Final Regulations Consistent Basis Rules

Robert S. Keebler, CPA/PFS, MST, AEP

Overview

- Why did Congress act?
- Response by Treasury
- New statutory language
- New draft form
- Who must file
- When to file
- How to file

Congressional Action

- Congress took issue with beneficiaries reporting a basis *inconsistent* with the values claimed on estate tax returns.

- *Example of Problem:* Mom reports an interest in a partnership with a FMV $100,000 on her estate tax return. Daughter later sells this interest and reports the basis to her, as provided by §1014(a), is $120,000.

- **Congress therefore decided to require reporting of the basis of assets received by beneficiaries to the Service.**

Congressional Action

- Included in the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015
  - P.L. 114-41
  - Sec. 2004

Congressional Action

- Effective on date of enactment: 7/31/15

- Added § 1014(f) and § 6035
  - § 1014(f) requires consistent basis
  - § 6035 requires reporting

Response by Treasury

- Notice 2015-57:
  - Delayed the due date for the reporting requirements of §6035
  - Statements otherwise due between 7/31/15 -2/28/16 are due 2/29/16
  - Provided time for Treasury to implement guidance regarding the reporting requirements

Response by Treasury

- Forms & Instructions
  - 12/18/15 Draft Form Released: 8971 Information Regarding Beneficiaries Acquiring Property From a Decedent.
  - 1/6/16 Draft Instructions for Form 8971 released.

Response by Treasury

- Notice 2016-19
  - Released on 2/11/16
  - Further delayed the due date for the reporting requirements of §6035
  - The earliest the new form could be due was 3/31/16
  - Recommended executors prepare statements after the issuance of proposed regulations

Response by Treasury

- Proposed Rulemaking & Temporary Regulations
  - Published on 3/4/2016
  - Proposed regulation §§:
    - 1.1014-10,
    - 1.6035-1,
    - 1.6035-2
  - May be relied on before the rules are adopted as final in the federal register

Statutory Language

1014(f) Basis Must Be Consistent With Estate Tax Return

(1) In general. The basis of any property to which subsection (a) applies shall not exceed--

(A) in the case of property the final value of which has been determined for purposes of the tax imposed by chapter 11 on the estate of such decedent, such value, and

(B) in the case of property not described in subparagraph (A) and with respect to which a statement has been furnished under section 6035(a) identifying the value of such property, such value.

…

Statutory Language

6035

(a) Information with respect to property acquired from decedents

(1) In general

The executor of any estate required to file a return under section 6018(a) shall furnish to the Secretary and to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes 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.

Statutory Language

6035(a)

(2) Statements by beneficiaries

Each person required to file a return under section 6018(b) shall furnish to the Secretary and to each other person who holds a legal or beneficial interest in the property to which such return relates a statement identifying the information described in paragraph (1).

Statutory Language

6035(a)

(3) Time for furnishing statement

(A) In general Each statement required to be furnished under paragraph (1) or (2) shall be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of—

(i) the date which is 30 days after the date on which the return under section 6018 was required to be filed (including extensions, if any), or

(ii) the date which is 30 days after the date such return is filed.

Statutory Language

6035(b) Regulations. The Secretary shall prescribe such regulations as necessary to carry out this section, including regulations relating to—

(1) the application of this section to property with regard to which no estate tax return is required to be filed, and

(2) situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or fair market value of the property.

Statutory Language

6662 - Imposition of accuracy-related penalty on underpayments

(a) Imposition of penalty

If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to **20 percent** of the portion of the underpayment to which this section applies.

(b) PORTION OF UNDERPAYMENT TO WHICH SECTION APPLIES This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(8) Any inconsistent estate basis.

Statutory Language

6662 - Imposition of accuracy-related penalty on underpayments

(k) Inconsistent estate basis reporting

For purposes of this section, there is an “inconsistent estate basis” if the basis of property claimed on a return exceeds the basis as determined under section 1014(f).

Statutory Language

6724

(d) DEFINITIONS For purposes of this part—

(1)INFORMATION RETURN The term “information return” means—

(D) any statement required to be filed with the Secretary under section 6035.

Reporting

Form **8971**
(January 2016)
Department of the Treasury
Internal Revenue Service

Information Regarding Beneficiaries Acquiring Property from a Decedent

▶ **Information about Form 8971 and its separate instructions is at *www.irs.gov/form8971*.**

OMB No. 1545-XXXX

Check box if this is a supplemental filing ☐

Part I Decedent and Executor Information

1 Decedent's name	**2** Decedent's date of death	**3** Decedent's SSN
4 Executor's name (see instructions)	**5** Executor's phone no.	**6** Executor's TIN

7 Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code)

8 If there are multiple executors, check here ☐ and attach a statement showing the names, addresses, telephone numbers, and TINs of the additional executors.

9 If the estate elected alternate valuation, indicate the alternate valuation date: ______________

Part II Beneficiary Information

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Reporting

Part II **Beneficiary Information**

How many beneficiaries received (or are expected to receive) property from the estate? ________ For each beneficiary, provide the information requested below. If more space is needed, attach a statement showing the requested information for the additional beneficiaries.

A Name of Beneficiary	B TIN	C Address, City, State, ZIP	D Date of Service
Any errors automatically allow the Service to assess penalties.*			

Notice To Executors:

Submit Form 8971 with a copy of each completed Schedule A to the IRS. To protect privacy, Form 8971 should not be provided to any beneficiary. Only Schedule A of Form 8971 should be provided to the beneficiary. Retain copies of all forms for the estate's records.

*According to the draft instructions

Reporting

Schedule A

Form 8971 (1-2016)

SCHEDULE A—Information Regarding Beneficiaries Acquiring Property from a Decedent

▶ Information about Form 8971 and its separate instructions is at *www.irs.gov/form8971*.

Check box if this is a supplemental filing ☐

Part 1. General Information

1 Decedent's name	2 Decedent's SSN	3 Beneficiary's name	4 Beneficiary's TIN

5 Executor's name	6 Executor's phone no.

7 Executor's address

Part 2. Information on Property Acquired

Reporting

Schedule A

Part 2. Information on Property Acquired

A Item No. *(continue from previous page)*	B Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the percentage acquired here.	C Did this asset increase estate tax liability? *(Y/N)*	D Valuation Date	E Estate Tax Value *(in U.S. dollars)*
	Same as 706			Same as 706

Indicate "N" for property that qualifies for the marital deduction or charitable deduction.

Date of death or alternate valuation date

Reporting

Notice To Beneficiaries:

You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. **Retain this schedule for tax reporting purposes.** If the property increased the estate tax liability, Internal Revenue Code section 1014(f) applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

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Beneficiaries should hold onto their Schedule A in order to avoid later reporting an inconsistent basis and being subject to an accuracy related penalty.

Summary

Reporting Requirements

	706 Filed	8971 Required	§ 1014(f) Applies
Estate[1] < BEA			
Estate[1] < BEA (portability only)	X		
Estate[1] < BEA (GST allocation only)	X		
Estate[1] ≈ BEA (protective claim)	X		
Estate[1] > BEA (charitable & marital deductions eliminate tax liability)	X	X[2]	
Estate[1] > BEA	X	X	X[3]

1. Plus prior gifts.
2. Form 8971 is required for property transferred to transfers which do not qualify for the marital or charitable deduction.
3. § 1014(f) applies to property which increased the estate tax liability.

Summary

Exempt Property

- Cash & equivalents
- Income in respect of a decedent
- Household and personal effects
- Certain contingent interests
- Property sold or exchanged by the trust or estate (not distributed)
- Beneficiaries who die before the information return is due

Penalties

Instructions

If the executor of an estate or other person required to file Form 8971 fails to file a correct Form 8971 and/or Schedule A with the IRS by the due date and reasonable cause is not shown, a penalty may be imposed. The penalty applies if there is a failure to file timely, a **failure to include all information required to be shown on the form or schedule**, a failure to include correct information on the form or schedule, or a failure to file a correct supplemental Form 8971 and/or Schedule A by the due date. A complete Form 8971 includes all Schedule(s) A.

Penalties

Instructions

One penalty will apply for all failures relating to a single filing of a single Form 8971 and the Schedule(s) A required to be filed along with it.

Each filing of a Form 8971 with Schedule(s) A is a separate filing, regardless as to whether the filing is of the initial Form 8971 and Schedule(s) A or a supplemental Form 8971 and Schedule(s) A.

Penalties

Instructions

$50 per Form 8971 (including all Schedule(s) A) if it is filed within 30 days after the due date. The maximum penalty is $532,000 per year (or $186,000 if the taxpayer qualifies for lower maximum penalties).

Penalties

Instructions

$260 per Form 8971 (including all Schedule(s) A) if it is filed more than 30 days after the due date or if it is not filed. The maximum penalty is $3,193,000 per year ($1,064,000 if the taxpayer qualifies for lower maximum penalties).

Penalties

Instructions

If any failure to file a correct Form 8971 or Schedule A is due to intentional disregard of the requirements to file a correct Form 8971 and Schedule(s) A, the minimum penalty is at least $530 per Form 8971 and the Schedule(s) A required to be filed with it, with no maximum penalty.

Penalties

Instructions

An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission does not prevent or hinder the IRS from processing the Form 8971 and the Schedules A required to be filed along with it.

Errors and omissions that are never inconsequential are those related to a **TIN**, a **beneficiary's surname**, and the **value of the asset** the beneficiary is receiving from the estate.

Penalties

Instructions

The penalties for failing to file correct Form 8971 and Schedules A with the IRS and for failing to provide correct Schedules A to beneficiaries will not apply to any failure that is shown to be **due to reasonable cause and not to willful neglect**.

In general, it must be shown that the failure was due to an event beyond the taxpayer’s control or due to significant mitigating factors. It must also be shown that the executor or other person required to file acted in a responsible manner and took steps to avoid the failure.

Penalties

Instructions

Beneficiaries who report basis in property that is inconsistent with the amount on the Schedule A may be liable for a 20 percent accuracy-related penalty under section 6662.

Final Regulations

Final Regulations

- Key revisions
  - Removing the **zero-basis** rule for unreported property
  - Modification of the reporting requirements in the case of property NOT acquired by a beneficiary before the estate tax return due date
  - Elimination the subsequent transfer reporting requirement for all beneficiaries other than trustees
  - Additional exceptions from the constant basis requirements and reporting requirements

Duration of Consistent Reporting

Final rule - Consistent basis reporting requirement applies until:

- The property is sold, exchanged, or otherwise disposed of in a recognition transaction (a like-kind exchange does not qualify)
- The property becomes includable in another decedent's gross estate

Treas. Reg. §1.1014-10(a)(3)

Adjustments

Final rule – Subsequent adjustments are required:

- Initial basis in the property may be adjusted due to operation of the Tax Code without violating the consistent basis reporting requirement

- Examples provided in the final regulations:
  - Gain recognized on distribution from the estate or trust (e.g. *Kenan* gain),
  - Adjustments for post-death capital improvements or depreciation,
  - Post-death adjustments to the basis of an S-corporation or partnership

Treas. Reg. §1.1014-10(a)(2)

Initial Basis

Final rule – Identification of Initial Basis

- The final regulations maintain the rules in the proposed regulations if a final value has been determined
- However, final regulations revise the rule if the final value of the property has not been determined

Treas. Reg. §1.1014-10(a)(2)

Property Subject to Consistency Requirement

Final rule – Consistency Requirement Applicability

- Treasury clarified that it applies to property to which Section 1014(a) applies
- Various corrections were also made to citations and terminology (these are technically non-substantive changes but could be confusing)
- Foreign tax treaty issues were also addressed

Treas. Reg. §1.1014-10(c)-(d)

Property Subject to Consistency Requirement

Final rule – Consistency Requirement Applicability

- Treasury also addressed details regarding the statutory effective date (7/31/15)
- Specifically, commentators noted it was unclear where reporting obligations applied to:
  - Returns which were due after the effective date, but filed before the effective date
  - Supplemental returns filed after the effective date when the original return was filed before the effective date
- The final regulations clarify that neither situation subjects property to the basis consistency requirements

Treas. Reg. §1.1014-10(c)(1)(ii)

Exclusions

Final rule – Consistency Requirement Applicability

- Proposed regulations provided the following exclusions:
  - Property which qualifies for the charitable or marital deduction
  - Tangible personal property not subject to an appraisal requirement
  - Cash & equivalents

- Final Regulations clarify:
  - That property subject to a partial charitable or marital deduction is subject to the basis consistency requirements
    - ➢ Examples of non-exemptions include: CRTs, CLTs, pooled income funds, partial QTIP elections, and property divided between a surviving spouse & charity
  - That household and personal effects better describes the tangible property which can be excluded

Treas. Reg. §1.1014-10(c)

Applicability

Final Rule – When Reporting is Required

- The proposed regulations provided that if an estate tax liability is payable, the consistent basis requirement applies to the entire gross estate
- The final regulations generally adopt the proposed rule, but clarify if no tax is payable, the consistent basis requirement does not apply

Treas. Reg. §1.1014-10(c)

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Finality of Value

Final Rule – Final Value

- The proposed regulations provided final value is: reported value after the statute of limitations lapses without adjustment, the value determined by the IRS, the value as determined by agreement, or the value as determined by a court

- The final regulations generally adopt the proposed regulations, except that Treasury clarifies that: protective claims and challenges must be specific to an item of property and meet specific requirements

Treas. Reg. §1.1014-10(c)(1), (d)(1)

No Finality of Estate Tax Value

- The proposed regulations provide that:
  - Later claimed basis cannot exceed reported basis
  - A deficiency may arise if the actual value at death differs from the reported basis

- The final regulations
  - Clarify that the value estate tax return (as adjusted) generally controls and a statements which vary from this does not provide a properly reported value. In other-words, an income tax deficiency may arise if the final value of the property changes on audit.
  - The final regulations also refer to Section 6664 for penalty waiver

Treas. Reg. §1.1014-10(c)(1), (d)(1)

After Discovered Omitted Property

The ZERO Basis Rule

- The proposed regulations provide that:
  - If property is omitted, the basis of the property is zero until an amended or supplement return is filed
  - If property is not reported before the period of limitation on assessment expires, the final basis of the property is zero
  - If no estate tax return is filed, the basis of the property is zero until a return is filed
- The final regulations
  - Do not adopt a specific rule regarding the basis of unreported property
  - **The "ZERO-Basis Rule" is eliminated**

Treas. Reg. §1.1014-10(c)(3)

Beneficiary Challenges

- Commentators noted that beneficiaries have no input in the event they believe the estate tax return reports an incorrect value.
- Treasury considered creating a process in response to these concerns but chose not to include it in the proposed regulations.
- The final regulations do not include such a process either, but Treasury and the IRS are considering future guidance

Information Returns & Statements

The final regulations make the following changes:

- Modify reporting for property not acquired by a beneficiary before the estate tax return due date
- **Eliminate the subsequent transfer reporting for all beneficiaries, except trustees**
- Except additional types of property interests from reporting requirements

Treas. Reg. §1.6035-1

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Zero Due Estate Tax Returns

- Reporting requirements do not apply if no estate tax return is **required** to be filed

- Examples:
  - To make a portability election
  - To make GST exemption allocations
  - To establish value and preclude adjustment

Treas. Reg. §1.6035-1

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Responsible Parties

- If an executor is unable to meet their reporting requirements due to property in a trust beyond their control, the trustee upon notification by the IRS is required to file

- If there is no executor, those actual/constructive receipt of property are subject to filing requirements

- If there are co-executors, only one must file but all are responsible for the reporting

Treas. Reg. §1.6035-1

Furnishing Statements

- The proposed regulations required that executors to furnish statements to beneficiaries which include all the property which could be used to satisfy their interest within 30-days of filing the estate tax return.

- **The final regulations require statements be furnished by January 31 of the year following acquisition by the beneficiary.**
  - However, executors may opt to furnish all statements within 30-days of filing the estate tax return
  - Furthermore, executors may opt to furnish statements before property is acquired by the beneficiary
  - Supplemental returns are required as necessary for changes and are due 30-days after the executor acquires the information

Treas. Reg. §1.6035-1

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Property for which Reporting is Required

- The final regulations note the application of Section 6035 is broader than Section 1014(f)

- The final regulations clarify
  - That property for which a marital or charitable deduction is claimed is subject to reporting
  - Only the decedent's ½ interest in community property is subject to reporting

Treas. Reg. §1.6035-1

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Excepted Property Subject to Limited Reporting

- Treasury concludes in the final regulations that the following is **NOT** included in the **cash exception** for reporting:
  - Any currency other than US dollars
  - Any payments not made in US dollars
  - Life insurance not paid in US dollars
  - Life insurance payable to a beneficiary annually or at some other interval for a period of time after death
  - Notes (other than a 453 sale)
  - Account receivable (other than IRD)
  - Digital assets

Treas. Reg. §1.6035-1

Excepted Property Subject to Limited Reporting

- 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.
- Final regulations describe these items as household and personal effects, rather than as tangible personal property
  - No further changes were made by the final regulations

Treas. Reg. §1.6035-1

Exceptions for property whose basis is unrelated to the Federal estate tax value of the property.

- The proposed regulations excepts IRD from reporting requirements as the federal estate tax value does not affect the beneficiary's basis.

- The final regulations generally except from reporting requirement property having a basis determined without regard to the estate tax value.
  - IRAs and other retirement plans are not subject to reporting.
  - Section 72 annuity contracts and 453 installment sales are not subject to reporting.
  - Property subject to Section 1014(e) is not subject to reporting.
  - However, property that consists only in part of a right to receive IRD, such as a pass-through entity, is subject to reporting.

Treas. Reg. §1.6035-1(b)(1)(ii), (f)(2)(xi)

Exceptions for property sold, exchanged, or disposed of prior to distribution

- The proposed regulations excluded from reporting property sold, exchanged or otherwise disposed of in a transaction which causes the recognition of gain or loss.

- The final regulations clarify that whether gain or loss is recognized is irrelevant (as property could be sold for fair market value, which equals its basis) and instead exclude property disposed of in a recognition transaction.

Treas. Reg. § 1.6035-1(f)(2)(x)

Exceptions for property included in the gross estate of a beneficiary

- The final regulations provide that property included in the gross estate of a beneficiary who died before the due date of the information return is also excepted from reporting (as the reported basis would be irrelevant)

Treas. Reg. § 1.6035-1(f)(2)(xiii)

Publicly Traded Securities

- Commentators suggested that information reporting was duplicative as basis reporting was already required for certain securities.

- The final regulations DO NOT adopt these suggestions as basis reporting to the IRS is not always required thereby creating an administrative burden of distinguishing what to report.

Charities and Nonresident Noncitiziens

- Commentators suggested that information reporting was unnecessary.

- The final regulations DO NOT adopt these suggestions as basis information may be relevant.

Identification of Beneficiaries

- Commentators suggested that the information reporting as proposed created confusion and complexity as the statement would be issued to a taxpayer unlikely to engage in a recognition transaction (such as issuing a statement to trust which would be distributed quickly).

- The final regulations therefore adopt a flexible rule for identifying the beneficiary to which the executor must furnish the statement.
  - Specifically, an executor may issue at statement directly to beneficiaries of trust with a copy to the trustee.

Treas. Reg. § 1.6035-1(g)(2)(i)

Identification of Beneficiaries

- Commentators as questioned whether a statement would need to be issued regarding property held by an inter vivos trust included in the gross estate. Note, in this situation the executor is not distributing the property and the trustee is not required to file a 706.

- The final regulations clarify that only when the trustee is also the executor (generally), does the trustee have a filing obligation.

Treas. Reg. § 1.6035-1(g)(2)(i)

Identification of Beneficiaries

- Commentators also requested guidance regarding how to comply with reporting requirements if a beneficiary trust (sub-trust) is not established on the due date of the information return.

- The final regulations provide that in that situation the executor must report that the beneficiary trust is not yet established, and supplemental reporting is requirement once it is.

Treas. Reg. § 1.6035-1(g)(2)(ii)

Furnishing Statements for Split-Interest Property, not in Trust

- Commentators also required guidance regarding reporting for split interests, such as for beneficiaries who receive a life estate and others who are the remainderman

- The final regulations provide that unless the contingency is satisfied ends before the executor's duty to provide supplemental statements ends the remainderman is NOT required to receive a statement.
  - ➢The regulations also clarify that only the estate tax value must be reported and the executor is not required to may any allocations amongst these type of beneficiaries.

Treas. Reg. § 1.6035-1(g)(3)

Reporting a Missing Beneficiary

- The proposed regulations addressed reporting requirements if the executor is unable to locate a beneficiary. Specifically, the “reasonable due diligence” to locate the beneficiary was required.

- The preamble to the final regulations clarify it was a refence to the executor’s duty under local law and not indented to create a new standard; the final regulations therefore remove this language.
  - ➢Instead, the final regulations require the executor to report on the information return that they were unable to locate the beneficiary and the efforts made to do so.

Treas. Reg. § 1.6035-1(g)(4)

Subsequent Transfers

- The proposed regulations imposed reporting requirements for certain subsequent transfers.

- The final regulations:
  - Do not require the reporting of subsequent transfer for *individuals.*
  - However, trustees remain subject to the obligation to furnish an information return for subsequent transfers.

Treas. Reg. § 1.6035-1(h)

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Penalties

- May commentators noted that penalties for failing to provide an information return could compound quickly in the case of many beneficiaries.

- The final regulations clarify that multiple penalties may be assessed for failing to file initial returns, subsequent returns, and furnishing incorrect statements.

- The final regulations also refer to procedures to obtain relief.

Treas. Reg. § 1.6035-1(i)

Applicability Date

- The final regulations apply to estate tax returns filed after the date the final regulations are published in the federal register **(9/17/24)**.

Treas. Reg. § 1.6035-1(i)

Thank You

https://public-inspection.federalregister.gov/2024-20429.pdf

New Final Regulations – Table of Contents

§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

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§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.

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§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 date

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§1.1014-4 Uniformity of basis; adjustment to basis.

- (a) In general.
- (b) Multiple interests.
- (c) Records.
- (d) Effective/applicability date.

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§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.

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§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.

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