

Guidance for Executors of 2010 Decedents' Estates; Due Date for Form 8939

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On Friday, August 5, 2011, the Internal Revenue Service finally announced an important due date for executors of 2010 decedents' estates who elect to opt out of the estate tax. An executor electing to have carryover basis rules apply without any federal estate tax will be required to file a Form 8939 - Allocation of Increase in Basis for Property Acquired from a Decedent. The long-awaited Form 8939 and related instructions are expected to be issued in the next couple of months according to the announcement. The due date for filing the Form 8939 will be November 15, 2011.

Form 8939 applies only to estates for 2010 decedents. Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal estate tax was repealed for the calendar year 2010 and carryover basis rules applied to estates of individuals who died in 2010. However, the so-called Tax Relief Act of 2010 enacted on December 17, 2010 reinstated the estate tax for 2010 decedents' estates, with a choice. The executor of a 2010 decedent is allowed to opt out of the estate tax, and instead elect to be governed by the carryover basis rules. It is now clear that this election will be made by filing Form 8939 on or before November 15, 2011.