

How the 2010 Tax Relief Act Affects the Basis of Assets.

Along with the amount of the federal estate tax exemption and the applicable rate of tax, the basis rules for estate assets were similarly unsettled this past year. Under the 2001 legislation, assets owned by decedents dying through 2009 received a full step-up in basis to fair market value (thereby eliminating pre-death gain) while 2010 estate assets were subject to a modified carry-over basis system which capped the step-up at \$1.3 million of gain (plus an additional \$3 million for a surviving spouse). 2011 returned the basis rules to full step-up.

The 2010 Tax Relief Act clarifies that estate assets will receive a full step-up in basis. This factor can be important for 2010 decedent=s estate who have the option to choose whether to apply the new rules to the estate. That is, 2010 decedents have a \$5 million federal estate tax exemption with full step-up in basis unless the estate=s representative affirmatively elects to opt-out and apply the 2001 legislation rules (repeal of the federal estate tax coupled with modified carry-over basis rules).