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Analyzing the 2010 Election Not to Incur the Federal Estate Tax

Relevant Statutes and Act Sections
- §301 of Tax Relief, Unemployment Insurance Reauthorization & Job Creation Act of 2010 ("2010 Act") - Reinstatement of estate tax and repeal of carryover basis
- §301(c) of 2010 Act - Special election for 2010 deaths
- §301(d) of 2010 Act - Extension of reporting requirements and disclaimers
- IRC §121 - Excludes up to $250,000 of gain ($500,000 for married taxpayers filing jointly) on the sale of a home.
- IRC §691(c) - Income tax deduction for the estate tax paid
- IRC §1014 - Traditional Step-up Basis
- IRC §1022(b) & (c) Allows a basis adjustment of $1.3 million for qualifying property
- IRC §1022(c) Allows a basis adjustment of an additional $3 million for qualifying property passing to a spouse
- IRC §2505 - Unified credit against gift tax
- IRC §2518 - Disclaimer Provisions
- IRC §2010 - Unified credit against estate tax & portability between spouses
- IRC §2001 - Estate tax rate
- IRC §2502 - Gift tax rate
- IRC §2641 - GST tax rate
- IRC §2631 - GST exemption

Estate Tax Applies with Full Step-up
1. Calculate estate tax liability at first death
2. Calculate estate tax at spouse’s death
3. Compute the present value of the §691(c) deduction
4. Add 1 and 2 and subtract 3 for total of the estate and income tax liability
   a. Include all credits
   b. Include marital, charitable and other deductions

Election Out with Carryover Basis
1. Apportion basis step-up to assets
   a. Single decedent
   b. Married decedents
2. Determine tax rates and holding periods
3. Calculate future income tax liability
4. Discount future income tax liability using appropriate discount rate
5. Calculate estate tax at spouse’s death
6. Add 4 and 5 for total tax liability

2010 Election Break-even Point
Factors
- $X = Gross estate
- $Xb = Cost basis of gross estate
- Y = Estate tax exemption
- $Z = Modified carryover basis increase
- $R = Estate tax rate
- $Rb = Income tax/capital gains tax rate

Formula

\[(X - Y) \times R = (Xb - X - Z) \times Rb\]

Keep yourself abreast of the changes and your clients’ assets protected!
Now that either the estate tax rules or those governing carryover basis can be elected for the estates of decedents dying in 2010, it’s essential to determine the best plan for your clients and document how you applied the calculation. CCH® Carryover Basis Answers provides the trusted expertise and practical assistance of industry leaders to guide you in developing effective wealth transfer strategies for your clients.

Learn more about this product, call 888-CCH-REPS (888-234-7377) or visit CCHGroup.com

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