

New Estate Basis Reporting – Form 8971

Affecting Estate Tax Returns Filed After July 31, 2015

First Filings Due February 29, 2016

As a result of 2015 legislation, many estates have **new** reporting requirements that provide the IRS and estate beneficiaries with the estate tax value information about assets received – the purpose of these new requirements is to better ensure consistent basis reporting upon a sale or transfer of an asset received from a decedent. **This new filing requirement only applies to estate tax returns filed after July 31, 2015.**

With the **first deadline of February 29, 2016**, approaching for the new Form 8971 (Information Regarding Beneficiaries Acquiring Property From A Decedent), here is a brief overview of these new requirements:

- **For estates subject to the new filing requirement, Form 8971 and Schedule A are due 30 days after the filing of the estate tax return** (or 30 days after the due date of the return, including extensions, if the return is filed late). Form 8971 must be filed separately from the estate tax return. Failure to timely file a correct Form 8971 by the applicable due date is subject to penalty, as is failure to provide the appropriate Schedule A to a beneficiary.
- For estates filing estate tax returns after July 31, 2015, **the due date for Form 8971 has been extended to February 29, 2016**, if the form would otherwise have been due prior to that date.
- **Not all estates are required to file Form 8971.** Generally, if an estate tax return (Form 706) was required, Form 8971 will also be required. However, there is no requirement to file Form 8971 if an estate tax return was filed only to allocate generation-skipping transfer tax exemption. **Under current guidance, it is unclear whether Form 8971 is required in an estate which filed an estate tax return solely for the purpose of electing “portability” of the estate tax credit between spouses.**
- Form 8971 requires the executor to list all beneficiaries, their taxpayer identification numbers, addresses and the date on which the executor provided the beneficiary with a Schedule A to Form 8971. **Note that Form 8971 will be considered incomplete if all information, including taxpayer identification numbers and names of all beneficiaries, is not provided.**
- Each beneficiary must receive a Schedule A listing (1) the assets he, she or it receives, (2) whether the assets increased the estate tax liability, (3) the valuation date and (4) the estate tax value of the asset. **If the division of assets among beneficiaries has not yet been determined at the time Form 8971 is due, all assets that could be used to fund the beneficiary’s share must be listed on the beneficiary’s Schedule A.** If you do not wish for each beneficiary to receive information about all estate assets, you may wish to ensure assets have been fully allocated prior to the due date for Form 8971.
- If an amended estate tax return is filed, or if estate tax values are adjusted on audit or at the conclusion of a dispute, a supplemental Form 8971 and Schedule A for any affected beneficiary must be filed. Similarly, if the allocation of assets among the beneficiaries is determined and made after the due date of Form 8971, a supplemental Form 8971 and Schedule A listing the allocation to each beneficiary must be filed.

- The completed Form 8971, including all Schedule A attachments, must be filed with the IRS. Each beneficiary receives only his, her or its Schedule A, not the entire Form 8971.

In general, if an asset “increased the estate tax liability” for the decedent’s estate, the beneficiary will be subject to consistent basis reporting under Internal Revenue Code Section 1014(f), requiring the beneficiary to report an initial basis in the asset consistent with the value of the asset as shown on the estate tax return (as reported on the beneficiary’s Schedule A of Form 8971). Accuracy related penalties will apply for inconsistent estate basis reporting by a beneficiary receiving property that is subject to Internal Revenue Code Section 1014(f).

We expect additional guidance from the Treasury Department in the coming weeks regarding these new reporting requirements and will keep you apprised of further developments. If you have questions regarding the preparation and filing of the new Form 8971, or if you would like assistance in determining whether there is a filing requirement for an estate in which you are involved, please contact us for more information.

About Greenberg Glusker’s Private Client Services Group

Wealth management, tax efficiency and family harmony are of great importance to successful families. The shared values and aspirations of a multigenerational family should be evident and upheld throughout their estate plans. Thoughtful and creative planning must be marked by the highest level of technical tax advice and wealth preservation techniques. Greenberg Glusker’s Private Client Services Group combines all these defining elements to provide a platform for the increased success of future generations of a family.

Our Private Client Services Group forms one of the largest trusts and estates practices in Southern California. Our professionals work closely with our client families, and all of their wealth advisors, to develop individually tailored solutions to wealth transfer and preservation challenges that reflect the family’s aspirations and values.

Laura Zwicker | Department Chair
lzwicker@greenbergglusker.com

Stefanie Lipson | Partner
slipson@greenbergglusker.com

Brian Berman | Associate
bberman@greenbergglusker.com

Megan Rivetti | Associate
mrivetti@greenbergglusker.com

Laura Chooljian | Associate
lchooljian@greenbergglusker.com

Marc Stern | Partner
mstern@greenbergglusker.com

Darryl Cluster | Partner
dcluster@greenbergglusker.com

This document is intended solely to provide a general overview of the implications of the New Estate Basis Reporting – Form 8971. The statements in this document are not intended to provide specific legal advice. This document may be considered advertising in some jurisdictions.