

# Estate Tax Basis Consistency Regs to Reduce Compliance Burden

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By Chandra Wallace

Long-anticipated final regulations governing consistent basis and related reporting include a few changes aimed at reducing the burden of compliance.

The IRS and Treasury released final regs ([T.D. 9991](#)) on September 16, implementing a statutory mandate that estate beneficiaries take a tax basis in property they receive consistent with its tax basis in the estate. The new rules also apply reporting requirements to help enforce the mandate.

The final rules replace temporary ([T.D. 9757](#)) and proposed ([REG-127923-15](#)) regulations released in March 2016.

The changes were welcomed by estate tax advisers.

“The reporting will be complex, but that is a result of the statute, so the only way you could make it simple is not to enforce the statute,” Turney P. Berry of Wyatt, Tarrant & Combs LLP told *Tax Notes* in an email. Given that, the government overall “did a very nice job” finalizing these rules, he said.

The underlying statutes — sections [1014\(f\)](#) and [6035](#) — were enacted in 2015. [Section 1014\(f\)](#) imposed a consistency requirement to align the recipient’s basis in property acquired from a deceased person to the basis in that property as finally determined for federal estate tax purposes. [Section 6035](#) set out related reporting requirements.

The new rules include common sense changes and clarifications and reflect both a practical approach to implementing the statutory requirements and a thoughtful approach to comments from taxpayers and their advisers, according to Austin Bramwell of Milbank LLP.

The final regs apply generally to specified property acquired from a decedent if the relevant estate tax return is filed after September 17.

## No More ‘Zero-Basis’ Rule

A “zero-basis” rule included in the proposed regs was scrapped in the final ones. That rule would have meant that unreported property — property omitted from the estate tax return — would be assigned a tax basis of zero.

The rule “was essentially just a disguised penalty,” Bramwell said.

"There are enough penalties in the system that discourage people from [failing to report property] on purpose, and when it happens, it's almost always inadvertent," Carol A. Harrington of McDermott Will & Emery said. "There's no reason for the beneficiary to end up with a zero basis."

Getting rid of that rule is "the right result," but it will require that state courts ensure executors can't "play games and 'discover' assets later that were known or could have been known had a little effort been expended," according to Berry.

Both Harrington and Bramwell said the government likely lacked the statutory authority to impose the zero-basis rule.

## Reporting Fixes

The final regs largely eliminate a requirement to report the basis of estate property upon transfers subsequent to death, an obligation that Bramwell said could continue "potentially for generations."

All three tax advisers identified the requirement as beyond the scope of authority granted by statute. Berry pointed out that the exception — the remaining portion of the rule that requires trustees to continue reporting — may be subject to challenges.

"It is disappointing that the final rules still require trustees to file basis consistency reports upon transfers subsequent to death, such as upon a distribution to a successor trust or outright to a beneficiary," Bramwell said. Imposition of that additional reporting burden only on trustees of testamentary trusts is arbitrary, he added.

The final rules also changed the timing for basis reporting to beneficiaries to January 31 of the year following their receipt of property. The proposed rules would have required basis reporting within 30 days after the estate tax return was filed — at a time when it may not yet be clear what property a beneficiary will receive.

"At that point, unless somebody has been given a specific piece of property, you don't know what anybody's going to get, so it's a pointless amount of work" to report that soon, Harrington said. The January 31 deadline still gives beneficiaries sufficient time before their tax returns are due to know the applicable basis, she added.

The new rule is "an obvious simplification, but a welcome one," Berry said.

## Based on a Misconception

The consistency requirement in [section 1014\(f\)](#) wasn't necessary in the first place, according to Bramwell.

Its enactment in 2015 was based on the erroneous premise that taxpayers could legally disregard the estate tax value when determining the basis of property they acquired from a decedent, Bramwell said. "In fact, basis consistency was already required by law," he said.

Bramwell also pointed out that estate tax values are already reported to the IRS.

Nevertheless, if basis consistency reporting is necessary, these final regs are “about as tolerable as [they] could be, if still needlessly burdensome,” Bramwell said.

Harrington agreed on both points, adding that “there’s no widespread problem” the basis consistency requirements address.

The final regs will significantly reduce the burden imposed by the statutes, but “this whole thing is burdensome, frankly, like solving a minor problem with a nuclear bomb.”