

Publication 4895

Tax Treatment of Property Acquired From a Decedent Dying in 2010



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Reminders

Throughout this publication, section references are to the Internal Revenue Code unless otherwise noted.

More information. For more information about the latest developments on Publication 4895, go to www.irs.gov/pub4895. For information about Form 8939 and its instructions go to www.irs.gov/form8939.

Election required. In order for the modified carryover basis rules described in this publication to apply to property you acquired from a decedent who died in 2010, the estate's executor must make a valid and timely election (Section 1022 Election) on Form 8939, Allocation of Increase in Basis for Property Received From a Decedent. If the executor does not make a valid and timely Section 1022 Election, the rules in effect for determining basis in property acquired from a decedent who died immediately before 2010 will apply. For information on the rules applicable if the Section 1022 Election is not made, see Pub. 551.

Introduction

This publication is designed to help executors and individuals who acquired property from a decedent dying in 2010, for which the Section 1022 Election has been made, determine the tax treatment of the property

acquired. See *Property Acquired From the Decedent*, later.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Individual and Specialty Forms and Publications
Branch
SE:W:CAR:MP:T:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us [at taxforms@irs.gov](mailto:taxforms@irs.gov). Please put “Publications Comment” on the subject line. You can also send us comments from www.irs.gov/formspubs/, select “Comment on Tax Forms and Publications” under “Information about.”

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs/ to download forms and publications, call 1-800-829-3676, or write to the address below and receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Tax questions. If you have a tax question, check the information available on IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

Useful Items

You may want to see:

Publication

- **551** Basis of Assets
- **555** Community Property
- **559** Survivors, Executors, and Administrators

Form (and Instructions)

- **8939** Allocation of Increase in Basis for Property Received From a Decedent

- **706** United States Estate (and Generation-Skipping Transfer) Tax Return

Section 1022 Election

The executor of an estate of a decedent who died in 2010 can elect to apply modified carryover basis treatment to property acquired from the decedent under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA). If the election is made, the estate will not be subject to federal estate tax and does not need to file a Form 706 even if the value of the estate is \$5,000,000 or more. As a result, section 1014 generally does not apply to determine the recipient's basis in property acquired from the decedent. Instead, section 1022 applies to determine the recipient's basis in most (but not all) property acquired from the decedent. This election is referred to as the Section 1022 Election.

Form 8939

Form 8939 is an information return used by the executor of a decedent who died in 2010:

1. To make the Section 1022 Election;
2. To report information about property acquired from a decedent (defined in *Property Acquired From the Decedent*, later); and

3. To allocate Basis Increase (defined in *Basis Increase*, later) to certain property acquired from a decedent.

For detailed information about the Section 1022 Election, see Notice 2011-66, 2011-35 I.R.B. 184, available at www.irs.gov/irb/2011-35_IRB/ar09.html and Notice 2011-76, 2011-40 I.R.B. 479, available at www.irs.gov/irb/2011-40_IRB/ar13.html. For optional safe harbor guidance under section 1022, see Revenue Procedure 2011-41, 2011-35 I.R.B. 188, available at www.irs.gov/irb/2011-35_IRB/ar10/html.

The Section 1022 Election is made when the executor timely files Form 8939. The due date for Form 8939 is January 17, 2012. For more information on the filing due date, see *When to File* in the Instructions for Form 8939.

Effect of the Section 1022 Election

If the executor makes the Section 1022 Election, special rules apply. These rules include the following.

- There is no estate tax.
- The basis of property acquired from a decedent generally is determined under the modified carryover basis rules of section 1022 and not under section 1014. Generally, the recipient's basis is the lesser of the decedent's adjusted basis or the fair market value (FMV) at the date

of the decedent's death, increased by any allocation of Basis Increase, and as further adjusted as required by sections 1016, 1017, and 1018, or as otherwise specifically provided for under applicable provisions of Internal Revenue laws.

If the executor makes the Section 1022 Election and follows the provisions of section 4 of Revenue Procedure 2011-41, and takes no return position contrary to any provisions of section 4, the IRS will not challenge the taxpayer's ability to rely on the provisions of section 4 on either Form 8939 or any other return of tax.

Once made, the Section 1022 Election cannot be revoked after the due date for filing Form 8939.

Note. If the executor does not make a valid and timely Section 1022 Election, the rules in effect for determining basis in property acquired from a decedent who died immediately before 2010 will apply.

Interaction of Section 1022 with Other Income Tax Provisions

For information on how property acquired from the decedent for which a Section 1022 Election has been made is treated with respect to certain income tax provisions (including holding period, tax character, and depreciation) see Rev. Proc. 2011-41, section 4.06.

Statement to Recipients

The executor filing Form 8939 must furnish a Schedule A (Form 8939) to each person who acquired property from the decedent, including the following persons.

- The decedent's surviving spouse.
- The trustee of a qualified terminable interest property (QTIP) trust.
- Any charitable remainder trust the sole non-charitable beneficiary of which is the decedent's surviving spouse.
- Any other person (other than the executor filing the return) who acquires property from the decedent.

The executor must provide a Schedule A (Form 8939) to each person who acquired property from the decedent no later than 30 days after the date that the executor files Form 8939. The executor must also provide amended or supplemental Schedules A (Form 8939) in certain circumstances. For more information, see Notice 2011-66.

The Schedule A (Form 8939) that the recipient of property receives should include the following information about the property acquired from the decedent.

- A description of the property.
- The date the decedent acquired the property (to help determine the recipient's holding period in the property).
- The adjusted basis of the property on the date of the decedent's death.
- The FMV of the property on the date of the decedent's death.
- The amount of Basis Increase allocated to the property.
- The amount, if any, of ordinary income that would result on the sale of the property.

Property Acquired From the Decedent

Generally, section 1022 determines a recipient's basis in property, but only if the property is acquired from the decedent. Generally, property acquired from the decedent includes the following.

1. Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent.
2. Property transferred by the decedent during the decedent's lifetime to:

- a. A qualified revocable trust (as defined in section 645(b)(1)), or
 - b. Any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.
3. Any other property passing from the decedent by reason of death to the extent that such property passed without consideration.

Note. Section 1022 does not apply to a decedent's interest in a QTIP trust or similar arrangement funded for the benefit of the decedent by the decedent's predeceased spouse. A recipient's basis in this property will not be determined under section 1022.

Note. Section 1022 also does not apply to property that constitutes a right to receive an item of income in respect of a decedent under section 691.

Property Eligible for Increase to Basis

Generally, the executor can allocate additional basis under section 1022 (up to the FMV of the property) to property acquired from the decedent that was owned by the decedent at the time of death.

Property Owned by the Decedent at the Time of Death

The basis of property acquired from the decedent can be increased by an allocation of Basis Increase only if and to the extent the property was owned by the decedent at the time of death.

For information about ownership, see *Rules relating to ownership*, in the Instructions for Form 8939.

Amount of Basis Increase

The executor can allocate General Basis Increase (defined in *General Basis Increase*, later), and/or Spousal Property Basis Increase (defined in *Spousal Property Basis Increase*, later) to eligible property (defined earlier) but not in excess of the amount needed to increase the decedent's adjusted basis to the property's FMV as of the date of the decedent's death. The result is that, for each property, the sum of the decedent's adjusted basis in that property and the Basis Increase allocated to that property cannot exceed the FMV of that property on the decedent's date of death.

The executor can allocate Basis Increase to property owned by and acquired from the decedent on a property-by-property basis. For example, the executor can allocate Basis Increase to one or more shares of

stock or to a particular block of stock rather than to the decedent's entire holding of that stock.

Basis Increase may not be allocated separately to a life estate and remainder interest in the same property.

Decedent's Adjusted Basis

Generally, the adjusted basis of the property in the hands of the decedent as of the date of the decedent's death is the decedent's cost or other basis, adjusted as required by sections 1016, 1017, and 1018, or as otherwise specifically provided for under applicable provisions of Internal Revenue laws.

Fair Market Value (FMV)

Generally, for purposes of section 1022, the FMV of property is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

Basis Increase

Basis Increase is the sum of the General Basis Increase (defined below) and the Spousal Property Basis Increase (defined below).

General Basis Increase

General Basis Increase is the sum of the Aggregate Basis Increase (defined below) and the Carryovers/Unrealized Losses Increase (defined in Rev. Proc. 2011-41). However, for a decedent who was neither a resident nor citizen of the United States, the General Basis Increase is limited to the Aggregate Basis Increase (limited as described below).

Aggregate Basis Increase

Aggregate Basis Increase is \$1,300,000. However, for a decedent who was neither a resident nor citizen of the United States, the Aggregate Basis Increase is \$60,000.

Spousal Property Basis Increase

Spousal Property Basis Increase is \$3,000,000.

Generally, the executor can allocate Spousal Property Basis Increase only to qualified spousal property that was both acquired from and owned by the decedent. Qualified spousal property means:

- Outright transfer property; and
- Qualified terminable interest property

For more information on outright transfer property and QTIP, see *Spousal Property Basis Increase*, in the Instructions for Form 8939.

Penalty Relief

For certain penalty relief related to the recipient's income tax return and computing the recipient's income tax liability, see Notice 2011-76.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free help with your return. Free help in preparing your return is available nationwide from IRS-certified volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-moderate income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Most VITA and TCE sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, visit IRS.gov or call 1-800-906-9887 or 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at www.aarp.org/money/taxaide.

For more information on these programs, go to IRS.gov and enter keyword “VITA” in the upper right-hand corner.



Internet. You can access the IRS web-site at IRS.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2011 refund. Go to IRS.gov and click on *Where’s My Refund*. Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2011 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.

- Use the online Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant available online at www.irs.gov/individuals.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX -FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.

- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- *Refund information.* To check the status of your 2011 refund, call 1-800-829-1954 or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2011 tax return available so you can provide your social

security number, your filing status, and the exact whole dollar amount of your refund. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.

- *Other refund information.* To check the status of a prior-year refund or amended return refund, call 1-800-829-1040.

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To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries

have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look

in the phone book under *United States Government, Internal Revenue Service*.



Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS) is your voice at the IRS. Our job is to ensure that every taxpayer is treated fairly, and that you know and understand your rights. We offer free help to guide you through the often-confusing process of resolving tax problems that you haven't been able to solve on your own. Remember, the worst thing you can do is nothing at all.

TAS can help if you can't resolve your problem with the IRS and:

- Your problem is causing financial difficulties for you, your family, or your business.
- You face (or your business is facing) an immediate threat of adverse action.

- You have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for our help, we'll do everything we can to get your problem resolved. You will be assigned to one advocate who will be with you at every turn. We have offices in every state, the District of Columbia, and Puerto Rico. Although TAS is independent within the IRS, our advocates know how to work with the IRS to get your problems resolved. And our services are always free.

As a taxpayer, you have rights that the IRS must abide by in its dealings with you. Our tax toolkit at www.TaxpayerAdvocate.irs.gov can help you understand these rights.

If you think TAS might be able to help you, call your local advocate, whose number is in your phone book and on our website at www.irs.gov/advocate. You can also call our toll-free number at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

TAS also handles large-scale or systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it to us through our Systemic Advocacy Management System at www.irs.gov/advocate.

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Free tax services. Publication 910, IRS Guide to Free Tax Services, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

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DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet based Tax Research Materials.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.

- Two releases during the year.
 - The first release will ship the beginning of January 2012.
 - The final release will ship the beginning of March 2012.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).

