

# ALERT



Trusts and Estates Practice Group

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## INCOME TAX BASIS RULE CHANGES FOR 2010:

Spring 2010

### *Absence of Federal Estate Tax for 2010 Requires Review of Estate Plans for Income Tax Savings.*

Back in 2001 Congress enacted legislation that would suspend the federal estate tax for 2010. As part of the law suspending the federal estate tax, Congress also changed the way in which the income tax basis is calculated upon a property owner's death. Under pre-2010 law, a beneficiary would not recognize any gain on an immediate sale of inherited property as the income tax basis in such property would be "stepped-up" to the fair market value of the property included in a decedent's estate as of a decedent's date of death. For decedent's dying in 2010, Congress has replaced the step-up basis rules with the "carry-over" basis rules.

Under the carry-over basis rules, basis is the lesser of (i) the decedent's existing basis, or (ii) the fair market value of the property on the decedent's date of death. Any appreciated property would be subject to capital gain tax upon a sale by a beneficiary. However, there are two exceptions to this carry-over basis method. First, an executor of an estate can allocate up to \$1.3 million worth of new income tax basis to appreciated assets in the estate. Second, for property passing to a decedent's spouse, either outright or in a marital trust, the executor of an estate can allocate up to \$3 million worth of new income tax basis.

While most estate plans provide a formula for allocating assets to maximize each individual's estate tax exemption, these plans do not address these income tax basis allocations. We are recommending that clients review their estate plan to determine the necessity of addressing this change. **The proper allocation of basis could be worth as much as \$600,000 in capital gain income tax savings;** more if capital gain income tax rates rise in the future.

To address this issue, we will review your estate plan to determine the need to make a temporary amendment to address this income tax issue. The cost to prepare the necessary amendments is estimated to be approximately \$300.

If you would like us to prepare this Amendment, or would like to schedule a time to review your entire estate plan, please contact us at (316) 631-3131.

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*Clients should amend their estate plans to affirmatively allocate statutorily-provided income tax basis.*

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