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Estate Planning - Carryover Basis For Spousal Property

The federal estate tax rules have traditionally been very favorable to married couples. Under traditional federal estate tax rules, an unlimited marital deduction was allowed to the estates of decedents for property passing to a surviving spouse. Additionally, the traditional rules exempted from federal estate tax an amount equal to the applicable exclusion amount then in effect. However, because of recent changes in the federal tax laws, the traditional rules do not apply to estates of decedents dying in 2010 unless Congress decides otherwise.

As of January 1, 2010, the federal estate tax is abolished for decedents dying after December 31, 2009 and before January 1, 2011. In its place, are carryover basis at death rules. The carryover basis treatment includes special rules for spousal property.

Effective for property acquired from a decedent dying after December 31, 2009 and before January 1, 2011, the income tax basis of the property will generally be carried over from the decedent. This means that the recipient will take on the tax basis of the decedent. However, there are two separate basis increase provisions that are generally available for property passing from decedents.

First, the executor can generally step up the basis of assets of the executor's choosing by a total of \$1.3 million. Second, for properties passing to the decedent's surviving spouse, an additional \$3 million in basis step-up is available. In order for the \$3 million spousal property basis to be available, the property transferred to the surviving spouse must be qualified spousal property. The rules are complex. Our office can help you navigate them.

As mentioned, the carryover basis rules for 2010 may be short lived. That's because Congress is expected to revive the pre-carryover basis rules (as they existed in 2009) and make them retroactive to January 1, 2010. However, it is not clear when Congress will act. The House passed a bill extending the 2009 federal estate tax through 2010 in December 2009 but the Senate has yet to take up the bill.

All of this uncertainty has made estate tax planning very challenging.

Please contact our office. We can review your existing estate plans and discuss in more detail the carryover basis rules. 1-866-657-0246 or jwaage@strategiclawgroup.com