



TaxNewsFlash

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Final regulations: Modified carryover basis rules under section 1022

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9811) concerning the modified carryover basis rules under section 1022.

The [final regulations](#) [PDF 294 KB] adopt proposed regulations (issued in May 2015) "without modification" but also provide "certain nonsubstantive, clarifying changes." With today's final regulations, provisions of existing regulations concerning the basis rules include a reference to section 1022 and affect property transferred from certain decedents who died in 2010.

Background

Legislative changes (enacted in 2001) effectively provided that no estate tax would apply to any decedent who died in 2010.

The estate tax (and the generation-skipping transfer tax), however, was retroactively reinstated by legislation enacted in 2010. A provision of that 2010 legislation allowed the executor of an estate of a decedent who died in 2010 to elect not to apply the estate tax, but to elect instead to have the provisions of section 1022 apply—the "section 1022 election."

The "section 1022 election" generally provides that property transferred by death of a decedent who died in 2010 is not allowed a "step up" in basis, but that the property will be treated as if it had been transferred by gift—so that if the decedent's adjusted basis in the property were less than or equal to the property's fair market value (as determined on the date of death), then the recipient's basis would be the decedent's adjusted basis. On the other hand, if the decedent's adjusted basis were greater than the fair market value, the recipient's basis would be limited to the property's fair market value.

The section 1022 election also provides rules for allocation of additional basis to property both owned by the decedent and acquired from the decedent.

While section 1022 only applies for decedents dying in 2010, the rules are relevant for later years until all of the subject property is disposed of or sold.

Regulations

In May 2015, regulations were proposed to incorporate into existing regulations references to section 1022 so that the existing references to property's basis also include a reference to the basis rules pursuant to section 1022.

Today's release finalizes the proposed regulations. In some instances, there are only a few changes or new examples added to illustrate the application of the section 1022 election. Other changes to reflect revisions to myriad Code provisions concerning subjects ranging from qualified rehabilitation expenditures, to stock acquired in corporate reorganizations so as to include references to section 1022.

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