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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9797]

RIN 1545-BM98

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide transition rules providing that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (2) regarding the value of property included in a decedent's gross estate for federal estate tax purposes before June 30, 2016, need not have done so until June 30, 2016. These final regulations are applicable to executors and other persons who file federal estate tax returns required by section 6018(a) or (b) after July 31, 2015.

DATES: Effective Date. These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Dates: For date of applicability, see §1.6035-2(b).

FOR FURTHER INFORMATION CONTACT: Theresa Melchiorre (202) 317-6859 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6018(a) requires executors to file federal estate tax returns with respect to (1) certain estates of citizens or residents of the United States and (2) certain estates of nonresidents that are not citizens of the United States. If an executor is unable to make a complete federal estate tax return as to any property that is a part of a decedent's gross estate, section 6018(b) requires every person or beneficiary holding such property, upon notice from the Secretary, to make a federal estate tax return as to such part of the gross estate.

On July 31, 2015, the President of the United States signed into law H.R. 3236, The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41, 129 Stat. 443 (Act). Section 2004 of the Act added new section 6035.

Section 6035 imposes reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes. Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must file with the Secretary and furnish to the person acquiring any interest in property included in the decedent's gross estate, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

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

identifying the same information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that each statement required to be filed or furnished under section 6035(a)(1) or (2) is to be filed or furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date that is 30 days after the date on which the return under section 6018 was required to be filed (including extensions actually granted, if any) or (ii) the date which is 30 days after the date such return is filed.

On August 21, 2015, the Treasury Department and the IRS issued Notice 2015-57, 2015-36 IRB 294. That notice delayed until February 29, 2016, the due date for any statements required by section 6035.

On February 11, 2016, the Treasury Department and the IRS issued Notice 2016-19, 2016-09 IRB 362. That notice provided that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (2) before March 31, 2016, need not have done so until March 31, 2016.

On March 4, 2016, the Treasury Department and the IRS published temporary regulations (TD 9757) in the **Federal Register** (81 FR 11431-01) providing transition relief under §1.6035-2T. The temporary regulations extended the due date for statements required by section 6035 to March 31, 2016, as provided in Notice 2016-19.

Also on March 4, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 11486-01) proposed regulations (REG-127923-15). The text of TD 9757 served as the text of the proposed regulations regarding the transition relief provided under §1.6035-2T.

On March 23, 2016, the Treasury Department and the IRS issued Notice 2016-27, 2016-15 IRB 576. That notice provided that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (2) before June 30, 2016, need not have done so until June 30, 2016.

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 numerous written comments. Both at the hearing and in written comments, commenters commented favorably on the transition relief providing extensions of time to file and furnish the statements required by section 6035(a)(1) or (2) that the Treasury Department and the IRS had granted in TD 9757 and the notices (including Notice 2016-27 issued after TD 9757 was published in the Federal Register).

Explanation of Provisions

These final regulations reiterate the statement in Notice 2016-27 and provide that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (2) before June 30, 2016, need not have done so until June 30, 2016. These final regulations are issued within 18 months of the date of the enactment of the statutory provisions to which the final regulations relate and, as authorized by section 7805(b)(2), are applicable to executors and other persons who file a return required by section 6018(a) or (b) after July 31, 2015.

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

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

In addition, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) did not apply to TD 9757 because TD 9757 was excepted from the notice and comment requirements of section 553(b) and (c) of the Administrative Procedure Act under the interpretative rule and good cause exceptions provided by section 553(b)(3)(A) and (B). The Act included an immediate effective date, thus making the first required statements due 30 days after enactment. It was necessary to provide more time to provide the statements required by section 6035(a), to allow the Treasury Department and the IRS sufficient time to issue both substantive and procedural guidance on how to comply with the section 6035(a) requirement, and to provide executors and other affected persons the opportunity to review this guidance before preparing the required statements. TD 9757 reiterated the relief in Notice 2016-19 and, because of the immediate need to provide relief, notice and public comment pursuant to 5 U.S.C. 553(b) and (c) was impracticable, unnecessary, and contrary to the public interest. Public comment, however, was received on TD 9757 and all the notices, including Notice 2016-27, at the public hearing held on June 27, 2016, and in

written comments submitted on the proposed regulations that cross-referenced and included the text of TD 9757.

It has been certified that the collection of information in these final 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, TD 9757 and notice of the proposed rulemaking that cross-referenced and included the text of TD 9757 was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

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Section 1.6035-2 also issued under 26 U.S.C. 6035(b).

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§1.6035-2T [Removed]

Par. 2. Section 1.6035-2T is removed.

Par. 3. Section 1.6035-2 is revised to read as follows:

§1.6035-2 Transitional relief.

(a) Statements due before June 30, 2016. Executors and other persons required to file or furnish a statement under section 6035(a)(1) or (2) after July 31, 2015 and before June 30, 2016, need not have done so until June 30, 2016.

(b) Applicability Date. This section is applicable to executors and other persons who file a return required by section 6018(a) or (b) after July 31, 2015.

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2016.

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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