

**Allocation of Increase in Basis for Property Acquired From a Decedent**

Section references are to the Internal Revenue Code unless otherwise noted.

**General Instructions**

**More information.** For more information about the latest developments on Form 8939 and its instructions, go to [www.irs.gov/form8939](http://www.irs.gov/form8939).

**Purpose of Form**

Form 8939 is an information return used by the executor (defined below) of a decedent who died in 2010:

1. To make the Section 1022 Election (see *Section 1022 Election*, later);
2. To report information about property acquired from a decedent; and
3. To allocate Basis Increase (see *Basis Increase*, later) to certain property acquired from a decedent.

For detailed information about the Section 1022 Election, see Notice 2011-66, 2011-35 I.R.B. 184, available at [www.irs.gov/pub/irs-irbs/irb11-35.pdf](http://www.irs.gov/pub/irs-irbs/irb11-35.pdf) and Notice 2011-76, 2011-40 I.R.B. 479, available at [www.irs.gov/pub/irs-irbs/irb11-40.pdf](http://www.irs.gov/pub/irs-irbs/irb11-40.pdf). For optional safe harbor guidance under section 1022, see Revenue Procedure 2011-41, 2011-35 I.R.B. 188, available at [www.irs.gov/pub/irs-irbs/irb11-35.pdf](http://www.irs.gov/pub/irs-irbs/irb11-35.pdf).

**Section 1022 Election**

The executor of an estate of a decedent who died in 2010 can elect to apply modified carryover basis treatment to property acquired from the decedent under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA). If the election is made, the estate will not be subject to federal estate tax and does not need to file a Form 706 even if the value of the estate is \$5,000,000 or more. As a result, section 1014 generally does not apply to determine the recipient's basis in property acquired from the decedent. Instead, section 1022 applies to determine the recipient's basis in most (but not all) property acquired from the decedent. This election is referred to as the Section 1022 Election.

**How to Make the Section 1022 Election**

The Section 1022 Election is made by filing a timely Form 8939. Prior filings purporting to make the Section 1022 Election must be replaced with a timely filed Form 8939. For information on when to file Form 8939, see *When to File*, later.

If there is an executor appointed, qualified, and acting within the United States, the IRS generally will accept Form 8939 only if filed by that executor. For detailed information on multiple and conflicting filings by executors who are not appointed, qualified, and acting, see Notice 2011-66, section I.A.

**Effect of Election**

If the executor makes the Section 1022 Election, special rules apply. These rules include the following.

- There is no estate tax.
- The basis of property acquired from a decedent generally is determined under the modified carryover basis rules of section 1022 and not under section 1014. Generally, the recipient's basis is the lesser of the decedent's adjusted basis or the fair market value (FMV) at the date of the decedent's death.

If the executor makes the Section 1022 Election and follows the provisions of section 4 of Revenue Procedure 2011-41, and takes no return position contrary to any provisions of section 4, the IRS will not challenge the taxpayer's ability to rely on the provisions of section 4 on either Form 8939 or any other return of tax.

**Section 1022 Election Irrevocable**

*A Section 1022 Election can not be revoked after the due date. See When to File, later.*

Generally, once the executor has made the Section 1022 Election, the election is irrevocable. However, the executor can revoke a prior Section 1022 Election on a subsequent Form 8939 filed before the due date. See *When to File*, later. To revoke the Section 1022 Election, the executor must check the box at the top of Form 8939 designated for revocation. See *Checkbox for Revoking Section 1022 Election*, later. For more information, see Notice 2011-66.

**Required Disclosure****Returns by Executors**

Generally, if the executor (defined later) makes the Section 1022 Election, the executor must report all the information required by Form 8939 and its instructions about all property acquired from the decedent (other than cash). However, for the executor of a decedent who is a nonresident not a citizen of the United States, the executor must report certain information about the property

acquired from the decedent (other than cash) that is one of the following.

1. Tangible property situated in the United States.
2. Other property acquired from the decedent by a United States person. A United States person is any of the following.
  - a. A citizen or resident of the United States.
  - b. A domestic partnership.
  - c. A domestic corporation.
  - d. Any estate other than a foreign estate. A foreign estate is an estate the income of which, from sources outside the United States that is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income.
  - e. Any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust.

**Executor.** The executor is the executor, personal representative, or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent. For detailed information on multiple or conflicting filings by executors who are not appointed, qualified, and acting, see Notice 2011-66, sections I.A. and I.B.

**Note.** For the definition of property acquired from a decedent, see *Property Acquired from a Decedent*, later.



*The executor's disclosure on Form 8939 of property acquired from the decedent does not satisfy the requirements, if applicable, to disclose foreign financial assets on Form 8938, Statement of Specified Foreign Financial Assets, or to disclose a financial interest in or signature authority over a foreign financial account by filing Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts.*

**Returns by Trustees and Beneficiaries**

If the executor is unable to make a complete return as to any property acquired from the decedent, the executor must include a description of such property and the name of every person holding a legal or beneficial interest in the property. Upon notice from the IRS, such person must file Form 8939 as to such

property. For details, see section 6018(b)(4).

## Statement to Recipients

The executor filing Form 8939 must furnish to each person whose name is required to be set forth in such return (other than the executor filing the return) a written statement showing the information required by section 6018(e) with respect to property (other than cash) acquired from the decedent to the person required to receive the statement. The executor must furnish this statement not later than 30 days after the date Form 8939 is filed.



*The statement must include information about all property (other than cash) acquired from the decedent by the recipient of the statement, whether or not the executor allocates any Basis Increase to that property.*

Use Schedule A to provide this statement to each recipient of property (other than cash) acquired from the decedent, including the following persons.

- The decedent's surviving spouse.
- The trustee of a qualified terminable interest property (QTIP) trust.
- Any charitable remainder trust the sole non-charitable beneficiary of which is the decedent's surviving spouse.
- Any other person (other than the executor filing the return) who acquires property (other than cash) from the decedent.

**Updated statements.** The executor must furnish an updated statement in the following circumstances.

- The executor files an amended or supplemental Form 8939. For details, see *Amended and supplemental returns*, and Notice 2011-66, section I.D.2.
- The IRS makes an adjustment to any tax return that affects the amounts properly reportable on Form 8939.

The executor must furnish updated statements to each affected recipient of property no later than 30 days after the executor's filing of the amended or supplemental Form 8939 or receiving notice of the adjustment from the IRS, whichever is applicable. If the property is subject to multiple interests (life estate and remainder interest), the life tenant and all holders of remainder interests are affected recipients of the property.

If the executor files an amended Form 8939 that revokes a Section 1022 Election, the executor should write "Section 1022 Election Revoked" at the top of the updated statement and send a copy to each affected recipient.

## When to File

File Form 8939 by January 17, 2012. See Notice 2011-76. For more information, see [www.irs.gov/form8939](http://www.irs.gov/form8939). Generally, the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 or an amended Form 8939 filed after the due date. However, see

*Amended and supplemental returns and Extension of time to file, later.*



*An executor is not permitted to file both an estate tax return (Form 706 or Form 706-NA) and a conditional Form 8939 that would take effect only if an estate tax audit results in an increase in the gross estate above the applicable exclusion amount in section 2010(c).*

For individuals serving in the Armed Forces of the United States or serving in support of the Armed Forces, the deadline for filing Form 8939 can be extended under section 7508. An executor filing Form 8939 after the due date under section 7508 should write "Filed Pursuant to Section 7508" at the top of the first page of the form. For details, see section 7508 and *Extension of Deadlines* in Publication 3, *Armed Forces' Tax Guide*.

For individuals living in a Presidentially declared disaster area or affected by terroristic or military action, the deadline to file Form 8939 can be postponed under section 7508A. An executor filing Form 8939 after the due date under section 7508A should write "Filed Pursuant to Section 7508A" at the top of the first page of the form. A Presidentially declared disaster is a disaster that occurred in an area declared by the President to be eligible for federal assistance under the Disaster Relief and Emergency Assistance Act.



*A list of the areas eligible for assistance under the Disaster Relief and Emergency Assistance Act is available at the Federal Emergency Management Agency (FEMA) website at [www.fema.gov](http://www.fema.gov) and at [IRS.gov](http://IRS.gov).*

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

## Extension of time to file

Generally, the IRS will not grant an extension of time to file Form 8939. However, see Notice 2011-66, section I.D.2. for limited relief provisions.

## Amended and supplemental returns

There are only a few limited circumstances where the IRS will accept an amended Form 8939. One of these circumstances is described in *Amended Form 8939 to allocate Spousal Property Basis Increase*, below. For information on other limited circumstances, see Notice 2011-66, section I.D.2. To amend or supplement a previously filed Form 8939, file an amended Form 8939 and check the box at the top of page 1 designated for amended returns. Attach a statement that identifies the schedule, line number, and item number of each amended item, the corrected or amended amount or treatment of the item, and an explanation of the reasons for the change. If the executor files an amended or supplemental Form 8939, the executor must provide updated statements to affected recipients. See *Updated statements*, earlier.

**Amended Form 8939 to allocate Spousal Property Basis Increase.** The executor can file an amended Form 8939 after the due date for the sole purpose of allocating Spousal Property Basis Increase to property eligible to receive an allocation of that basis, provided that each of the two following requirements is satisfied.

- Form 8939 must have been timely filed and must have been complete when filed except for the allocation of the full amount of the Spousal Property Basis Increase to the eligible property reported on that Form 8939.
- Each amended Form 8939 must be filed no more than 90 days after the date of the distribution of the qualified spousal property to which Spousal Property Basis Increase is allocated on that amended Form 8939.

See *Spousal Property Basis Increase*, later.

## Who Must Sign

The executor who files the return must, in every case, sign the declaration on page 1 of Form 8939 under penalties of perjury.

## Where to File

Send this return to:

Internal Revenue Service  
Estate & Gift Stop 824G  
201 W. Rivercenter Blvd.  
Covington, KY 41011



*Do not file Form 8939 with the decedent's final income tax return. Do not send Form 8939 to the same address you use for mailing the decedent's final income tax return.*

## Penalties

Section 6716 provides penalties for failing to file this return on time and for failing to provide the information required unless there is reasonable cause for the failure. Generally, the penalty is \$10,000 for each such failure. The penalty for failure to

provide the information required by section 6018(b)(2) is \$500 for each failure. The penalty for failure to provide recipients of property acquired from the decedent the information required by section 6018(e) is \$50 for each such failure. If any failure is due to intentional disregard of the requirements of section 6018, the penalty is 5% of the FMV (as of the date of death) of the property about which the information is required.

## Rounding Off to Whole Dollars

Show the money items on the return and accompanying schedules as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 cents through 99 cents to the next higher dollar.

## Assembling the Return

Attach the following to the return.

- Decedent's death certificate.
- If the decedent died testate, a certified copy of the will. If you cannot obtain a certified copy, attach a copy of the will and an explanation of why it is not certified.
- Copies of trust instruments for any trust that is shown on the return as a recipient of property acquired from the decedent.
- If the executor is appointed, a certified copy of the letters testamentary, letters of administration, or other similar evidence of the executor's authority to act.
- Appraisals used to value certain property as required under section 2031 and Rev. Proc. 2011-41, section 4.04(1).

## Property Acquired from the Decedent

Generally, section 1022 determines a recipient's basis in property, but only if the property is "acquired from the decedent." Generally, property acquired from the decedent includes the following.

1. Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent.
2. Property transferred by the decedent during the decedent's lifetime to:
  - a. A qualified revocable trust (as defined in section 645(b)(1)), or
  - b. Any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.
3. Any other property passing from the decedent by reason of death to the extent that such property passed without consideration.

**Note.** Section 1022 does not apply to a decedent's interest in a QTIP trust or similar arrangement funded for the benefit of the decedent by the decedent's predeceased spouse. A recipient's basis in this property will not be determined under section 1022.

## Income in Respect of a Decedent

Section 1022 does not apply to property that constitutes a right to receive an item of income in respect of a decedent (IRD) under section 691. The executor is not required to list property that constitutes a right to receive an item of IRD on Form 8939. Generally, IRD is income that the decedent would have received had death not occurred and that was not properly includible on the decedent's final income tax return. IRD includes the following.

- An installment obligation, reportable by the decedent on the installment method, that remains uncollected by the decedent.
- Accrued but unpaid interest on a note, certificate of deposit, or other obligation.
- Dividends declared on a share of stock before the decedent's death but payable to shareholders of record on a date after the decedent's death.

The right to receive an amount of IRD must be treated in the hands of the estate, or by the person entitled to receive that amount by bequest, devise, or inheritance from the decedent, or by reason of the decedent's death, as if it had been acquired in the same transaction as the decedent acquired that right, and must be considered as having the same character it would have had if the decedent had lived and received that amount. For more information, see Regulations section 1.691(a)-3.

### **Example: Installment Obligation.**

Decedent Tammy died in 2010 and her executor, Vince, timely makes the Section 1022 Election. Whitney, an heir of Tammy's estate, is entitled to collect an installment obligation, reported by Tammy on the installment method, that has a face value of \$100, FMV of \$80, and a basis in Tammy's hands on the date of her death of \$60. Section 1022 does not apply to the installment obligation and does not determine the estate's basis or Whitney's basis in the installment obligation.

## Property Eligible for Increase to Basis

Generally, the executor can allocate additional basis under section 1022 (up to the FMV of the property) to property acquired from the decedent that was owned by the decedent at the time of death. Property the basis of which can be increased is eligible property.



*Not all property acquired from the decedent is considered owned by decedent at the time of death.*

## Property Owned by the Decedent at the Time of Death

The basis of property acquired from the decedent can be increased by an allocation of Basis Increase (defined in *Basis Increase*, later) only if and to the extent the property was owned by the decedent at the time of death.

**Rules relating to ownership.** The following rules apply in determining

whether property was owned by the decedent at the time of death.

**Jointly held property.** If property was owned by the decedent and one or more other persons (either as joint tenants with right of survivorship or tenants by the entirety), the following rules apply.

1. If the only other person with whom the decedent owned the property is the decedent's surviving spouse, the decedent is treated as owning 50% of the property.
2. If any other person with whom the decedent owned the property is not the decedent's surviving spouse and if the decedent furnished consideration for the acquisition of the property, the decedent is treated as the owner to the extent of the portion of the property that is proportionate to the consideration furnished by the decedent.
3. If any other person with whom the decedent owned the property is not the decedent's surviving spouse and if the property was acquired by gift, bequest, devise or inheritance by the decedent and the other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the decedent is treated as owning a fractional part of the property. The fractional part of the property that the decedent is treated as owning is determined by dividing the value of the property by the number of joint tenants with right of survivorship.

**Revocable trusts.** The decedent is treated as the owner of any property that the decedent transferred to a qualified revocable trust (QRT) during his or her lifetime.

A QRT is any trust (or part of a trust) that, on the day the decedent died, was treated as owned by the decedent under section 676 by reason of a power to revoke that was exercisable by the decedent (determined without regard to section 672(e)). For this purpose, a QRT includes a trust that was treated as owned by the decedent under section 676 by reason of a power to revoke that was exercisable by the decedent with the consent or approval of a nonadverse party or the decedent's spouse. However, a QRT does not include a trust that was treated as owned by the decedent under section 676 by reason of a power to revoke that was exercisable solely by a nonadverse party or the decedent's spouse and not by the decedent. For more information, see sections 645(b) and 676 and the instructions for Form 8885, Election To Treat a Qualified Revocable Trust as Part of an Estate.

**Election not required.** No election is required for a trust to be a QRT.

**Powers of appointment.** The decedent is not treated as the owner of any property by virtue of holding a power of appointment with respect to such property.

**Community property.** Property that represents the decedent's surviving spouse's one-half share of the community property held by the decedent and his or her surviving spouse will be treated as owned by (and acquired from) the decedent if at least one-half of the whole of the community interest in such property is treated as owned by (and acquired from) the decedent under the community property laws of the state (or possession of the United States or any foreign country) that apply to the decedent.

## Property Not Eligible for Increase to Basis

Only property owned by and acquired from the decedent is eligible for allocation of Basis Increase. See *Rules relating to ownership*, earlier.

The executor cannot allocate Basis Increase to cash, whether acquired from the decedent, in exchange for property acquired from the decedent, or otherwise.

The executor cannot allocate any Basis Increase to property or proceeds acquired after the decedent's death in exchange for property acquired from the decedent. The basis of this property is determined under other applicable rules for determining basis.

Even if property acquired from the decedent was owned by the decedent at the time of death, the basis of the types of property acquired from the decedent discussed below, under *Property Acquired by the Decedent by Gift Within 3 Years of Death* and under *Stock or Securities of Certain Entities*, generally cannot be increased under section 1022. This property is ineligible property.

## Property Acquired by the Decedent by Gift Within 3 Years of Death

Generally, property that the decedent acquired by gift or lifetime transfer for less than adequate and full consideration in money or money's worth during the 3-year period ending on the date of the decedent's death is not eligible for a basis increase. However, property acquired by the decedent from the decedent's spouse during such 3-year period will generally be eligible for a basis increase, unless, during the 3-year period, the decedent's spouse acquired the property in whole or in part by gift or lifetime transfer for less than adequate and full consideration in money or money's worth.

## Stock or Securities of Certain Entities

The decedent's interest in the following types of property is not eligible for an increase in basis.

- Stock or securities of a foreign personal holding company.
- Stock of a domestic international sales corporation (DISC) or former DISC.
- Stock of a foreign investment company.
- Stock of a passive foreign investment company unless such company is a

qualified electing fund (as defined in section 1295) with respect to the decedent.

## Amount of Increase to Basis

The executor can allocate General Basis Increase (defined in *General Basis Increase*, later), and/or Spousal Property Basis Increase (defined in *Spousal Property Basis Increase*, later) to eligible property (defined earlier) but not in excess of the amount needed to increase the decedent's adjusted basis to the property's FMV as of the date of the decedent's death. The result is that, for each property, the sum of the decedent's adjusted basis in that property and the Basis Increase allocated to that property can not exceed the FMV of that property on the decedent's date of death.

The executor can allocate Basis Increase (defined in *Basis Increase*, later) to property owned by and acquired from the decedent on a property-by-property basis. For example, the executor can allocate Basis Increase to one or more shares of stock or to a particular block of stock rather than to the decedent's entire holding of that stock.

Basis Increase may not be allocated separately to a life estate and remainder interest in the same property.

## Decedent's Adjusted Basis

Generally, the adjusted basis of the property in the hands of the decedent as of the date of the decedent's death is the decedent's cost or other basis, adjusted as required by sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of Internal Revenue laws.

**Property acquired by gift.** If the decedent acquired property by gift, the decedent's adjusted basis at death is the decedent's basis determined under section 1015, adjusted as required by sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of Internal Revenue laws. The decedent's original basis under section 1015 is the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the FMV of the property at the time of the gift, then for the purpose of determining loss the basis shall be such FMV.

## Fair Market Value (FMV)

Generally, for purposes of section 1022, the FMV of property is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

## Basis Increase

Basis Increase is the sum of the General Basis Increase (defined later) and the Spousal Property Basis Increase (defined later).

## General Basis Increase

General Basis Increase is the sum of the aggregate basis increase and the carryovers/unrealized losses increase. However, for a decedent who was neither a resident nor citizen of the United States, the General Basis Increase is limited to the Aggregate Basis Increase (limited as described below).

## Aggregate Basis Increase

Aggregate Basis Increase is \$1,300,000. However, for a decedent who was neither a resident nor citizen of the United States, the Aggregate Basis Increase is \$60,000.

## Carryovers/Unrealized Losses Increase

Carryovers/Unrealized Losses Increase is the sum of the following three items.

1. The amount of any capital loss carryovers under section 1212(b) that would (but for the decedent's death) be carried from the decedent's last taxable year to a later tax year. See *Carryforwards*, below.
2. The amount of any net operating loss (NOL) carryovers under section 172 that would (but for the decedent's death) be carried from the decedent's last taxable year to a later tax year. See *Carryforwards*, below.
3. The amount of any losses that would be allowable under section 165 if the property acquired from the decedent had been sold at FMV immediately before the decedent's death ("unrealized losses"). See *Unrealized Losses*, later.

**Note.** The amount of any losses that would be allowable under section 165 is determined based on a hypothetical sale and does not require an actual sale of property.



*For any decedent who was neither a citizen nor resident of the United States the amount of the Carryovers/Unrealized Losses Increase is zero.*

## Carryforwards

The Carryovers/Unrealized Losses Increase includes any capital loss carryovers under section 1212(b) and the NOL carryovers under section 172 that would (but for the decedent's death) be carried forward to tax years after the decedent's last tax year.

**Capital loss.** The capital loss carryforward included in the Carryovers/Unrealized Losses Increase is the amount of any capital loss carryforward that would (but for the decedent's death) be carried to a tax year of the decedent after the decedent's last tax year. Generally, you can figure the decedent's capital loss carryforward using the *Capital Loss*

Carryover Worksheet in the Instructions to Schedule D (Form 1040).

Existing income tax rules will apply to determine the decedent's share of a capital loss carryforward under section 1212(b) if the decedent's final Form 1040 is filed jointly with the decedent's surviving spouse. For rules about a capital loss carryforward arising from community property, see sections 4.05 and 4.06(4) of Rev. Proc. 2011-41.

**Net operating loss (NOL).** The NOL carryovers under section 172 included in Carryovers/Unrealized Losses Increase are the losses that would (but for the decedent's death) carry forward to tax years after the decedent's last tax year.



*An NOL arising in the decedent's final tax year must be carried back and used in the applicable 2-year, 3-year, 5-year, or 10-year carryback period unless the carryback period is waived on the decedent's final income tax return by attaching a statement showing that the carryback period is waived. See Waiving the Carryback Period in Publication 536.*

Existing income tax rules will apply to determine the decedent's share of the NOL carryovers under section 172 if the decedent's final Form 1040 is filed jointly with the decedent's surviving spouse. For rules about NOL carryovers arising from community property, see sections 4.05 and 4.06(4) of Rev. Proc. 2011-41.

### Unrealized Losses

The amount of unrealized losses included in the Carryovers/Unrealized Losses Increase is the amount that would have been allowable as a deduction under section 165 if the property acquired from the decedent had been sold at FMV immediately before the death of the decedent. The amount of losses that would have been allowable as a deduction under section 165 is limited to losses incurred in a trade or business and losses incurred in any transaction entered into for profit, though not connected with a trade or business.

Certain limitations on the allowance of losses may apply. For example, no deduction is allowable for a loss sustained on any registration-required obligation not in registered form. For more information, see section 165(j) and Regulations section 1.165-12.

Figure the unrealized losses that can be included in the General Basis Increase without regard to the limitation in section 165(f) on the allowance of losses from the sale or exchange of capital assets. The amount of any loss that would have been allowable under section 165 if the property acquired from the decedent had been sold at FMV immediately before the decedent's death is determined without the dollar limitations on capital losses under section 1211.

For rules about unrealized losses arising from community property, see

sections 4.05 and 4.06(4) of Rev. Proc. 2011-41.

### Spousal Property Basis Increase

Spousal Property Basis Increase is \$3,000,000.

Generally, the executor can allocate Spousal Property Basis Increase only to qualified spousal property that was both acquired from and owned by the decedent.

**Qualified spousal property.** Qualified spousal property means:

- Outright transfer property; and
- Qualified terminable interest property.

**Outright transfer property.** For purposes of the Spousal Property Basis Increase, outright transfer property means any interest in property acquired from the decedent by the decedent's surviving spouse. Outright transfer property does not include an interest passing to the surviving spouse that, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, will terminate or fail:

1. If both:
  - a. An interest in such property passes or has passed (for less than adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and
  - b. By reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse; or

2. If such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of the exception described in the preceding sentence, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

For purposes of whether property is outright transfer property, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if both of the following two conditions are met.

- The spouse's death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event.
- Such termination or failure does not in fact occur.

**Qualified terminable interest property (QTIP).** For purposes of the Spousal Property Basis Increase, QTIP is property that passes from the decedent and in which the surviving spouse has a qualifying income interest for life. The surviving spouse has a qualifying income interest for life if both of the two following conditions are met.

1. The surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property.
2. No person has a power to appoint any part of the property to any person other than the surviving spouse.

Item 2, above, shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

**Special Rules.** For purposes of the Spousal Property Basis Increase, the following rules apply.

- The term "property" includes an interest in property.
- A specific portion of property is treated as separate property. For this purpose, "specific portion" only includes a portion determined on a fractional or percentage basis.

The executor also can allocate Spousal Property Basis Increase to the following.

1. Property held by a testamentary charitable remainder trust (CRT) as defined in section 664 (subject to the limitation of section 1022(d)), if the surviving spouse is the sole non-charitable beneficiary of the CRT and the CRT would have qualified for the marital deduction under section 2056(b)(8) if the decedent's executor had not made the Section 1022 Election.

2. Property that is sold before being distributed. However, this allocation can be made only to the extent that the executor:

- a. Certifies on Form 8939 that the net proceeds from the sale of that property will be distributed to or for the benefit of the decedent's surviving spouse in a manner that would qualify property as qualified spousal property, and
- b. Attaches to Form 8939 each document providing a bequest or devise to the surviving spouse.

For more information, see Rev. Proc. 2011-41, section 4.02(3).

For detailed information on how to report the property described in item 2, see the specific instructions for Schedule A, line 4, column (e)(i) and (e)(ii).

## Specific Instructions

### Checkbox for Amended Return

If this is an amended or supplemental return, check the box for an amended return. If the amended return is filed under Regulations section 301.9100-2, also write "FILED PURSUANT TO SECTION 301.9100-2" at the top of the return.

### Checkbox for Revoking Section 1022 Election

If this Form 8939 revokes a previous Section 1022 Election made on an earlier Form 8939, check the box for revocation of an election.

### Decedent's Name and Address

Enter the decedent's name and address.

### Line 2. Decedent's Social Security Number

If the decedent was a nonresident or resident alien and did not have and was not eligible to get a social security number (SSN), the executor must apply for an individual taxpayer identification number (ITIN) on behalf of the decedent. For details on how to do so, see Form W-7 and its instructions. It takes 6 to 10 weeks to get an ITIN. If the decedent already had an ITIN, enter it wherever the decedent's SSN is requested on Form 8939.

**Note.** An ITIN is for tax use only. It does not entitle the holder to social security benefits or change the holder's employment or immigration under U.S. law.

### Line 6a. Executor's Name

If there is more than one executor, enter the name of the executor filing this Form 8939. List the other executors' names, addresses, and SSNs (if applicable and if known) on an attached sheet.

### Line 6c. Executor's Social Security Number

Only individual executors should complete this line. If there is more than one individual executor, all should list their SSNs on an attached sheet.

### Line 9. Names of Recipients

Enter the name of each recipient, other than the decedent's surviving spouse, of property acquired from the decedent.

### Line 10. Built-in Loss

Enter the aggregate amount of any losses that would have been allowable under section 165 if the property acquired from

the decedent had been sold at FMV immediately before the decedent's death. In the case of a decedent who was a nonresident not a citizen of the United States, enter zero. For more information, see *Unrealized Losses*, earlier.

### Line 11. Capital Loss Carryforward

Enter the aggregate amount of any capital loss carryforward under section 1212(b) that would (but for the decedent's death) have been carried from the decedent's last tax year to a later tax year of the decedent. In the case of a decedent who was a nonresident not a citizen of the United States, enter zero. For more information, see *Carryforwards*, earlier.

### Line 12. Net Operating Loss Carryforward

Enter the aggregate amount of any NOL carryover under section 172 that would (but for the decedent's death) have been carried from the decedent's last tax year to a later tax year of the decedent. In the case of a decedent who was a nonresident not a citizen of the United States, enter zero. For more information, see *Carryforwards*, earlier.

You can use Schedule A of Form 1045, Application for Tentative Refund to figure the amount, if any, of the decedent's NOL.

#### Line 12a.

Add lines 10, 11, and 12. This line 12a is the amount of the Carryovers/Unrealized Losses Increase.

#### Line 12b.

For nonresident decedents who were not United States citizens, enter \$60,000. For all others, enter \$1,300,000.

### Line 12c. General Basis Increase

Add lines 12a and 12b. This line 12c is the total General Basis Increase that is available to allocate to property acquired from and owned by the decedent.

### Line 13.

Enter the sum of the totals from all Schedules A, line 4B, column (e)(i) on this line. This total may not exceed the amount listed on line 12c.

### Line 14.

Enter the total from each Schedule A, line 4B, column (e)(ii) on this line. This total may not exceed \$3,000,000.

## Schedule A

Complete a separate Schedule A—Disclosure of Property Acquired From the Decedent (and Recipient Statement) for each recipient of property acquired from the decedent, including each of the following.

- The decedent's estate.
- The decedent's surviving spouse, if any.
- Any QTIP or other trust.
- Each other person who acquires property from the decedent by bequest, devise, inheritance, or otherwise by reason of the death of the decedent to the extent that such property passed without consideration.

Each property or interest in property required to be disclosed on Form 8939 must be reported on a Schedule A.

### **Multiple and partial interests in property.**

For an undivided or fractional interest in property held by and received from the decedent by the recipient listed on line 2a, describe only the undivided or fractional interest. For a life estate or remainder interest in property, where the partial interest received by the recipient listed on line 2a was created by the bequest or devise made by the decedent, however, Basis Increase may be allocated only to the entire property owned by the decedent. Therefore, assuming the decedent's adjusted basis in the entire property is less than the FMV of the property at the date of death, describe the undivided interest in property (including the decedent's adjusted basis, the property's FMV at the date of death, and the amount of Basis Increase allocated by the executor) on an attachment to Line 4 or in column (a) of Line 4. Also include in this description the applicable section 7520 rate, the life tenant's age, and the recipient's actuarial factor at the decedent's date of death. Compute the recipient's portion of adjusted basis, FMV, and basis increase allocation (allocated on an actuarial basis between the income and the remainder interests), and list the recipient's share of each in columns (b) through (f) on line 4.

**Note.** For property transferred in trust with an income and remainder interest, the trust is considered the sole recipient of the property.

**Example.** Donald died on October 10, 2010, owning real property. Donald originally acquired the property on December 10, 2007. As of Donald's date of death, the property has an FMV of \$967,000 and an adjusted basis of \$425,000. Donald devised the property to Larry for life, with remainder to Rachel. At the time of Donald's death, Larry is 48 years old. The section 7520 rate for October 2010 is 2.0 percent. Donald's executor, Edward, makes the Section 1022 Election by timely filing Form 8939. Edward allocates \$542,000 of General Basis Increase to the property. See *Attachment to Larry's Schedule A*, on the next page and *Attachment to Rachel's Schedule A*, later.

### Line 1a—Executor's Name

Enter the name of the executor shown on line 6a of Form 8939.

ATTACHMENT TO LARRY'S SCHEDULE A:

Description: Real Property located at 1234 South Avenue, City, State.

Date Decedent Acquired Property: 12/10/2007  
 Adjusted basis at decedent's death: \$425,000  
 FMV at decedent's death: \$967,000  
 General Basis Increase allocated by executor: \$542,000  
 Spousal Property Basis Increase allocated by executor: \$0

Section 7520 Rate for October 2010: 2.0%  
 Life Tenant's (Larry) Age: 48  
 Life Estate Factor (from Table S of §20.2031-7(d)): 0.45045

Computation of Actuarial Interest

Adjusted Basis: \$425,000 X 0.45045 = \$191,441  
 FMV: \$967,000 X 0.45045 = \$435,585  
 General Basis Increase: \$542,000 X 0.45045 = \$244,144  
 Spousal Property Basis Increase: \$0 X 0.45045 = \$0

LARRY'S SCHEDULE A: Line 4

Item No.	(a) Description of property	(b) Date decedent acquired property	(c) Adjusted basis at death	(d) FMV at death	(e)* Allocation of basis increase		(f) Amount of gain that would be ordinary income
					(i) General basis increase	(ii) Spousal property basis increase	
1	Life interest in real property located at 1234 South Avenue, City, State	12/10/2007	\$191,441	\$435,585	\$244,144	<input type="checkbox"/> \$0	\$0
						<input type="checkbox"/>	
						<input type="checkbox"/>	
						<input type="checkbox"/>	

**Line 2a—Name and Address of Recipient**

Enter the name and address of the recipient of the property acquired from the decedent reported on this Schedule A.

**Line 2b—Recipient's Taxpayer Identification Number**

If the person named in line 2a is an individual, enter the SSN or ITIN, as applicable, of that individual. If the person named in line 2a is a corporation, partnership, trust, estate, or other entity, enter the entity's employer identification number (EIN).

**Line 3—Property Acquired from the Decedent with Adjusted Basis Greater Than or Equal to FMV**

List each item of property (other than cash) acquired from the decedent by the person listed on line 2a the basis of which at the time of death is greater than or equal to its FMV at the date of death. Number each item of property in the left-hand column.

**Column (a). Description of the Property.** For each item of property acquired from the decedent, accurately describe the property received by the

person named on line 2a. The following guidelines can be used in describing the property.

- *Real property.* Describe the real estate in enough detail so that the property could be easily located.

1. For each parcel of real estate, report the area.
2. For city or town property, report the street and number, ward, subdivision, block and lot, etc.
3. For rural property, report the township, range, landmarks, etc.

- *Stocks.* For stocks, list:

1. The number of shares;
2. The exact name of corporation; and
3. The principal exchange upon which sold, if listed on an exchange.

- *Bonds.* For bonds, list:

1. The quantity and denomination;
2. The name of obligor;
3. Date of maturity;
4. Interest rate;
5. Interest due date; and
6. The principal exchange, if listed on an exchange.

- *Tangible personal property.* Accurately describe any tangible personal property (for example, works of art, jewelry, furs, silverware, books, statuary, vases,

oriental rugs, coin or stamp collections) received by the person listed on line 2a in enough detail so that such property could be easily identified by its description.

**Column (b). Date Decedent Acquired the Property.** For each item of property, enter the date the decedent acquired the property. If the actual date of acquisition is not known, and cannot be determined after reasonable inquiry, enter the approximate date of acquisition and write "approximate" after the date.

**Column (c). Adjusted Basis at Death.** For each item of property, enter the adjusted basis of the property as of the date of the decedent's death. See *Decedent's Adjusted Basis*, earlier, for more details.

**Column (d). FMV at Death.** For each item of property, enter the FMV of the property as of the date of the decedent's death. See *Fair Market Value (FMV)*, earlier, for more information.

**Column (e). Ordinary Gain.** For each item of property, enter the maximum amount of gain, if any, that would be ordinary. Attach a statement detailing how you figured the amount of gain that would be ordinary.

ATTACHMENT TO RACHEL'S SCHEDULE A:

Description: Real Property located at 1234 South Avenue, City, State.

Date Decedent Acquired Property: 12/10/2007

Adjusted basis at decedent's death: \$425,000

FMV at decedent's death: \$967,000

General Basis Increase allocated by executor: \$542,000

Spousal Property Basis Increase allocated by executor: \$0

Section 7520 Rate for October 2010: 2.0%

Life Tenant's (Larry) Age: 48

Life Estate Factor (from Table S of §20.2031-7(d)): 0.54955

Computation of Actuarial Interest

Adjusted Basis: \$425,000 X 0.54955 = \$233,559

FMV: \$967,000 X 0.54955 = \$531,415

General Basis Increase: \$542,000 X 0.54955 = \$297,856

Spousal Property Basis Increase: \$0 X 0.54955 = \$0

RACHEL'S SCHEDULE A: Line 4

Item No.	(a) Description of property	(b) Date decedent acquired property	(c) Adjusted basis at death	(d) FMV at death	(e)* Allocation of basis increase		(f) Amount of gain that would be ordinary income
					(i) General basis increase	(ii) Spousal property basis increase	
1	Remainder interest in real property located at 1234 South Avenue, City, State	12/10/2007	\$233,559	\$531,415	\$297,856	<input type="checkbox"/> \$0	\$0
						<input type="checkbox"/>	
						<input type="checkbox"/>	
						<input type="checkbox"/>	

**Line 4—Property Acquired from the Decedent With Adjusted Basis Less Than FMV**

List each item of property (other than cash) acquired from the decedent by the person listed on line 2a the basis of which at the time of death is less than its FMV at the date of death.

Number each item of property in the left-hand column. Four categories of property can be reported here.

- Property that receives an allocation of both General Basis Increase in column (e)(i) and also Spousal Property Basis Increase in column (e)(ii).
- Property that receives only an allocation of Spousal Property Basis Increase in column (e)(ii).
- Property that receives only an allocation of General Basis Increase in column (e)(i).
- Property that receives no allocation of increase to basis.

Do not include in column (e)(i) or (e)(ii) of line 4 any adjustments to basis other than adjustments to basis under section 1022(b) or (c). For example, do not include in column (e)(i) or (e)(ii) any adjustments to basis required or

permitted under sections 469, 1016, or 2654.

**Column (a). Description of the property.** For each item of property acquired from the decedent, accurately describe the property received by the person listed on line 2a. Use the guidelines discussed under the instructions to line 3, column (a), earlier.

If the property is property in which the surviving spouse acquires a qualified terminable interest, include a description of the spouse's interest in the property and include the designation "QTIP" in the description of the property.

If the property is any of the kinds of property listed under *Property Not Eligible for Increase to Basis* earlier, include sufficient information to identify the kind of ineligible property and the designation "Ineligible Property" in the description of the property. Attach a statement that lists the item number from Schedule A, Line 4 and an explanation as to why the property is ineligible for a basis increase.

If the item of property acquired from the decedent is treated as not having been owned by the decedent at the time of death, so state. If the item of property acquired from the decedent is treated as

having been owned by the decedent at the time of death to the extent provided in rule 2 or rule 3 under *Jointly held property*, earlier, attach a statement and show how the extent of the decedent's ownership is figured.

**Column (b). Date decedent acquired the property.** For each item of property, enter the date the decedent acquired the property. If the actual date of acquisition is not known, and cannot be determined after reasonable inquiry, enter the approximate date of acquisition and write "approximate" after the date.

**Column (c). Adjusted basis at death.** For each item of property, enter the adjusted basis of the property as of the date of the decedent's death. See *Decedent's Adjusted Basis*, earlier, for more details.

**Column (d). FMV at death.** For each item of property, enter the FMV of the property as of the date of the decedent's death. See *Fair Market Value (FMV)*, earlier, for more information.

**Column (e)(i). Basis Increase allocated to property.** List the amount of General Basis Increase (as defined in Rev. Proc. 2011-41, section 4.02(2)) allocated to the property described in column (a).

Do not include in column (e)(i) any adjustments to basis other than those provided for in section 1022(b).

**Column (e)(ii). Spousal Property Basis Increase allocated to property.** List the amount of Spousal Property Basis Increase (as defined in Rev. Proc. 2011-41, section 4.02(2)) allocated to the property described in column (a).

Do not include any adjustments to basis other than those provided for in section 1022(c) or in Rev. Proc. 2011-41, section 4.02(3).



*Spousal Property Basis Increase may be allocated only to qualified spousal property, except as otherwise provided in Rev. Proc. 2011-41, section 4.02(3).*

If column (e)(ii) includes an allocation of Spousal Property Basis Increase to property that is sold (regardless of whether the allocation of Spousal Property Basis Increase is made before or after such sale) instead of being distributed to or for the surviving spouse, check the box in column (e)(ii). Attach a statement identifying the property by item number and showing how the allocation of Spousal Property Basis Increase complies with the rules of Rev. Proc. 2011-41, section 4.02(3).

Attach this statement to the Schedule(s) A that show the property to which Spousal Property Basis Increase is allocated. Also, attach to such schedules each document providing a bequest or devise to the surviving spouse.

**Column (f). Ordinary gain.** Enter in column (f) the maximum amount of gain, if any, that would be treated as ordinary income. Attach a statement including the item number from line 4, showing how you figured the amount of gain that would be ordinary and providing sufficient information to figure this amount on any subsequent sale, exchange, or other disposition.

## Line 4B—Total Allocation of Basis Increase

Add column (e)(i) and (e)(ii) and place the sum on line 4B. The sum of line 4B, column (e)(i) of all Schedules A may not exceed the amount on line 12c, General Basis Increase, on page 1. Enter the sum of line 4B, column (e)(i) from all Schedules A on line 13 of page 1. Enter the sum of line 4B, column (e)(ii), from all Schedules A on line 14, of page 1.

## Schedules R and R-1—GST Exemption

### Introduction and Overview

Schedule R is used to allocate the generation-skipping (GST) exemption. Schedule R-1 is used to inform the trustee of certain trusts of the amount of GST exemption allocated to such trusts. Because the GST tax rate for 2010 is zero, these schedules are not used to compute the GST tax. For certain

definitions and general rules that may be applicable, see the instructions to Schedule R in the instructions to Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

### How To Complete Schedules R and R-1

**Valuation.** Enter on Schedules R and R-1 the FMV of the property interests subject to the GST tax.

### How To Complete Schedule R

#### Part 1. GST Exemption Reconciliation

Part 1, line 8, Part 2, line 4, and line 4 of Schedule R-1 are used to allocate the decedent's GST exemption. This allocation is made by filing Form 8939 and attaching a completed Schedule R and/or R-1. Once made, the allocation is irrevocable. You are not required to allocate all of the decedent's GST exemption. However, the portion of the exemption that you do not allocate will be allocated by the IRS under the deemed allocation at death rules of section 2632(e).

For transfers made through 1998, the GST exemption was \$1,000,000. Beginning in 2010, the GST exemption is \$5,000,000; however, the tax rate on generation-skipping transfers made in 2010 is 0%. The exemption amounts for 1999 through 2009 are as follows:

Year of transfer	GST exemption
1999	1,010,000
2000	1,030,000
2001	1,060,000
2002	1,100,000
2003	1,120,000
2004 and 2005	1,500,000
2006, 2007, and 2008	2,000,000
2009	3,500,000

The amount of each increase can only be allocated to transfers made (or appreciation that occurred) during or after the year of the increase. The following example shows the application of this rule:

**Example.** In 2003, G made a direct skip of \$1,120,000 and applied her full \$1,120,000 of GST exemption to the transfer. G made a \$450,000 taxable direct skip in 2004 and another of \$90,000 in 2006. For 2004, G can only apply \$380,000 of exemption (\$380,000 inflation adjustment from 2004) to the \$450,000 transfer in 2004. For 2006, G can apply \$90,000 of exemption to the 2006 transfer, but nothing to the transfer made in 2004. At the end of 2006, G would have \$410,000 of unused exemption that she can apply to future transfers (or appreciation) starting in 2007.

**Line 2.** These allocations will have been made either on Forms 709 filed by the decedent or on Notices of Allocation made by the decedent for *inter vivos*

transfers that were not direct skips but to which the decedent allocated the GST exemption. These allocations by the decedent are irrevocable.

Also include on this line allocations deemed to have been made by the decedent under the rules of section 2632. Unless the decedent elected out of the deemed allocation rules, allocations are deemed to have been made in the following order:

1. To *inter vivos* direct skips and
2. Beginning with transfers made after December 31, 2000, to lifetime transfers to certain trusts, by the decedent, that constituted indirect skips that were subject to the gift tax.

For more information, see section 2632.

**Line 3.** Make an entry on this line if you are filing Form(s) 709 for the decedent and wish to allocate any exemption. See Notice 2011-66, section II.B. for special rules regarding *inter vivos* direct skips occurring during 2010.

**Lines 4 and 5.** These lines represent your allocation of the GST exemption to direct skips made by reason of the decedent's death. Complete Part 2 and Schedule R-1 before completing these lines.

**Line 8.** Line 8 is used to allocate the remaining unused GST exemption (from line 7) and to help you compute the trust's inclusion ratio. Line 8 is a Notice of Allocation for allocating the GST exemption to trusts as to which the decedent is the transferor and from which a generation-skipping transfer could occur after the decedent's death.

If line 8 is not completed, the deemed allocation at death rules will apply to allocate the decedent's remaining unused GST exemption, first to property that is the subject of a direct skip occurring at the decedent's death, and then to trusts as to which the decedent is the transferor. If you wish to avoid the application of the deemed allocation rules, you should enter on line 8 every trust (except certain trusts entered on Schedule R-1, as described below) to which you wish to allocate any part of the decedent's GST exemption. Unless you enter a trust on line 8, the unused GST exemption will be allocated to it under the deemed allocation rules.

If a trust is entered on Schedule R-1, the amount you entered on line 4 of Schedule R-1 serves as a Notice of Allocation and you need not enter the trust on line 8 unless you wish to allocate more than the Schedule R-1, line 4 amount to the trust. However, you must enter the trust on line 8 if you wish to allocate any of the unused GST exemption amount to it. Such an additional allocation would not ordinarily be appropriate in the case of a trust entered on Schedule R-1 when the trust property passes outright (rather than to another trust) at the decedent's death.



To avoid application of the deemed allocation rules, Schedule R should be filed to allocate the exemption to trusts that may later have taxable terminations or distributions under section 2612 even if the form is not required to be filed to report GST tax.

**Line 8, column C.** Enter the GST exemption included on lines 2 through 5 of Part 1 of Schedule R, and discussed above, that was allocated to the trust.

**Line 8, column D.** Allocate the amount on line 7 of Part 1 of Schedule R in line 8, column D. Value the trust as of the date of death. You should inform the trustee of each trust listed on line 8 of the total GST exemption you allocated to the trust. The trustee will need this information to compute the GST tax on future distributions and terminations.

**Line 8, column E. Trust's inclusion ratio.** The trustee must know the trust's inclusion ratio to figure the trust's GST tax for future distributions and terminations. You are not required to inform the trustee of the inclusion ratio and may not have enough information to compute it. Therefore, you are not required to make an entry in column E. However, column E and the worksheet below are provided to assist you in computing the inclusion ratio for the trustee if you wish to do so.

You should inform the trustee of the amount of the GST exemption you allocated to the trust. Line 8, columns C and D may be used to compute this amount for each trust.

**Note.** This worksheet will compute an accurate inclusion ratio only if the decedent was the only settlor of the trust. You should use a separate worksheet for each trust (or separate share of a trust that is treated as a separate trust).

**WORKSHEET (inclusion ratio):**

- 1 Total FMV of all of the property interests that passed to the trust \_\_\_\_\_
- 2 State death taxes and other charges actually recovered from the trust . . . . . \_\_\_\_\_
- 3 Subtract line 2 from line 1 . . . . . \_\_\_\_\_
- 4 Add columns C and D of line 8 . . . . . \_\_\_\_\_
- 5 Divide line 4 by line 3 . . . . . \_\_\_\_\_
- 6 Trust's inclusion ratio. Subtract line 5 from 1.000 . . . . . \_\_\_\_\_

**How To Complete Schedule R-1**

**Line 4.** Do not enter more than the amount on line 3. If you wish to allocate an additional GST exemption, you must use Schedule R, Part 1. Making an entry on line 4 constitutes a Notice of Allocation of the decedent's GST exemption to the trust.

**Filing Schedule R-1.** Attach to Form 9939 one copy of each Schedule R-1 that you prepare. Send two copies of each Schedule R-1 to the fiduciary.

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. Subtitle A and section 6109, and the regulations require you to provide this information.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose information from this form in certain circumstances. For example, we may disclose information to the Department of

Justice for civil or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths or possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information, or providing false information, may subject you to penalties.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated average times are:

- Recordkeeping** . . . . . 20 hrs., 34 min.
- Learning about the law or the form** . . . . . 8 hrs., 37 min.
- Preparing the form** . . . . . 19 hrs., 34 min.
- Copying, assembling, and sending the form to the IRS** . . . . . 2 hrs., 57 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File*.