will depreciate, sell, or otherwise dispose of the property in a recognition event for income tax purposes. For this purpose, a trust's beneficiaries include all potential current income beneficiaries and each remainderman who would have had a current interest in the trust if one or more of the income beneficiaries had died immediately before the decedent.

Commenters also requested clarification of the executor's obligation to furnish a Statement regarding the property of an inter vivos trust included in the decedent's gross estate for Federal estate tax purposes. In this situation, the executor is not distributing the trust property to the trustee and, assuming the executor reported the trust on the estate tax return, the trustee is not the executor required to file that estate tax return. If the trust property is reported on the estate tax return filed by the executor of the estate, that executor is subject to the reporting requirements as described in this section with regard to the trust property. Except for the reporting required under § 1.6035-1(h) of the final regulations, it is only in the situations described in § 1.6035-1(b)(2) of the final regulations, in which a trustee of a trust might be an executor required to file an estate tax return with regard to trust property, that the trustee would be required to file the Information Return and Statement(s) with regard to the trust property reported on the estate tax return filed by that trustee.

Commenters requested guidance on how to comply with the reporting requirements to a beneficiary trust if that trust is not yet established by the due date of the Information Return. In response, § 1.6035-1(g)(2)(ii) of the final regulations provides that, if by the due date of the Information Return, a beneficiary trust does not have at least one trustee and a tax identification number from the IRS, an executor must report on the Information Return that the beneficiary trust is not yet established in accordance with the instructions. Supplemental reporting is required once the beneficiary trust is established.

iii. Furnishing Statement to Beneficiary of Split Interest in Property, Not in Trust

Section 1.6035-1(g)(3) of the final regulations retains and clarifies certain aspects of the rules in proposed § 1.6035-1(c)(1) applicable to beneficiaries of split interests in property not in trust. Under § 1.6035-1(g)(3) of the final regulations, the beneficiary of a life estate not in trust is the life tenant, and the beneficiary of a remainder interest not in trust is each remainderman, identified as if the life tenant were to die immediately after the decedent. For purposes of determining the due date for furnishing Statements to such beneficiaries under § 1.6035-1(c)(3) of the final regulations, each beneficiary will be deemed to have acquired the property subject to reporting on the date of the decedent's death. Section 1.6035-1(g)(3) of the final regulations further provides that the beneficiary of a contingent interest not in trust is a beneficiary only if the contingency occurs before the end of the period during which the executor has an obligation to supplement the reporting as provided in § 1.6035-1(d)(5) of the final regulations. If the contingency occurs during this period, § 1.6035-1(g)(3) of the final regulations provides that the executor must update the beneficiary information on the Information Return and furnish a Statement to that beneficiary pursuant to the executor's duty to supplement to report a change in beneficiary information as described in § 1.6035-1(d) of the final regulations. Section 1.6035-1(g)(3) of the final regulations clarifies that usufruct interests are treated in the same manner.

Several commenters requested confirmation that, for purposes of complying with the reporting requirements of section 6035(a), the executor is not required to determine the allocation of uniform basis among the beneficiaries with interests in an

asset for different periods of time. The Treasury Department and the IRS agree that nothing in section 6035(a) requires the executor to report to a beneficiary of such an interest that beneficiary's share of uniform basis as of the decedent's date of death. It is only the value of the entire property that is the subject of the required reporting. Therefore, § 1.6035-1(c)(2) of the final regulations provides that an executor is required to identify the property acquired by the beneficiaries, the value of the property as reported on the estate tax return filed with the IRS, and such other information prescribed by the Statement and the instructions.

iv. Reporting for a Missing Beneficiary

In response to comments, § 1.6035-1(g)(4) of the final regulations modifies the rule in proposed § 1.6035-1(c)(4) with regard to the applicable reporting requirements if the executor cannot locate a beneficiary. The proposed rule provides that an executor must use reasonable due diligence to identify and locate all beneficiaries and, if the executor is unable to locate a beneficiary by the due date of the Information Return, the executor must so report on the Information Return and explain the efforts the executor has taken to locate the beneficiary and to satisfy the obligation of reasonable due diligence. Commenters requested an explanation or definition of "reasonable due diligence" for this purpose. In referencing "reasonable due diligence" in the proposed regulations, the Treasury Department and the IRS intended only to reference an executor's responsibility as a fiduciary under local law to identify and locate all beneficiaries and did not intend to create a new standard. Therefore, the requirement of due diligence is removed in the final regulations. Instead, § 1.6035-1(g)(4) of the final regulations provides that, if the executor is unable to locate a beneficiary by the date required for filing the Information Return with the IRS, then the executor must report on the Information Return the failure to locate the beneficiary and the efforts the executor has made to locate the beneficiary. The final regulations retain the requirement to supplement the Information Return and to furnish the required Statement to the beneficiary once the beneficiary has been located or, if the beneficiary is not located, to report the distribution of the property to a different beneficiary.

H. Subsequent Transfers of Property Subject to Reporting

Proposed § 1.6035-1(f) would impose a reporting requirement with regard to

certain subsequent transfers of property previously reported (or required to be reported) on a Statement. Specifically, it would require the recipient of property to which section 6035 applies to file with the IRS a supplemental Information Return, and to furnish to a transferee of the property a Statement, if the recipient (who becomes the transferor) distributes or transfers all or any portion of that property in a transaction in which the transferee determines its basis, in whole or in part, by reference to the transferor's basis.

Commenters asserted that section 6035 imposes reporting requirements on executors, but not on subsequent transferees and, therefore, the Treasury Department and the IRS lack authority to require reporting under section 6035 by beneficiaries who subsequently transfer property acquired from a decedent. Commenters also noted that this reporting requirement could continue for generations, and thus be impossible for the IRS to monitor and enforce, especially with respect to nonresident non-citizen beneficiaries if the property is no longer in the United States. Commenters also noted that this subsequent reporting requirement creates uncertainty for executors, estate tax return preparers, and beneficiaries as to whether supplemental reporting is required, and that the failure to comply with the reporting requirement is subject to penalties. They contended this requirement is particularly unfair with respect to unsophisticated individual recipients who are likely to be unaware of the reporting requirements and, as a result, are more likely to become subject to noncompliance penalties. Finally, commenters noted that, in many cases, the obligation to report the basis of property transferred is duplicative of other required filings.

The Treasury Department and the IRS carefully have reconsidered the benefits and burdens of the proposed subsequent reporting requirement in light of these comments. The enactment of section 1014(f) created the consistent basis requirement, and the enactment of section 6035 gave the IRS the ability to enforce the provisions of section 1014(f) and the related penalty under section 6662(k) for use of an inconsistent estate basis for income tax purposes. Without this proposed reporting requirement, subsequent ownership changes made through nonrealization events would erode the ability of the IRS to enforce the consistent basis requirement under section 1014(f) and the penalty under section 6662(k) for violations of that requirement.

Nevertheless, the Treasury Department and the IRS conclude that the burden of the proposed subsequent reporting requirement, including the potential penalties for noncompliance, is too heavy a burden to impose on individual beneficiaries who, as a practical matter, may have no way of knowing of the existence of, or of how to comply with, this subsequent reporting requirement. The Treasury Department and the IRS, however, also conclude that trustees of trusts are one class of beneficiaries for whom the subsequent reporting requirement would not be sufficiently burdensome to outweigh the needs of, and benefits to, the IRS and trust beneficiaries. Generally, the trustee of a trust is likely to be aware of applicable tax requirements and to be both able and motivated to comply with these requirements. In addition, in discharging the trustee's fiduciary obligations to the trust beneficiaries, a trustee is likely (even without a supplemental reporting requirement) to provide certain relevant information (such as basis) to the beneficiary to whom the trustee is distributing a trust asset.

Accordingly, the final regulations retain a reporting requirement for subsequent transfers, but this requirement is narrowed significantly. Under § 1.6035-1(h)(1) of the final regulations, reporting requirements are imposed on trustees of beneficiary trusts making a distribution of property that was reported on a Statement furnished to those trustees, or of any other property the basis of which is determined, in whole or in part, by reference to the basis of this property. Such a trust distribution includes, for example, a transfer of trust property pursuant to the exercise or lapse of a person's power of appointment (whether general or limited). That section further provides that trustees of trusts that receive a distribution of such property, whether from a beneficiary trust or from any other trust that has received such property, either directly or indirectly, also are subject to these reporting requirements when making a distribution of that property. This reporting obligation imposed on trustees continues to apply for each subsequent transfer or distribution until the property is distributed to a beneficiary not in trust. However, these reporting requirements do not apply if property is disposed of by the trustee in a transaction that is a recognition event for income tax purposes (whether or not resulting in a gain or loss) that results in the entire property having a basis that

no longer is related, in whole or in part, to the property's final value (or, if applicable, reported value (within the meaning of § 1.1014-10(b)(1) or (2) of the final regulations, respectively).

By imposing a reporting obligation on trustees of beneficiary trusts and certain other recipient trusts, the final regulations ensure that an individual or entity likely to incur an income tax realization event with respect to the trust property has the necessary information to determine the correct initial basis. This facilitates the proper reporting of basis and compliance with the consistent basis requirement if it is applicable.

Finally, to reduce burden and improve administrability, § 1.6035-1(h)(2) of the final regulations adopts the same due date for the filing of the Information Return and the furnishing of the Statement with regard to distributions of property by trustees as is required under § 1.6035-1(c)(3)(ii) of the final regulations, which is January 31 of the year following the distribution. Section 1.6035-1(h)(3) of the final regulations adds an example illustrating the application of the reporting requirements applicable to trustees making subsequent transfers of property if the property is subject to reporting under § 1.6035-1(e) of the final regulations.

I. Penalties

Section 1.6035-1(i) of the final regulations provides a cross-reference to sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724 that impose penalties on the failure to timely file a correct Information Return and the failure to timely furnish a correct Statement as required by section 6035. Sections 301.6721-1(h)(2)(xii) and 301.6722-1(e)(2)(xxxv) of these final regulations clarify that the penalties under those sections also apply to the failure to report as required by section 6035. A penalty applies separately to each initial or supplemental Information Return that the executor is required to file with the IRS, and to each initial or supplemental Statement that the executor is required to furnish to a beneficiary. Accordingly, only one penalty under section 6721 may be imposed for filing an incorrect Information Return, even if copies of multiple required Statements are not attached to the Information Return, but multiple penalties under section 6722 may be imposed for furnishing multiple incorrect Statements, even if the Statements were filed with the IRS as attachments to a single Information Return. Section 1.6035-1(i) of the final

regulations also refers to section 6724 and the regulations in part 301 under section 6724 for rules relating to waivers of these penalties if it is shown that the failure was due to reasonable cause and not to willful neglect.

For purposes of applying these penalties, commenters inquired whether an appointed executor is relieved of the reporting requirements if a successor executor is appointed. The issue of an executor's continuing liability under the Code if a successor executor is appointed is not limited to the section 6035 reporting requirements and may depend on varying factors, including local law. Accordingly, this issue is outside the scope of these regulations and is not addressed in these final regulations.

Multiple commenters inquired about how to complete the Information Return and Statements in various scenarios, such as cases in which a nonresident noncitizen is a beneficiary and has no tax identification number, a partnership is a beneficiary, an executor reports bulk assets and brokerage accounts on an estate tax return, and others. To the extent not otherwise addressed in the final regulations or this preamble, these comments are best considered in contemplation of necessary or appropriate revisions to the Information Return and its instructions.

J. Applicability Date

Proposed § 1.6035–1(i) provides that, upon publication of the Treasury Decision adopting these rules as final in the **Federal Register**, § 1.6035–1 of the final regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose estate tax return is filed after July 31, 2015. The final regulations revise the applicability date of § 1.6035–1(i) of the proposed regulation consistent with section 7805(b)(1). Accordingly, § 1.6035–1(j) of the final regulations does not reference the July 31, 2015, effective date of section 6035, and provides instead that § 1.6035–1 of the final regulations applies to executors of a decedent's estate who are required to file an estate tax return under section 6018 if that return is filed after the date of publication of these final regulations in the **Federal Register**, and to trustees receiving certain property included in the gross estate of such a decedent.

3. Section 6662—Inconsistent Estate Basis Reporting

Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax relating to property subject to the consistent basis requirement that is attributable to an

inconsistent estate basis. Proposed § 1.6662–8(b) provides that there is an inconsistent estate basis to the extent that a taxpayer claims a basis, without regard to the adjustments described in proposed § 1.1014–10(a)(2), in property described in proposed § 1.6662–8(c) that exceeds that property's final value as determined under proposed § 1.1014–10(c). Proposed § 1.6662–8(c) provides that proposed § 1.6662–8(b) applies to property described in proposed § 1.1014–10(b) that is reported or required to be reported on an estate tax return filed after July 31, 2015.

One commenter noted that the phrase “without regard to the adjustments described in § 1.1014–10(a),” as used in proposed § 1.6662–8(b), eliminates adjustments that correctly may be made by other sections of the Code on or after the decedent's date of death. The commenter's concern was that this language would void the effects of, or disallow the adjustments available under, other sections of the Code.

Section 1.6662–9(b) of the final regulations clarifies that there is an inconsistent estate basis to the extent that a taxpayer claims a basis that was determined by using an initial basis as defined in § 1.1014–10(a)(2) of the final regulations that exceeds the property's final value as determined under § 1.1014–10(b)(1) of the final regulations. The property to which this section applies is property described in § 1.1014–10(c)(1) of the final regulations. In addition, § 1.1014–10(a)(2) of the final regulations confirms that the taxpayer may compute basis at any time by adjusting the property's initial basis due to the operation of other provisions of the Code without violating the consistent basis requirement. Section 1.6662–9(b)(2) of the final regulations provides an example illustrating the provisions of § 1.6662–9(b) of the final regulations. The provisions regarding the reasonable cause exception to the penalty are contained in section 6664 and the regulations in part 1 under section 6664.

In the final regulations, proposed § 1.6662–8 has been redesignated as § 1.6662–9. Section 1.6662–8 is being reserved for future regulations to address other provisions under section 6662.

Special Analyses

1. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of

Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

2. Paperwork Reduction Act

The collection of information contained in these final regulations has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2264. On March 4, 2016, proposed regulations (REG–127923–15) were published in the **Federal Register** (81 FR 11486). The proposed regulations proposed amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301). Comments were specifically requested concerning (1) whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collection of information; (3) how the quality, utility, and clarity of the information to be collected may be enhanced; (4) 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 (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

During the comment period, the IRS received 5 comments on the collection of information. With respect to the necessity and utility of the proposed collection of information, a commenter contended that the reporting requirements in section 6035 are intended solely to implement and enforce the basis consistency requirement under section 1014(f) and, therefore, reporting should be limited to property subject to section 1014(f). The Treasury Department and the IRS did not accept this recommendation because this comment appears to be based on a budget proposal rather than on section 6035 as enacted and its history. See U.S. Dept. of the Treasury, *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals*, 160–161 (2014). Based on the language of section 6035(a)(1) and (2), Congress mandated that reporting apply to a larger universe of property than the universe of property subject to the consistent basis requirement under section 1014.

Regarding the accuracy of the estimated burden associated with the collection of information, commenters indicated that the IRS estimate of the total annual reporting burden per respondent of 5.31 hours was too low. Commenters estimated that the total annual reporting burden per respondent should be 20 to 50 hours. Taking into account the input from the commenters regarding the number of hours needed to comply, as well as new rules in the final regulations that reduce certain reporting burdens, the Treasury Department and the IRS increased the estimated total annual reporting burden per respondent from 5.31 hours to 20 hours.

With respect to how the burden of complying with the proposed collection of information may be minimized, a commenter suggested that the IRS could minimize the burden of complying with the proposed collection of information by accepting Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, and Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, along with a statement identifying the beneficiaries, rather than requiring duplicative reporting on the 6035 Information Return (currently, Form 8971, *Information Regarding Beneficiaries Acquiring Property From a Decedent*). Another commenter suggested that, if the executor is the only beneficiary required to receive the Statement, the IRS could reduce the cost of compliance by allowing the executor to check a box on Form 706 certifying that fact. This commenter also suggested that the reporting requirements could be satisfied by giving beneficiaries an appropriately redacted copy of the filed Form 706.

The Treasury Department and the IRS did not accept this recommendation because the filing of Form 709 does not trigger a section 6035 filing requirement of Form 8971 and Schedule A. Further, through its amendment of section 6724(d)(1) and (2) and the enactment of section 6035, both pursuant to section 2004 of the 2015 Act, Congress identified the statement required by section 6035(a)(1) and (2) to be filed with the IRS as an *information return*, and the statement required by section 6035(a)(2) to be furnished to a beneficiary as a *payee statement*. The Treasury Department and the IRS conclude that replacing the information return and payee statement identified in section 6724 with a beneficiary statement attached to the Form 706, a redacted Form 706, or the checking of a box on the Form 706 would be contrary to legislative intent and the

statutory language of section 6724(d)(1)(D) and (d)(2)(II).

A commenter suggested that the optional ability to electronically file returns, including Forms 706 and 709, would facilitate compliance with the section 6035 reporting requirements and enhance efficiency. The Treasury Department and the IRS concur that the ability to electronically file not only Forms 706 and 709, but also Form 8971 and Schedule A, would facilitate compliance with the section 6035 reporting requirements and enhance efficiency. At this time, however, taxpayers are unable to electronically file Forms 706 and 709.

Several comments were received with substantive recommendations that relate to whether the collection of information will have practical utility and how the burden of compliance could be minimized (including specific recommendations to expand the exceptions to the section 6035 reporting requirements, modify the reporting requirements in certain circumstances, and limit or eliminate the subsequent transfer reporting requirement). These comments are addressed in the Summary of Comments and Explanation of Revisions section of this preamble.

The collection of information in these final regulations is in § 1.6035-1(c)(1) and (2), (d)(1) and (2), and (h)(1) and (2). The collection of information is necessary to comply with the reporting requirements under section 6035(a). The likely respondents are executors and other persons required to file an estate tax return under section 6018 and trustees making in-kind distributions of property that was subject to reporting under section 6035 when initially acquired by the trustee.

Estimated number of respondents: 10,000.

Estimated average annual burden per respondent: 20 hours.

Estimated total annual reporting burden: 200,000 hours.

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

3. Regulatory Flexibility Act

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 preceding this regulation was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

4. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

5. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, 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 Publishing Office,

Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these final regulations are Donna Douglas, Melissa Liquerman, and Karlene Lesho of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, 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.

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

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS are amending 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising entries for §§ 1.1014–1 and 1.1014–2, and adding entries for §§ 1.1014–10, and 1.6035–1 in numerical order to read as follows:

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

■ **Par 2.** Add § 1.1014–0 to read as follows:

§ 1.1014–0 Table of contents.

This section lists the captions contained in §§ 1.1014–1 through 1.1014–10.

- § 1.1014–1 Basis of property acquired from a decedent.
 - (a) General rule.
 - (b) Scope and application.
 - (c) Property to which section 1014 does not apply.
 - (d) Applicability date.
- § 1.1014–2 Property acquired from a decedent.
 - (a) In general.
 - (b) Property acquired from a decedent dying after December 31, 1953.
 - (1) In general.
 - (2) Rules for the application of paragraph (b)(1) of this section.

(3) Exceptions to application of this paragraph.

- (c) Special basis rules with respect to certain property acquired from a decedent.
 - (1) Stock or securities of a foreign personal holding company.
 - (2) Spouse’s interest in community property of decedent dying after October 21, 1942, and on or before December 31, 1947.
- § 1.1014–3 Other basis rules.
 - (a) Fair market value.
 - (b) Property acquired from a decedent dying before March 1, 1913.
 - (c) Reinvestments by a fiduciary.
 - (d) Reinvestments of property transferred during life.
 - (e) Alternate valuation dates.

- § 1.1014–4 Uniformity of basis; adjustment to basis.
 - (a) In general.
 - (b) Multiple interests.
 - (c) Records.
 - (d) Effective/applicability date.

- § 1.1014–5 Gain or loss.
 - (a) Sale or other disposition of a life interest, remainder interest, or other interest in property acquired from a decedent.
 - (b) Sale or other disposition of certain term interests.
 - (1) In general.
 - (2) Effective/applicability date.
 - (c) Sale or other disposition of a term interest in a tax-exempt trust.
 - (1) In general.
 - (2) Tax-exempt trust defined.
 - (3) Taxable beneficiary defined.
 - (4) Effective/applicability date.
 - (d) Illustrations.

- § 1.1014–6 Special rule for adjustments to basis where property is acquired from a decedent prior to his death.
 - (a) In general.
 - (b) Multiple interests in property described in section 1014(b)(9) and acquired from a decedent prior to his death.
 - (c) Adjustments for deductions allowed prior to the decedent’s death.

- § 1.1014–7 Example applying rules §§ 1.1014–4 through 1.1014–6 to case involving multiple interests.
- § 1.1014–8 Bequest, devise, or inheritance of a remainder interest.
- § 1.1014–9 Special rule with respect to DISC stock.
 - (a) In general.
 - (b) Portion of property acquired from decedent before his death included in decedent’s gross estate.
 - (1) In general.
 - (2) Example.
 - (c) Estate tax valuation date.
 - (d) Examples.

- § 1.1014–10 Basis of property acquired from a decedent must be consistent with property’s Federal estate tax value.
 - (a) Consistent basis requirement.
 - (1) General rule.
 - (2) Initial basis in consistent basis property and effect of basis adjustments.
 - (3) Duration of consistent basis requirement.
 - (b) Final value and reported value.
 - (1) Final value.

- (2) Reported value if no final value yet determined.
- (3) Special rules.
 - (c) Consistent basis property.
 - (1) Property subject to the consistent basis requirement.
 - (2) Property excepted from or not subject to the consistent basis requirement.
 - (d) Definitions.
 - (e) Examples.
 - (f) Applicability date.

■ **Par. 3.** Section 1.1014–1 is amended by:

- 1. Adding two sentences after the fourth sentence of paragraph (a).
- 2. Revising the last sentence and adding two sentences after the last sentence of paragraph (b).
- 3. Revising paragraphs (c) and (d).

The addition and revisions read as follows:

§ 1.1014–1 Basis of property acquired from a decedent.

(a) * * * For certain property acquired from a decedent, the initial basis of the property must not exceed the property’s final value for Federal estate tax purposes. See section 1014(f) and § 1.1014–10 for rules relating to the consistent basis requirement. * * *

(b) * * * In §§ 1.1014–1 to 1.1014–6, inclusive, and § 1.1014–10, whenever the words *property acquired from a decedent* are used, they also mean *property passed from a decedent*, and the phrase *person who acquired it from the decedent* includes the *person to whom it passed from the decedent*. The consistent basis rules in § 1.1014–10 apply to property subject to the consistent basis requirement, as described in § 1.1014–10(c)(1). For property subject to the consistent basis requirement, the rules in § 1.1014–10 modify the rules set forth in paragraphs (a) and (c) of this section and in §§ 1.1014–2 through 1.1014–9.

(c) *Property to which section 1014 does not apply.* Section 1014 has no application to property that constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) *Applicability date.* This section applies after September 17, 2024. For rules on and before September 17, 2024, see § 1.1014–1 as contained in 26 CFR part 1 revised as of January 19, 2017.

■ **Par. 4.** Section 1.1014–2 is amended by revising the second sentence of paragraph (b)(2) as follows:

§ 1.1014–2 Property acquired from a decedent.

- * * * * *
- (b) * * * * *
- (2) * * * Except as provided in § 1.1014–10, it is not necessary for the application of this paragraph (b)(2) that an estate tax return be required to be

filed for the estate of the decedent or that an estate tax be payable. * * *

■ **Par. 5.** Section 1.1014–10 is added to read as follows:

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

(a) *Consistent basis requirement*—(1) *General rule.* The consistent basis requirement is the requirement that the initial basis in certain property be equal to or less than the property's final value as determined under paragraph (b)(1) of this section or, if no final value has yet been determined, the property's reported value for Federal estate tax purposes as described in paragraph (b)(2) of this section. The property subject to the consistent basis requirement is referred to in this section as consistent basis property and is described in paragraph (c)(1) of this section.

(2) *Initial basis in consistent basis property and effect of basis adjustments.* The initial basis in consistent basis property is the final value of the property, as determined under paragraph (b)(1) of this section, and, until the final value of this property is determined, the property's initial basis is the reported value, as described in paragraph (b)(2) of this section. The initial basis in consistent basis property may be adjusted pursuant to the operation of section 1014 or other provisions of the Internal Revenue Code (Code) governing basis, as applicable, and those adjustments will not violate the consistent basis requirement in paragraph (a)(1) of this section. For example, the initial basis in consistent basis property may be adjusted for gain recognized by the estate upon distribution of the property and for post-death capital improvements and depreciation. It also may be adjusted in the manner provided in section 1014(d) in the case of DISC stock and in the manner provided under subchapter K or S of chapter 1 of the Code, respectively, in the case of an interest in a partnership or S corporation.

(3) *Duration of consistent basis requirement.* The consistent basis requirement applies as long as the initial basis in consistent basis property is related, in whole or in part, to the property's final value, as determined under paragraph (b)(1) of this section, or, if applicable, the property's reported value, as determined under paragraph (b)(2) of this section. Therefore, regardless of the number of successive owners, the consistent basis requirement continues to apply until the entire property is sold, exchanged, or

otherwise disposed of in one or more transactions that result in a recognition event for income tax purposes (whether or not resulting in a gain or loss) or until the entire property becomes includible in another decedent's gross estate. The consistent basis requirement applies whenever there is a taxable event with respect to the property, such as, but not limited to, a sale or exchange, depreciation, or amortization of the property. The expiration of the period of limitations on assessment for an income tax return that uses an incorrect basis in reporting a taxable event with respect to consistent basis property has no effect on the duty to determine basis under the rules of this section for purposes of reporting any subsequent taxable event with respect to the property if the consistent basis requirement continues to apply under the rule of this paragraph (a)(3).

(b) *Final value and reported value*—(1) *Final value.* The final value of consistent basis property is its fair market value as finally determined for Federal estate tax purposes. That value is—

(i) The value reported on an estate tax return filed with the IRS, once the period of limitations on assessment (see section 6501) of estate tax has expired without that value having been timely adjusted by the IRS; or

(ii) The value determined or specified by the IRS that differs from the value reported on an estate tax return filed with the IRS and the value specified by the IRS for other included property, as defined in paragraph (d)(4) of this section, once the period of limitations on assessment applicable to the estate tax has expired without that value having been timely contested by the executor, as defined in paragraphs (d)(1) and (2) of this section, respectively; or

(iii) The value determined in a written agreement with the IRS, (whether entered into in the course of the administrative proceedings between the estate and the IRS or after the commencement of litigation), once that written agreement has been executed by both the executor and the IRS and is binding on all parties (including, but not limited to, the executor, the IRS, and the beneficiaries); or

(iv) The value determined by a court for the purpose of determining the estate tax liability of the estate, as defined in paragraph (d)(3) of this section, once the court's determination no longer can be appealed to any court.

(2) *Reported value if no final value yet determined*—(i) *In general.* Prior to the determination of the final value in accordance with paragraph (b)(1) of this section, a taxpayer may not claim an

initial basis in consistent basis property in excess of the property's value as reported on the Statement described in § 1.6035–1(c)(2) and required under § 1.6035–1 (as supplemented). This value is referred to in this section as the reported value. A value reported on a Statement (or a supplement to the Statement) that either reports a value from an estate tax return filed after the expiration of the period of limitations on assessment applicable to that return, or a value reported for property not reported on the estate tax return, is not a reported value for purposes of this section. See § 1.6035–1(d) regarding an executor's duty to supplement the Statement.

(ii) *Limit on reliance on Statement not reporting final value.* If the final value of consistent basis property is determined (as described in paragraph (b)(1) of this section) before the expiration of the period of limitations on assessment for a taxpayer's income tax return that reports a taxable event with regard to the property, the taxpayer's reliance on a Statement (or a supplement to the Statement) that does not report the final value of the property may result in an income tax deficiency and underpayment. See, however, section 6664 and the corresponding regulations for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Special rules*—(i) *Property subject to debt.* The final value or, if applicable, the reported value of property subject to recourse or non-recourse debt is determined based on the gross value of that property undiminished by the debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the property or separately reports the gross value of the property and the outstanding debt.

(ii) *Special use property.* The final value or, if applicable, the reported value of special use property with regard to which a recapture event (described in section 2032A(c)(1)) has occurred is increased as provided in section 1016(c) if the qualified heir makes the election under section 1016(c) and pays the amounts required under that section.

(c) *Consistent basis property*—(1) *Property subject to the consistent basis requirement*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, consistent basis property is any property—

(A) To which section 1014(a) applies;

(B) That is included property, as defined in paragraph (d)(4) of this section, if the decedent's Federal estate tax return is filed after July 31, 2015, and any other property the basis of

which is determined, in whole or in part, by reference to the basis of included property (for example, property acquired in a like-kind exchange or an involuntary conversion); and

(C) Whose value increases the estate tax liability, as defined in paragraph (d)(3) of this section, that is payable after the application of allowable credits, as defined in paragraph (d)(5) of this section.

(ii) *Application.* If the decedent's Federal estate tax return is filed on or before July 31, 2015, no included property and no other property described in paragraph (c)(1)(i) of this section is subject to the consistent basis requirement, even if the due date of that return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015. If an estate tax liability is payable after the application of allowable credits, all property described in paragraphs (c)(1)(i)(A) and (B) of this section is considered property whose value increases the estate tax liability for purposes of paragraph (c)(1)(i)(C) of this section and, therefore, is subject to the consistent basis requirement, except as provided in paragraph (c)(2) of this section. If, after the application of allowable credits, no estate tax liability is payable, no such property is subject to the consistent basis requirement.

(2) *Property excepted from or not subject to the consistent basis requirement.* Notwithstanding paragraph (c)(1) of this section, the following property either is excepted from or is not subject to the consistent basis requirement—

(i) United States dollars (as defined in paragraph (d)(6) of this section).

(ii) United States dollar-denominated demand deposits.

(iii) Certificates of deposit denominated in United States dollars.

(iv) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit).

(v) Shares of a registered investment company priced in United States dollars that is a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2).

(vi) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars.

(vii) Federal, State, and local tax refunds and other refunds payable entirely in United States dollars.

(viii) Notes that are forgiven in full by the decedent upon death, whether or not denominated in United States dollars.

(ix) Household and personal effects for which an appraisal is not required under § 20.2031-6(b) of this chapter.

(x) Property the initial basis of which is not in any way determined with regard to or derived from the property's final value as determined under paragraph (b)(1) of this section or its reported value as determined under paragraph (b)(2) of this section, if applicable. Such property includes but is not limited to—

(A) Annuity contracts subject to section 72 and amounts received as an annuity subject to section 72;

(B) An interest in property that consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691;

(C) Amounts received under installment obligations arising from a transaction for which the installment method for determining gain under section 453 applies;

(D) Appreciated property described in section 1014(e) that is acquired by the decedent within 1 year of death;

(E) Stock of a passive foreign investment company subject to section 1296(i), but only if the basis of such stock is the adjusted basis in the hands of the decedent immediately before the decedent's death; and

(F) Interests in and distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, that are expressed entirely in United States dollars.

(xi) Any interest in property that qualified for an estate tax marital deduction under section 2056, 2056A, or 2106(a)(3) for which such a deduction was properly claimed, and/or any interest in property that qualified for an estate tax charitable deduction under section 2055 or 2106(a)(2) for which such a deduction was properly claimed, provided that the value of the decedent's entire interest in the included property is wholly deductible and equal to the total amount qualifying for those deductions.

(xii) Property that represents the surviving spouse's one-half share of community property to which section 1014(b)(6) applies, regardless of whether this property is included property as defined in paragraph (d)(4) of this section.

(xiii) Property the basis of which is adjusted in a manner similar to section 1014(a) on the occurrence of a taxable termination that occurs on the death of a trust beneficiary pursuant to section 2654(a)(2) (to the extent the property is not then includible in the gross estate of any person).

(xiv) Any other property that is not described in paragraph (c)(1)(i) of this section or that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(d) *Definitions.* The following definitions apply for purposes of this section—

(1) *Contested.* The term *contested* means to put at issue the value of property in a written communication to the IRS that identifies the specific property, states that the executor does not accept as correct the value of that property as determined or specified by the IRS, and provides the executor's claimed value for that property as determined in accordance with the requirements of section 2031, the corresponding regulations, and other applicable guidance. An issue cannot be contested by a general statement or written communication that does not include each of these specified elements.

(2) *Executor.* The term *executor* includes any person described in section 2203, as expanded to include all persons required under section 6018(b) to file an estate tax return.

(3) *Estate tax liability.* The term *estate tax liability* means the amount of tax imposed under chapter 11 of the Code (chapter 11).

(4) *Included property.* The term *included property* means property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Generally, this refers to property whose value is reported on an estate tax return, but it also refers to property whose value otherwise is included in the total value of the gross estate (for example, during examination by the IRS) so that a final value is or will be determined for that property under chapter 11. However, solely for purposes of this section, included property does not refer to unreported property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate as finally determined for Federal estate tax purposes.

(5) *Allowable credits.* The term *allowable credits* includes any credit against the estate tax liability allowable by any section of the Code or by reason of any treaty obligation of the United States, provided the estate qualifies for and properly claims the credit by complying with all applicable rules for claiming the credit. For instance, the prorated unified credit under section 2102(b)(3) is an allowable credit for qualifying estates if the estate files all

necessary forms or statements required by the IRS to claim that credit.

(6) *United States dollars.* The term *United States dollars* means the official currency of the United States. The term *United States dollars* includes physical bills and coins for which the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills and coins typically do not have a value equal to their face value.

(e) *Examples.* The following examples illustrate the application of this section. In each case, the decedent D was a citizen of the United States, the estate does not elect the alternate valuation method under section 2032, and an estate tax liability is payable after the application of all allowable credits.

(1) *Example 1—(i) Final value determined by value on estate tax return.* At D's death, D owned (among other assets) a private residence not subject to any debt. D's sole beneficiary is D's child C. The value of the residence is reported on the estate tax return at \$300,000. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of D's residence is \$300,000, and therefore, C's initial basis in the residence is \$300,000. See paragraphs (a)(2) and (b)(1)(i) of this section.

(ii) *Adjustment of initial basis pursuant to other Code provisions.* Several years later, C adds a master suite to the private residence at a cost of \$45,000. Pursuant to section 1016(a), C's basis in the residence is increased by \$45,000 to \$345,000. Subsequently, C sells the residence to an unrelated third party for \$450,000. C claims a basis in the residence of \$345,000 and reports a gain of \$105,000 (\$450,000 less \$345,000). C has complied with the consistent basis requirement, and C's adjustment to C's initial basis does not violate the consistent basis requirement. See paragraphs (a)(1) and (2) of this section.

(2) *Example 2—(i) Final value determined on examination.* The facts are the same as in paragraph (e)(1)(i) of this section (*Example 1*) except that, on examination, the IRS adjusts the value of the residence to \$290,000 and that value is not contested before the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of the residence is \$290,000, and therefore, C's initial basis in the residence, before taking into account C's subsequent renovations, is

\$290,000. See paragraphs (a)(2) and (b)(1)(ii) of this section.

(ii) *Reported value if no final value yet determined and reliance on Statement required under § 1.6035-1.* Prior to the determination of final value, C sells the residence for \$375,000. C reports a gain of \$75,000 on C's income tax return, relying on the reported value in a Statement required under § 1.6035-1 and claiming an initial basis of \$300,000. C has complied with the consistent basis requirement because C did not claim an initial basis in the residence in excess of its reported value before the final value was determined. However, because C claimed an initial basis in the residence that exceeds the final value, C may have an income tax deficiency and underpayment for the year of the sale if the applicable period of limitations on assessment for C's income tax return has not expired when the final value is determined. See paragraphs (b)(2)(i) and (ii) of this section.

(3) *Example 3—(i) Final value determined by agreement.* At D's death, D owned 50% of Partnership P, whose sole asset was a rental building with a fair market value of \$10 million subject to non-recourse debt of \$2 million. D's sole beneficiary is D's child C. The value of D's interest in Partnership P is reported on the estate tax return at \$4 million (50% of (\$10 million less \$2 million)). On examination, the IRS timely adjusts the value of the partnership interest to \$5.25 million and the executor of D's estate timely contests that value before the period of limitations on assessment of estate tax expires. Subsequently, the IRS and the executor of D's estate enter into a settlement agreement that provides that the value of D's interest in Partnership P for purposes of the estate tax is \$4.5 million. For purposes of the consistent basis requirement applicable to C, the final value of the partnership interest is \$4.5 million, and therefore, C's initial basis in the partnership interest is \$4.5 million. See paragraphs (a)(2) and (b)(1)(iii) of this section.

(ii) *Adjustment of initial basis pursuant to other Code provisions.* C's share of Partnership P's liabilities at the date of D's death is \$1 million. Under section 742 of the Internal Revenue Code and § 1.742-1 of this part, C's basis in the partnership interest is \$5.5 million (\$4.5 million initial basis plus C's \$1 million share of Partnership P's debt). C later sells the partnership interest for \$5 million at a time when C's basis has not changed and C's share of the debt remains \$1 million. Under section 752(d), C's amount realized on the sale includes \$1 million for the

reduction in C's share of partnership liabilities. Therefore, C's total amount realized is \$6 million. C reports taxable gain of \$0.5 million (\$6 million amount realized less \$5.5 million basis). C has complied with the consistent basis requirement because C did not claim an initial basis in the partnership interest that exceeds the final value of the interest, as determined under paragraph (b)(1) of this section, and C's adjustment of the initial basis in the partnership interest as reported does not violate the consistent basis requirement. See paragraphs (a)(1) and (2) of this section.

(4) *Example 4—(i) Final value determined by court decision.* At D's death, D owned (among other assets) a rental property. D's sole beneficiary is D's child C. The value of the rental property is reported on the estate tax return at \$1 million. On examination, the IRS determines the value of the rental property to be \$1.5 million. A court subsequently determines that the fair market value of the rental property for purposes of the estate tax is \$1.3 million and the court's decision becomes final. For purposes of the consistent basis requirement, the final value of the rental property is \$1.3 million, and therefore, C's initial basis is \$1.3 million. See paragraphs (a)(2) and (b)(1)(iv) of this section.

(ii) *Reliance on Statement required under § 1.6035-1 and duration of consistent basis requirement.* After the estate tax return is filed and before the final value is determined, C receives a Statement required under § 1.6035-1 showing a reported value of \$1 million for the rental property. C claims a depreciation deduction on the first income tax return C files after acquiring the property, relying on the reported value in the Statement required under § 1.6035-1. C has complied with the consistent basis requirement on that return because C did not claim an initial basis in the rental property in excess of its reported value before the final value was determined. C may claim a credit or refund of income tax that may result from the increased depreciation deduction based on the final value of the rental property, but only if the period of limitations for a claim for a credit or refund of income tax for that year has not expired. C must use the final value of \$1.3 million to determine C's unadjusted basis in the rental property for all open taxable years. In this case and pursuant to section 1016(a)(2), C's adjusted basis is determined by reducing the rental property's final value of \$1.3 million by the greater of the depreciation deductions allowed or allowable based on the final value of \$1.3 million for all

prior tax years (open and closed). See paragraphs (a)(3), (b)(2)(i) and (ii) of this section.

(5) *Example 5—Final value for property subject to debt.* At D's death, D's gross estate includes a yacht valued at \$750,000, subject to \$150,000 non-recourse debt. D's sole beneficiary is D's child C. Pursuant to the rule in § 20.2053-7 of this chapter, the executor of D's estate reports the \$600,000 net value of the yacht on the estate tax return (\$750,000 less \$150,000 debt) and claims no other deduction for the debt. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of the yacht is \$750,000, and therefore, C's initial basis in the yacht is \$750,000. See paragraph (b)(3) of this section.

(6) *Example 6—Included property subject to the consistent basis requirement.* After exercising due diligence to discover estate assets, the executor of D's estate reports the value of all known property includible in D's gross estate on a timely filed estate tax return and pays the estate tax liability. During examination of the return, the IRS becomes aware of a piece of artwork in the possession of D's child C, the value of which is includible in D's gross estate but is not reported on the estate tax return. The value of the artwork for Federal estate tax purposes is \$500,000. Pursuant to the examination, the IRS includes the value of the artwork in the value of D's gross estate, which causes an increase in D's estate tax liability. Neither the inclusion of the artwork in D's gross estate nor the value at which the artwork is included in D's estate is contested by the executor of D's estate before the period of limitation on assessment of estate tax expires. The artwork is subject to the consistent basis requirement and the final value of the artwork is \$500,000. Therefore, C's initial basis in the artwork is \$500,000. See paragraphs (a)(2) and (c)(1)(i) of this section.

(7) *Example 7—(i) Partially deductible property subject to the consistent basis requirement.* Pursuant to a bequest in D's will, Trust is established and funded with certain property, the value of which is includible in the gross estate under section 2031. Trust is a charitable remainder annuity trust described in section 664(d)(1). Trust provides that, in each taxable year during the lifetime of D's surviving child C, the trustee must pay to C an annuity of 5% of the initial net fair market value of all property passing to Trust as finally determined for Federal estate tax purposes. Upon the death of C, the trustee must

distribute all of the then principal and income of Trust to organizations described in sections 170(c), 2055(a), and 2522(a) of the Code as the trustee selects, in the trustee's sole discretion. Although the executor of D's estate properly claims an estate tax charitable deduction under section 2055(e)(2)(A) for the value of the remainder interest in Trust, D's estate has an estate tax liability after application of all allowable credits. The property passing to Trust is subject to the consistent basis requirement because the value of the property is included in D's gross estate, an estate tax liability is payable after the application of all allowable credits, and the property is not described in paragraph (c)(2) of this section (in particular, the property is not wholly deductible property within the meaning of paragraph (c)(2)(xi) of this section).

(ii) *Wholly deductible property not subject to the consistent basis requirement.* The facts are the same as in paragraph (e)(7)(i) of this section (*Example 7*), except that the sole annuity beneficiary of Trust is D's surviving spouse S, and the executor of D's estate properly claims a deduction under section 2056(b)(8) for the value of S's annuity interest. Because the value of D's entire interest in the property passing to Trust qualified for either a charitable deduction under section 2055(e)(2) or a marital deduction under section 2056(b)(8), none of the property passing to Trust will be subject to the consistent basis requirement. See paragraph (c)(2)(xi) of this section.

(iii) *Property not wholly deductible property if the sum of marital and charitable deductions allowed for that property is less than the value of the decedent's entire interest in the property.* At the time of D's death, D owned 80 shares of voting stock in a closely-held corporation that has 100 shares of voting stock outstanding. D's will directed the executor of D's estate to distribute 40 shares of D's stock to a marital trust and 40 shares of D's stock to a charitable trust. D's executor included the value of D's 80 shares of stock in D's gross estate at \$8,000,000 for purposes of the estate tax. Because of discounts applicable in valuing each of the two blocks of only 40 shares of the stock, D's executor correctly claimed a charitable deduction under section 2055(e)(2) of only \$3,000,000, and correctly claimed a marital deduction under section 2056(b)(7) of only \$3,000,000. D's executor determined that an estate tax was due on D's estate after the application of all allowable credits. The IRS accepted the return as filed and the period of limitations on assessment of estate tax expired. The 40

shares of stock owned by charitable trust and the 40 shares of stock owned by marital trust are not wholly deductible property within the meaning of paragraph (c)(2)(xi) of this section and are subject to the consistent basis requirement.

(f) *Applicability date.* This section applies to property described in paragraph (c)(1) of this section that is acquired from a decedent or by reason of the death of a decedent if the decedent's Federal estate tax return is filed after September 17, 2024.

■ **Par. 6.** Add § 1.6035-0 to read as follows:

§ 1.6035-0 Table of contents.

This section lists the captions contained in §§ 1.6035-1 and 1.6035-2.

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

(a) Overview.
(b) Applicability of section 6035 reporting requirements.

(1) In general.
(2) Executor(s) subject to section 6035 reporting requirements.

(3) Examples.
(c) Required Information Return and Statement(s).

(1) Required Information Return.
(2) Required Statement(s).
(3) Due dates.
(4) Acquiring an interest in property.
(5) Option to furnish Statement(s) prior to the acquisition of property by a beneficiary.

(6) Example.
(d) Duty to supplement.
(1) Duty to supplement to report changes to the information reported on the Information Return or Statement(s).

(2) Changes requiring supplemental reporting.

(3) Exceptions; no duty to supplement despite certain changes.
(4) Due date of supplemental reporting.
(5) Duration of duty to supplement.

(6) Examples.
(e) Property for which reporting is required.

(1) In general.
(2) Examples.
(f) Excepted property requiring only limited reporting.

(1) Excepted property.
(2) List of excepted property.
(3) United States dollars defined.
(4) Examples.
(g) Beneficiaries.
(1) In general.
(2) Required Statement to beneficiary trust.
(3) Required Statement to the holder of a split interest in property, not in trust.
(4) Reporting for a missing beneficiary.
(h) Reporting requirements applicable to trustees.

(1) Circumstances under which trustees of beneficiary trusts and other trusts are subject to reporting.
(2) Required reporting.
(3) Example.
(i) Penalties.

(j) Applicability date.

§ 1.6035-2 Transitional relief.

(a) Statements due before June 30, 2016.

(b) Applicability date.

■ **Par. 7.** Revise § 1.6305-1 to read as follows:

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

(a) *Overview.* This section implements the reporting requirements under section 6035 of the Internal Revenue Code (Code) applicable to executors and certain trustees. In general, the reporting requirements of this section require providing information to the IRS on the identity of persons acquiring property from a decedent and providing basis information to persons acquiring that property from the decedent. Basis information is needed by certain persons acquiring property from a decedent in order to comply with the consistent basis requirement of section 1014(f) of the Code. See § 1.1014-10 for rules applicable to the consistent basis requirement.

(b) *Applicability of section 6035 reporting requirements—(1) In general.* The reporting requirements under section 6035 of the Code apply only in the case of an estate in which the executor is required to file an estate tax return under section 6018 of the Code (determined without regard to § 20.2010-2(a)(1) of this chapter) (required estate tax return) and the executor files that return after July 31, 2015. The requirements do not apply in the case of an estate whose required estate tax return is filed on or before July 31, 2015, even if the due date of the return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015. Whether an estate tax return is a required estate tax return depends on the relevant factors identified in section 6018 and the corresponding regulations, including the date of death value of property includible in the decedent's gross estate, the amount of adjusted taxable gifts, and the applicable filing threshold. An election under section 2032 or 2032A of the Code to determine the value of the gross estate in accordance with those respective provisions is not relevant to whether an executor is required to file an estate tax return under section 6018. If an estate tax return is not required to be filed under section 6018 based on the relevant factors identified in section 6018, then an estate tax return filed for another purpose (such as to make a portability election under section 2010(c)(5) of the Code, an allocation or election under section 2632 of the Code with regard to a decedent's generation-

skipping transfer tax exemption, or a protective filing to avoid a penalty or satisfy a State law requirement) is not a required estate tax return for purposes of this section.

(2) *Executor(s) subject to section 6035 reporting requirements.* For purposes of this section, the term *executor* has the same meaning as in section 2203 of the Code, as expanded to include all persons required under section 6018(b) to file an estate tax return. Thus, more than one person may be subject to the reporting requirements for the same decedent's estate. If one executor is unable to file a complete estate tax return (for example, if the executor has insufficient information about property in the decedent's gross estate that is not in the possession of that executor), each person required to file a return is subject to the reporting requirements of this section only with regard to the property reported (or required to be reported) on the estate tax return required to be filed by that person. Similarly, if no executor is appointed by a court, each person in actual or constructive possession of any property of the decedent is an executor for purposes of this section and is subject to the reporting requirements of this section, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that executor under section 6018(b).

(3) *Examples.* The following examples, in which the decedent D was a United States citizen at the time of the decedent's death, illustrates the application of this paragraph (b).

(i) *Example 1—Executor required to file a return under section 6018.* The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c). On the timely-filed estate tax return, D's executor makes a valid alternate valuation election under section 2032 to value the property of D's gross estate as of a date subsequent to the date of death. As a result, the value of property includible in D's gross estate is decreased to a value that is less than the basic exclusion amount in effect for the year of D's death. Because D's executor is required to file an estate tax return under section 6018, D's executor also is subject to the reporting requirements of section 6035. This is true even though no estate tax liability was incurred, and the requirements of section 1014(f) do not apply to any property includible in D's gross estate. See § 1.1014-10(c)(1).

(ii) *Example 2—Executor not required to file a return under section 6018.* The value at death of property includible in D's gross estate does not exceed the

basic exclusion amount in effect for the year of D's death under section 2010(c) of the Code. In accordance with the terms of D's will, D's executor distributes D's entire estate to D's only child. D's executor files an estate tax return solely for the purpose of making a portability election under section 2010(c)(5). Because D's executor is not required to file an estate tax return under section 6018, D's executor is not subject to the reporting requirements of section 6035.

(iii) *Example 3—No executor appointed.* The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c) and consists entirely of D's interests in Property A and Property B that D owned with Nephew A and Nephew B, respectively, as joint tenants with rights of survivorship. Pursuant to local law, Nephew A becomes the sole owner of Property A and Nephew B becomes the sole owner of Property B upon D's death. No executor or administrator is appointed, qualified, or acting within the United States for D's estate on the due date of D's estate tax return. Because Nephew A has actual or constructive possession of Property A, Nephew A is an executor described in paragraph (b)(2) of this section with regard to D's interest in Property A. Because Nephew A is required to file an estate tax return under section 6018 with regard to D's interest in Property A, Nephew A also is subject to the reporting requirements of section 6035 with respect to Property A. Similarly, because Nephew B has actual or constructive possession of Property B on the due date of D's estate tax return, Nephew B is an executor described in paragraph (b)(2) of this section with regard to D's interest in Property B. Because Nephew B is required to file an estate tax return under section 6018 with regard to D's interest in Property B, Nephew B also is subject to the reporting requirements of section 6035 with respect to Property B.

(iv) *Example 4—Executor unable to make a complete return.* The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c). E is appointed the executor of D's estate. During the administration of D's estate, E discovers that D has made transfers each year for the past ten years to T as trustee of Trust. E contacts T, but T refuses to provide E with any information regarding Trust. E timely files D's estate tax return reporting the value of all of the property in D's gross estate except Trust. Pursuant to

§ 20.6018–2 of this chapter, E includes with the return a statement that gives T's name and contact information and the date and amount of each transfer from D to T as trustee of Trust, which is all the information E has about Trust. The IRS provides notice to T of T's obligation to make D's estate return as to Trust. Because E is required to file an estate tax return under section 6018, E is subject to the reporting requirements of section 6035 as to the property reported on the estate tax return filed by E. Because T is required to file an estate tax return under section 6018, T is subject to the reporting requirements of section 6035 as to Trust.

(c) *Required Information Return and Statement(s)*—(1) *Required Information Return*. An executor required to file an estate tax return under section 6018 must file with the IRS an Information Return by the date required under paragraph (c)(3) of this section. The term *Information Return* refers to the Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and all required attachments. Required attachments include a copy of each Statement described in paragraph (c)(2) of this section (if any) required to be furnished to a beneficiary who acquires property within the meaning of paragraph (c)(4) of this section on or before the due date of the estate tax return or, if earlier, the date on which the estate tax return is filed with the IRS. Required attachments also include a copy of each Statement (if any) furnished pursuant to paragraph (c)(5) of this section before the filing of the Information Return. The term *Information Return* also refers to any successor form or procedure designated by the IRS for this purpose. The Information Return must identify each beneficiary who has acquired or will acquire property subject to reporting (under paragraph (e) of this section), as well as other information prescribed by the Information Return and the instructions for that form. For the duty to supplement the Information Return in the event such property is acquired by a beneficiary after the filing of the estate tax return, see paragraph (c)(3)(ii) of this section. For the duty to supplement the Information Return in the event of a change to the information required to be reported, see paragraph (d) of this section.

(2) *Required Statement(s)*. An executor required to file an estate tax return under section 6018 also must furnish a Statement to each beneficiary who acquires property subject to reporting under paragraph (e) of this section. For purposes of this section, the term *Statement* refers to the payee

statement described as Schedule A of the Information Return to be furnished to a beneficiary, or any successor form, schedule, or procedure designated by the IRS for this purpose. The Statement furnished to a beneficiary must identify that beneficiary's acquired property and its value and other information prescribed by the Statement and the instructions for that form. For each property reported on a Statement, the value the executor reports on that Statement is the value of the property as reported on the estate tax return filed with the IRS. Generally, this is the value of the property on the date of the decedent's death, except in the case of an election in which the value is determined under section 2032 or 2032A, in which case it is the value determined under the applicable provision. If different interests in the same property pass from the decedent to one or more income beneficiaries or life tenants and remaindermen, the value to be reported is the value of the entire property and each recipient will be responsible for identifying his or her respective share of uniform basis. For the duty to supplement the Statement in the event of a change to the information required to be reported, including a change in the identified value of property reported on a Statement, see paragraph (d) of this section.

(3) *Due dates*—(i) *General rule*. Except as provided in paragraphs (c)(3)(ii) and (iii) of this section and in § 1.6035–2, the executor must file the Information Return with the IRS on or before the due date specified in this paragraph (c)(3)(i). In addition, each Statement, a copy of which is required to be attached to the Information Return, must be furnished to the named beneficiary on or before this same due date. The Information Return must be filed, and each such Statement (if any) must be furnished to its named beneficiary, on or before the earlier of—

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

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

(ii) *Due date and applicable rules if property is acquired subsequently by beneficiary*. If a beneficiary acquires property subject to reporting after the due date of the estate tax return (or the earlier filing of the Information Return), the executor must furnish a Statement to that beneficiary with regard to that acquired property on or before January 31 of the year following the beneficiary's acquisition of that property. By that same January 31, the

executor also must attach a copy of the Statement to a supplement to the Information Return (a supplemental Information Return) and must file the supplemental Information Return with the IRS. The supplemental Information Return must include a copy of each Statement required to be furnished for that year pursuant to this paragraph (c)(3)(ii), as well as a copy of each Statement (if any) furnished in accordance with paragraph (c)(5) of this section that has not already been filed with the IRS as an attachment to the Information Return or a supplement to the Information Return. The requirements of this paragraph (c)(3)(ii) do not apply if the property already has been reported on a Statement furnished pursuant to paragraph (c)(5) of this section. See this paragraph (c)(3) and paragraph (d)(4) of this section for the due date of other required supplements to this reporting.

(iii) *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 estate tax return with the IRS until after July 31, 2015, then the Information Return and all required Statements 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 § 1.6035–2.

(4) *Acquiring an interest in property*. For purposes of this section, the term *acquired property* refers to property subject to reporting under paragraph (e) of this section that a beneficiary acquires. A beneficiary acquires such property when, under local law, title vests in the beneficiary or when the beneficiary otherwise has sufficient control over or connection with the property that the beneficiary is able to take action related to the property for which basis is relevant for Federal income tax purposes (such as, for example, to sell or depreciate the property). In many cases, a beneficiary's acquisition of property occurs upon an executor's or trustee's distribution of the property. For property passing by contract or by operation of law, the beneficiary's acquisition of that property generally occurs automatically upon the death of the decedent.

(5) *Option to furnish Statement(s) prior to the acquisition of property by a beneficiary*. An executor may satisfy the requirement in paragraph (c)(2) of this section to furnish a Statement to a beneficiary by furnishing the Statement to the beneficiary prior to the beneficiary's acquisition of the property subject to reporting under paragraph (e) of this section, provided that the executor has reason to believe that the

beneficiary will acquire that property. The Statement furnished to such a beneficiary must identify the property the beneficiary is expected to acquire as well as the value of that property and other information prescribed by the Statement and the instructions for that form (and must include information relating to other property actually acquired by such beneficiary as may be required under paragraph (c)(2) of this section). If, after satisfying the requirements of this paragraph (c)(5), the property is acquired by a different beneficiary, the executor must update the beneficiary information in the Information Return and furnish a Statement to that beneficiary pursuant to the duty to supplement to report a change in beneficiary information as described in paragraph (d)(2)(i) of this section. The executor additionally is subject to the duty to supplement to report other changes to the information required to be reported as identified in paragraph (d) of this section.

(6) *Example.* The following example illustrates the application of this paragraph (c).

(i) The decedent D was a United States citizen at the time of D's death and the executor of D's estate E is required to file an estate tax return under section 6018. The terms of D's will provide for D's entire estate to be distributed to a marital trust. Prior to timely filing the estate tax return for D's estate, E funded the marital trust with a portion of the property, the value of which is included in D's gross estate. Under paragraph (c)(4) of this section, the marital trust has acquired this property upon the funding of the trust by E. Under paragraphs (c)(1) and (c)(3)(i) of this section, within 30 days of filing the estate tax return, E must file with the IRS the Information Return identifying the marital trust as the beneficiary (as well as other information prescribed by the Information Return or instructions) and must include with the Information Return all required attachments. Under paragraphs (c)(2) and (c)(3)(i) of this section, by the same date, E must furnish to the marital trust the Statement identifying the portion of the property distributed to the marital trust and its estate tax value (as well as any other information prescribed by the Statement or instructions). A copy of the Statement is a required attachment to be included with the Information Return. Pursuant to paragraph (c)(5) of this section, E may choose to expand the property identified on the Statement to also include the property the marital trust is expected to acquire subsequently. If E so chooses, the Statement to be furnished to the marital

trust will identify all such property and its value at the date of death and, except in the case of any changes to the information required to be reported, no further Statement will be required at the time of the completion of the funding of the trust.

(ii) However, if E chooses not to expand the reporting to property not yet acquired by the marital trust, then, once the marital trust has acquired additional property, E is subject to further reporting. Under paragraph (c)(3)(ii) of this section, in each year that E distributes additional property to the marital trust, E must furnish, by January 31 of the following year, a Statement to the marital trust identifying all of the property the marital trust has acquired from D's estate that year and the property's estate tax value (as well as any other information prescribed by the Statement or instructions). By the same date, E must file with the IRS a supplemental Information Return and attach a copy of that Statement as well as any other required attachments.

(d) *Duty to supplement*—(1) *Duty to supplement to report changes to the information reported on the Information Return or Statement(s).* An executor to whom the reporting requirements of this section apply must file a supplemental Information Return with the IRS and furnish a Statement or supplemental Statement to each affected beneficiary if a change to the information required to be reported on the Information Return or Statement (or supplement to either) causes the information as reported to be incorrect or incomplete. The executor must file the supplemental Information Return with the IRS, including copies of each Statement or supplemental Statement furnished to affected beneficiaries, and must furnish a Statement or supplemental Statement to each affected beneficiary, by the due date described in paragraph (d)(4) of this section.

(2) *Changes requiring supplement.* This paragraph (d)(2) provides a nonexhaustive list of changes that require supplemental reporting under paragraph (d)(1) of this section.

(i) *Change in beneficiary information.* The receipt, discovery, or acquisition by the executor of information that changes the beneficiary to whom property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise), or corrects or completes other beneficiary information originally reported, will give rise to a duty to supplement.

(ii) *Change in the identified value of property.* The supplementing of an estate tax return to report a corrected estate tax value of property that was

previously reported on an estate tax return and a Statement will give rise to a duty to supplement. In addition, a final determination of value of property for Federal estate tax purposes (within the meaning of § 1.1014–10(b)(1)) that differs from the value provided on a Statement or supplement to a Statement will give rise to a duty to supplement.

(iii) *Change or addition of property subject to reporting.* The supplementing of an estate tax return to report the estate tax value of property subject to reporting under paragraph (e) of this section, if that property and/or its value previously was not reported on an estate tax return or supplement to the estate tax return, will give rise to a duty to supplement. A duty to supplement also will arise if such property or its value that previously was not reported on an estate tax return or supplement to the estate tax return is included in the decedent's gross estate pursuant to an examination by the IRS or otherwise.

(iv) *Change in property to be acquired by beneficiary.* A duty to supplement will arise if an executor furnishes a Statement to a beneficiary prior to the beneficiary's acquisition of property pursuant to paragraph (c)(5) of this section and the beneficiary ultimately acquires property different from the property identified on that Statement. A beneficiary's acquisition of different property may occur for any reason, including an executor's receipt of different property in a transaction in which the basis of the new property received by the executor is determined, in whole or in part, by reference to the final value of property acquired from or as a result of the death of the decedent (for example, as the result of a like-kind exchange under section 1031 or an involuntary conversion).

(3) *Exceptions; no duty to supplement despite certain changes.* Notwithstanding paragraph (d)(2) of this section, no supplemental reporting under this section is required for:

(i) Inconsequential errors or omissions within the meaning of § 301.6722–1(b) of this chapter;

(ii) Changes resulting from an event that triggers an additional estate tax under section 2032A, including changes in value in the event of a beneficiary election under section 1016(c) of the Code;

(iii) Adjustments to the basis of property pursuant to sections of the Code other than section 1014(f); and

(iv) Any other change that is identified as requiring no supplemental reporting under this section in published guidance in the **Federal Register** or in the Internal Revenue

Bulletin (*see* § 601.601(d)(2)(ii)(b) of this chapter).

(4) *Due date of supplemental reporting.* The supplemental reporting required by this paragraph (d) must be filed with the IRS and furnished to each affected beneficiary on or before 30 days after the date on which information becomes available to the executor from which the executor can conclude that a change to the information provided on the Information Return or Statement (or supplement to either) requires supplemental reporting. For changes occurring as a result of supplementing the estate tax return, the date on which the information becomes available to the executor is deemed to be the filing date of the supplemental information. Therefore, for changes occurring as a result of supplementing the estate tax return, the due date of the supplemental reporting required by this paragraph (d) is 30 days after the filing date of the supplemental information. For changes occurring as a result of a determination of final value, the date on which the information becomes available to the executor is deemed to be the date a value becomes the final value under § 1.1014-10(b)(1). Therefore, for changes occurring as a result of a determination of final value, the due date of the supplemental reporting required by this paragraph (d) is 30 days after the date a value becomes the final value under § 1.1014-10(b)(1). However, with regard to property that has not been acquired by a beneficiary on or before the due date described in this paragraph (d)(4) and for which a Statement was not provided to the beneficiary pursuant to paragraph (c)(5) of this section, the due date may be delayed until the due date described in paragraph (c)(3)(ii) of this section.

(5) *Duration of duty to supplement.* An executor's duty to supplement as described in this section continues to apply until a final determination of value for Federal estate tax purposes (a final value within the meaning of § 1.1014-10(b)(1)) is determined for all property subject to reporting (under paragraph (e) of this section) or, if later, until such property has been acquired by a beneficiary. Therefore, the executor's final supplemental reporting is the reporting to the IRS and the furnishing of Statements to beneficiaries with regard to the last to occur of these two events, assuming that either event would create a change requiring supplemental reporting.

(6) *Examples.* The following examples illustrate the application of this paragraph (d). In each case, the decedent D was a U.S. citizen and D's

executor E was required under section 6018 to file an estate tax return.

(i) *Example 1—Change in identified value of property.* D's estate includes stock in a closely-held corporation. E distributes the stock to a beneficiary B of the estate before the due date of the estate tax return. D's executor reports the value of the stock at \$14 million on D's estate tax return and on the Statement furnished to B. On examination of D's estate tax return, the IRS adjusts the value of the closely-held stock to \$18 million. A court subsequently determines that the fair market value of the closely-held stock for Federal estate tax purposes is \$17 million and the court's decision becomes final on June 15th. On or before July 15th of the same year, E must furnish a supplemental Statement to B showing the final value of \$17 million for the closely-held stock, and must attach a copy of that supplemental Statement to a supplemental Information Return and file it with the IRS.

(ii) *Example 2—Duration of the duty to supplement.* D's gross estate includes stock in closely-held corporation X, stock in closely-held corporation Y, and cash. D's will directs E to distribute 50% of the value of D's estate to A and 50% to B in any manner to which A and B agree. A and B agree that A will take the stock in corporation X and B will take stock in corporation Y and they will divide the cash in such amounts as to cause each to take an equal share of the value D's estate. E timely files D's estate tax return and furnishes a Statement to A and to B pursuant to paragraph (c)(5) of this section. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. Thereafter, A and B agree to revise their agreement. E distributes the stock in corporation X to B and the stock in corporation Y to A in accordance with a revised agreement between A and B. E's final supplemental reporting is the filing of a supplemental Information Return and furnishing of a supplemental Statement to A describing the shares and value of stock distributed to A and a supplemental Statement to B describing the shares and value of stock distributed to B.

(e) *Property for which reporting is required—(1) In general.* Except for excepted property subject to only limited reporting as described in paragraph (f) of this section, the property subject to reporting under this section is *included property* and any other property the basis of which is determined, in whole or in part, by reference to the basis of the included property (for example, property

acquired in a like-kind exchange or an involuntary conversion). For purposes of this section, *included property* is property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Generally, included property refers to property whose value is reported on an estate tax return, but it also refers to property whose value otherwise is included in the total value of the gross estate (for example, during examination by the IRS). Thus, included property includes property that qualified, in whole or in part, for an estate tax marital deduction under section 2056, 2056A, or 2106(a)(3) or for an estate tax charitable deduction under section 2055 or 2106(a)(2). It further includes property included in the decedent's gross estate that is distributed to a surviving spouse in satisfaction of that surviving spouse's interest in community property not included in the gross estate that the executor has distributed to a non-spouse pursuant to State law properly applied. However, included property does not include property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate, such as the property of a deceased nonresident noncitizen that is not subject to United States estate tax, and the surviving spouse's share of community property described in section 1014(b)(6).

(2) *Examples.* The following examples illustrate the application of this paragraph (e). In each case, the decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return.

(i) *Example 1—Included property.* Pursuant to the terms of D's will, a trust is established and funded with property, the value of which is includible in D's gross estate under section 2031. The trust is a charitable remainder annuity trust described in section 664(d)(1). The terms of the trust provide that, in each taxable year during the lifetime of D's surviving spouse S, the trustee must pay to S an annuity of 5% of the initial net fair market value of all property passing to the trust as finally determined for Federal estate tax purposes. Upon the death of S, the trustee must distribute all of the then-principal and income of the trust to organizations described in sections 170(c), 2055(a) and 2522(a) as the trustee selects, in the trustee's sole discretion. The property used to fund the trust is included property and is subject to the reporting requirements of this section. This is true whether or not the requirements of section 1014(f)

apply to the property transferred to the trust. See § 1.1014–10(d)(4).

(ii) *Example 2—Property the basis of which is determined by reference to the basis of included property.* D's gross estate includes the value of Property A. Before the due date for filing the estate tax return, E exchanges Property A for Property B in a like-kind exchange pursuant to section 1031, for which D's estate recognizes no gain or loss. Property B is property subject to reporting as prescribed in this section. With respect to Property B, the value E reports on the Statement is the value reported for Property A on the estate tax return filed with the IRS.

(f) *Excepted property requiring only limited reporting—(1) Excepted property.* Certain included property that is described in paragraph (f)(2) of this section (excepted property) is subject to more limited reporting than the reporting required under paragraph (c) of this section. The requirement to file an Information Return with the IRS as described in paragraph (c)(1) of this section remains the same even if all property subject to reporting under paragraph (e) of this section is excepted property. However, the executor is not required to identify or provide any other information for excepted property on the Information Return, and the executor is not required to furnish a Statement to the beneficiary with regard to that property. Instead, the executor is required only to report on the Information Return, in accordance with the instructions for that form, that some or all of the property subject to reporting is excepted property described in this paragraph (f). Further, the executor is not required to identify or provide any other information for excepted property on any Statement furnished to a beneficiary and, if this property is the only property that a beneficiary has acquired, an executor is not required to furnish a Statement to that beneficiary.

(2) *List of excepted property.* Excepted property includes—

(i) United States dollars (as defined in paragraph (f)(3) of this section).

(ii) United States dollar-denominated demand deposits.

(iii) Certificates of deposit denominated in United States dollars.

(iv) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit).

(v) Shares of a registered investment company priced in United States dollars that is a money market fund under Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a).

(vi) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars.

(vii) Federal, State, and local tax refunds and other refunds payable in United States dollars.

(viii) Notes that are forgiven in full by the decedent upon the decedent's death, whether or not denominated in United States dollars.

(ix) Household and personal effects for which an appraisal is not required under § 20.2031–6(b) of this chapter.

(x) Property that, prior to distribution from the estate or the decedent's revocable trust, is completely sold, exchanged, or otherwise disposed of in one or more transactions that are recognition events for Federal income tax purposes (whether or not resulting in a gain or loss, and whether or not any gain is capital or ordinary). Such property includes, but is not limited to—

(A) Property distributed in satisfaction of a pecuniary bequest on which the estate recognizes any gain or loss pursuant to § 1.661(a)–2(f);

(B) Property for which an election under section 643(e)(3) has been made for the estate to recognize any gain or loss;

(C) Interests in a business entity that are redeemed for United States dollars prior to being distributed to the beneficiary;

(D) Property disposed of in a transaction described in section 267(a) and (b)(13); and

(E) Property subject to the mark to market accounting method at the time of distribution from the estate or from the decedent's revocable trust.

(xi) Other property having an initial basis that is not in any way determined with regard to or derived from the property's fair market value for Federal estate tax purposes. For purposes of this section, such property includes but is not limited to—

(A) Annuity contracts subject to section 72 and amounts received as an annuity subject to section 72;

(B) An interest in property that consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691;

(C) Amounts received under installment obligations arising from a transaction for which the installment method for determining gain under section 453 applies;

(D) Appreciated property described in section 1014(e) that is acquired by the decedent within 1 year of death;

(E) Stock of a passive foreign investment company subject to section 1296(i), but only if the basis of such stock is the adjusted basis in the hands

of the decedent immediately before the decedent's death; and

(F) Interests in and distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, that are expressed entirely in United States dollars.

(xii) Bonds to the extent that they are redeemed by the issuer for United States dollars prior to being distributed to a beneficiary so that any resulting gain or loss is recognized by the estate.

(xiii) Property included in the gross estate of a beneficiary who died before the due date of the Information Return.

(xiv) Any other property that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(3) *United States dollars defined.* For purposes of this paragraph (f), the term *United States dollars* means the official currency of the United States. The term United States dollars includes physical bills and coins for which the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills or coins typically do not have a value equal to their face value.

(4) *Examples.* The following examples illustrate the application of this paragraph (f). In each case, the decedent D was a U.S. citizen and D's executor E is required under section 6018 to file an estate tax return.

(i) *Example 1—Reporting household and personal effects.* Included in D's gross estate are D's household and personal effects. The only item included in D's household and personal effects with a value in excess of \$3,000 is a painting. E attaches to D's estate tax return an appraisal of the painting prepared in accordance with § 20.2031–6(b) of this chapter and a room-by-room itemization of D's other household and personal effects prepared in accordance with § 20.2031–6(a) of this chapter. E must furnish to the beneficiary of the painting the Statement required by paragraph (c)(2) of this section. E is not required to report on a Statement furnished to any beneficiary any information about D's other household and personal effects. If a beneficiary of D's household effects, other than the beneficiary of the painting, has acquired no other property, E is not required to furnish a Statement to that beneficiary. E is required to file the Information Return required by section (c)(1) of this section and attach to that Information

Return a copy of the Statement furnished to the beneficiary of the painting. E must disclose on the Information Return that some or all of the property included in D's gross estate is excepted property described in this paragraph (f).

(ii) *Example 2—Reporting if property is disposed of in taxable transaction.* Included in D's estate are shares in X, a publicly traded company. Shortly after D's death but prior to the filing of the estate tax return for D's estate, X is acquired by T, also a publicly traded company. In exchange for the shares in X, the estate receives shares in T and cash in a fully taxable transaction. E is required to report on the Information Return required by paragraph (c)(1) of this section that some or all of the property included in D's gross estate is excepted property described in this paragraph (f). E is not required to furnish a Statement to any recipient with respect to the cash, X stock, or T stock.

(iii) *Example 3—Reporting if estate is liquidated prior to distribution.* Property A is the only property in D's estate. Prior to filing the estate tax return for D's estate, E sells Property A for \$15,000,000. D's estate recognizes gain on the sale of Property A for income tax purposes. E distributes the \$15,000,000 among the beneficiaries of D's estate. E must file the Information Return required by paragraph (c)(1) of this section even though all of the property included in D's gross estate is excepted property within the meaning of this paragraph (f). E is not required to furnish to the beneficiaries of D's estate a Statement with regard to Property A, and therefore is not required to attach a copy of any Statement to the Information Return. E is required to file an Information Return with the IRS indicating that all of the property included in D's gross estate is excepted property described in this paragraph (f), and must provide other information as required by the Information Return and the instructions.

(g) *Beneficiaries—(1) In general.* Each person who acquires (or will acquire) property from a decedent or by reason of the decedent's death that is subject to the reporting described in paragraph (e) of this section is a beneficiary for purposes of this section and thus is a person to be listed on the Information Return and, except with respect to excepted property (described in paragraph (f) of this section), is a person to whom the executor must furnish a required Statement. Thus, a beneficiary may be:

(i) An individual, including one who is both the executor and a beneficiary,

who acquires (or will acquire) property subject to reporting not in trust;

(ii) The estate of a deceased individual who survived the decedent if such individual or estate acquires (or will acquire) property subject to reporting not in trust;

(iii) A trust, whether foreign or domestic, including without limitation a grantor retained annuity trust, charitable remainder trust, and charitable lead trust (each referred to in this section as *beneficiary trusts*); or

(iv) An entity other than a trust, including without limitation a business entity or an organization described in section 501(c).

(2) *Required Statement to beneficiary trust—(i) In general.* If a beneficiary trust is the beneficiary to be identified on the Information Return pursuant to paragraph (g)(1) of this section, the executor must furnish the Statement described in paragraph (c)(2) of this section to the trustee rather than to the beneficiaries of the trust. However, if the executor reasonably believes that it is unlikely that the beneficiary trust will depreciate, sell, or otherwise dispose of the property subject to reporting in a recognition event for income tax purposes but instead will distribute the property in kind to the trust beneficiaries, the executor instead may furnish the Statement described in paragraph (c)(2) of this section to each of the trust beneficiaries, with copies of the Statements to the trustee. For this purpose, the trust beneficiaries include all potential current income beneficiaries and each remainderman who would have had a current interest in the trust if one or more of the income beneficiaries had died immediately after the decedent. For purposes of determining the due date of such Statements, each trust beneficiary will be deemed to have acquired the trust property when the trust acquired that property.

(ii) *Beneficiary trust not yet established.* If, by the date required for filing the Information Return with the IRS, a beneficiary trust does not have at least one trustee and a tax identification number, an executor must report on the Information Return that the beneficiary trust has not yet been established in accordance with the instructions. Once the beneficiary trust has been established and the trust information becomes available to the executor, the executor must supplement the required reporting as described in paragraph (d) of this section to update the beneficiary information on the Information Return and Statement.

(3) *Required Statement to the holder of a split interest in property, not in*

trust. The beneficiary of a life estate not in trust, and thus the beneficiary to whom the executor is to furnish any required Statement, is the life tenant. Similarly, the beneficiary of a remainder interest not in trust is each remainderman identified as if the life tenant were to die immediately after the decedent. For purposes of determining the due date of the Statements reporting these interests under paragraph (c)(3) of this section, each beneficiary will be deemed to have acquired the property subject to reporting on the date of the decedent's death. The beneficiary of a contingent interest, not in trust, is a beneficiary only if the contingency occurs before the end of the period during which the executor has an obligation to supplement the reporting as provided in paragraph (d)(5) of this section. If the contingency occurs during this period, the executor must update the beneficiary information on the Information Return and furnish a Statement to that beneficiary pursuant to the executor's duty to supplement to report a change in beneficiary information as described in paragraph (d) of this section. Usufruct interests are treated in the same manner.

(4) *Reporting for a missing beneficiary.* If the executor is unable to locate a beneficiary by the date required for filing the Information Return with the IRS, the executor must report on the Information Return the failure to locate the beneficiary and the efforts the executor has made to locate the beneficiary. The executor must supplement the Information Return and must furnish the required Statement, as provided in paragraph (d) of this section, to report the subsequent location of the beneficiary or, if the beneficiary is not located, to report the distribution of the property subject to reporting to a different beneficiary.

(h) *Reporting requirements applicable to trustees—(1) Circumstances under which trustees of beneficiary trusts and other trusts are subject to reporting.* Trustees of beneficiary trusts making a distribution of property that was reported on a Statement furnished to those trustees, or of any other property the basis of which is determined, in whole or in part, by reference to the basis of property subject to reporting under paragraph (e) of this section, are subject to the reporting requirements described in paragraph (h)(2) of this section and the supplemental reporting requirements described in paragraph (d) of this section (to the extent applicable) with respect to such property. In addition, trustees of trusts that receive a distribution of such property, whether from a beneficiary trust or from any

other trust that has received such property, either directly or indirectly, also are subject to these reporting requirements when making a distribution of that property. This reporting obligation imposed on trustees continues to apply for each subsequent transfer or distribution until the property is distributed to a beneficiary not in trust. However, no trustee of a beneficiary trust or of a subsequent recipient trust is subject to the reporting requirements described in paragraph (h)(2) of this section for a disposition of property in a transaction that is a recognition event for income tax purposes (whether or not resulting in a gain or loss) that results in the entire property having a basis that no longer is related, in whole or in part, to the property's final value or, if applicable, reported value (within the meaning of § 1.1014–10(b)(1) or (2), respectively).

(2) *Required reporting.* On or before January 31 of the calendar year immediately following the year during which occurs a distribution of property subject to reporting under this paragraph (h), the trustee making the distribution must file an Information Return in accordance with the instructions for that form and must furnish a Statement to each recipient of the distribution. For purposes of this section, each recipient is a beneficiary.

(3) *Example.* The following example illustrates the application of this paragraph (h). Decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return. Pursuant to the will of D, E distributed 100 shares of publicly traded stock in Company X to a trust (Children's Trust) for the benefit of D's two children A and B and their respective issue. E provided a Statement to the trustee of Children's Trust in accordance with the requirements of paragraph (c)(2) of this section. Shortly thereafter, pursuant to the terms of Children's Trust, Children's Trust terminates with the 100 shares of Company X stock being distributed in equal shares between Trust A, for the benefit of A and A's issue, and Trust B, for the benefit of B and B's issue. Pursuant to paragraph (h)(2) of this section, the trustee of Children's Trust files an Information Return with the IRS and furnishes a Statement to the trustees of Trust A and Trust B. Several years later, the trustee of Trust A distributes its 50 shares of Company X stock to C,

the only child of A. Pursuant to this paragraph (h), the trustee of Trust A files an Information Return with the IRS and furnishes a Statement to C. Shortly thereafter, C gives the 50 shares of Company X stock, outright, to C's nephew N. C has no obligation to file an Information Return with the IRS or furnish a Statement to N to report the distribution of the 50 shares of Company X stock to N.

(i) *Penalties.* For the penalties applicable to the filing of Information Returns and the furnishing of Statements required by this section, including waivers for reasonable cause, see sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724.

(j) *Applicability date.* This section applies to executors of the estate of a decedent who are required to file a Federal estate tax return under section 6018 if that return is filed after September 17, 2024, and to trustees receiving certain property included in the gross estate of such a decedent.

■ **Par. 8.** Section 1.6662–9 is added to read as follows:

§ 1.6662–9 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 an income tax return that is attributable to an inconsistent estate basis.

(b) *Inconsistent estate basis—(1) In general.* There is an *inconsistent estate basis* in property under section 6662(k) to the extent that a taxpayer claims a basis that was determined by using an initial basis as defined in § 1.1014–10(a)(2) that exceeds the property's final value as determined under § 1.1014–10(b)(1). The property to which this section applies is the property described in § 1.1014–10(c)(1).

(2) *Example.* The following example illustrates the provisions of paragraph (b)(1) of this section. In year 1, taxpayer (T), a citizen of the United States, inherited a house, property described in § 1.1014–10(c)(1) and not described in § 1.1014–10(c)(2). The final value and thus initial basis of the house as determined under § 1.1014–10(b) was \$300,000. In year 5, T spent \$85,000 on an addition to the house, which is added to T's initial basis in the house under section 1016(a). In year 11, T sold

the house to an unrelated third party for \$650,000. On T's return, T claims an initial basis of \$400,000 and the \$85,000 spent on the addition to the house, for a total claimed basis of \$485,000. T's claimed initial basis exceeds the allowable basis by \$100,000. Because this amount is due to T claiming an initial basis as defined in § 1.1014–10(a)(2) that exceeds the property's final value as determined under § 1.1014–10(b), T is liable for the 20% accuracy-related penalty for the portion of any underpayment that is attributable to the reporting of an inconsistent basis.

(c) *Applicability date.* This section applies to property described in § 1.1014–10(c)(1) that is reported on an estate tax return required under section 6018 that is filed after September 17, 2024.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 9.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** Section 301.6721–1 is amended by revising paragraph (h)(2)(xii) and paragraph (j) to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(h) * * *

(2) * * *

(xii) Section 6035 (relating to basis information with respect to property acquired from a decedent, generally Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*), whether an initial or supplemental information return.

* * * * *

(j) *Applicability dates—(1) In general.* Except as provided in paragraph (j)(2) of this section, this section applies with respect to information returns required to be filed on or after January 1, 2024. See 26 CFR 301.6721–1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(2) *Exception.* Paragraph (h)(2)(xii) of this section applies with respect to information returns required to be filed after September 17, 2024.

■ **Par. 11.** Section 301.6722–1 is amended by revising paragraph (e)(2)(xxxv) and paragraph (g) to read as follows:

§ 301.6722-1 Failure to furnish correct payee statements.

* * * * *

(e) * * *

(2) * * *

(xxxv) Section 6035 (relating to basis information with respect to property acquired from a decedent, generally Schedule A of Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*), other than an information return described in

section 6724(d)(1)(D), whether an initial or supplemental payee statement;

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies with respect to payee statements required to be furnished on or after January 1, 2024. See 26 CFR 301.6722-1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(2) *Exception.* Paragraph (e)(2)(xxxv) of this section applies with respect to

payee statements required to be furnished after September 17, 2024.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: August 16, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

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