

Trust & Estates

Taxes and Planning

TM Financial Services

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Basis of Assets for 2010 Decedents

For the estates of decedents dying after December 31, 2009 and before January 1, 2011, the basis of assets acquired from the decedent is the **lesser of the decedent's adjusted basis or the FMV** of the property on the date of the decedent's death.

However, there are **two exceptions to this general rule:**

The executor can allocate up to \$1.3 million (increased by unused losses and loss carryovers) to increase the basis of assets; and

The executor can also allocate an additional amount, up to \$3 million, to increase the basis of assets passing to a surviving spouse, either outright or in a Qualified Terminable Interest Property ("QTIP") trust.

Current legislation requires the executor of an estate to file the following tax returns:

1. The final income tax return (Form 1040) for the decedent;
2. Fiduciary income tax returns (Form 1041) for the estate during administration; and
3. A return allocating the allowable basis adjustment to property acquired from a decedent, if the fair market value of the property exceeds \$1.3 million or if the decedent acquired property by gift, except in certain cases.
4. No later than 30 days after the filing of the return allocating the allowable basis adjustment, a written statement to each recipient of property that contains the information on the return.

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Basis of Assets for 2010 Decedents

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The form allocating the allowable basis adjustment must be submitted by the executor with the decedent's final income tax return. For decedents dying in 2010, the due date is Friday, April 15, 2011. The IRS has not yet released the new form. Failure to file this information return may result in a penalty of \$10,000.

Not all property acquired from a decedent is eligible for the new increase in basis allowance. There are some important rules for determining which property is allowed to receive an increase in basis; especially for jointly owned property, property held in trust, property subject to a power of appointment, community property, and property acquired by the decedent by gift within 3 years of death.

Property Eligible for Basis Increase

For property acquired from a decedent after December 31, 2009 to be eligible for basis increase, the property must have been owned by the decedent. Generally, this means that the title to the property must be held by the decedent. There are specific rules for certain kinds of property ownership:

Jointly owned property with rights of survivorship - the decedent is treated as owning 50% of the property if the only other joint tenant is the decedent's spouse. If property was acquired by the decedent by gift, bequest, devise, or inheritance, then, the decedent is treated as owning a fractional share, determined by dividing the value of the property by the

number of joint tenants with right of survivorship. In all other cases, the decedent is treated as owning only the portion of the property which is proportionate to the consideration furnished by the decedent.

Trust Property - if the decedent transferred property to a trust during his or her lifetime, then the decedent will be treated as owning the property held by the trust only if it is a "qualified revocable trust" under IRC §645(b)(1). Generally, this means that the decedent must have had the power to revoke the trust during his lifetime and at death, regardless of whether his or her spouse had the power to revoke the trust.

Power of Appointment - the decedent is not treated as owning property over which he or she has a power of appointment, regardless of whether it is a general or special power of appointment.

Community Property - both the decedent's one-half share of community property and the surviving spouse's one-half share of community property are treated as owned by the decedent for purposes of the basis increase.

Gift - the decedent will not be treated as owning any property acquired by gift within 3 years of death, unless the gift was from the decedent's spouse.

IRD - the basis adjustment rules do not apply to any item that is income in respect of decedent.

IRS Releases Form 8941 - Health Care Tax Credit for Small Businesses

The Internal Revenue Service has released a draft version of the form that small businesses will use to calculate the health care tax credit when they file income tax returns next year. The IRS also announced how eligible tax-exempt organizations, which do not generally file income tax returns, will claim the credit during the 2011 filing season.

For tax years 2010 to 2013, the maximum credit is 35 percent of premiums paid by eligible small business employers and 25 percent of premiums paid by eligible employers that are tax-exempt organizations. Beginning in 2014, the maximum tax credit will go up to 50 percent of premiums paid by eligible small business employers and 35 percent of premiums paid by eligible, tax-exempt organizations for two years. The maximum credit goes to smaller employers, those with 10 or fewer full-time equivalent (FTE) employees, paying annual average wages of \$25,000 or less.

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<u>Owner</u>	<u>Insured</u>	<u>Beneficiary</u>	<u>Schedule</u>
Anyone	Decedent	Estate	D
Decedent	Decedent	Anyone	D
Decedent	Anyone (but decedent)	Anyone	F
Decedent	Anyone (but decedent) Transferred within 3 years of death	Anyone	G
Anyone (but decedent)	Decedent	Anyone (but estate)	Excluded

Life Insurance – Form 706

<u>Type</u>	<u>706 & 1041</u>	<u>706 or 1041</u> (or split)	<u>706 or 1040</u>	<u>706</u>
Administrative		X		
Funeral				X
Medical			X	
Interest	X			
Taxes	X			
Alimony	X			
Casualty & Theft		X		
For production of Income	X			

Where to Deduct Estate Expenses

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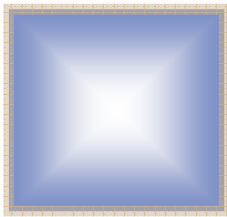
The credit is completely phased out for employers that have 25 FTEs or more or that pay average wages of \$50,000 per year or more. The final version of Form 8941 and its instructions will be available later this year.

IRS	General Information	800-829-1040
	EINs	800-829-4933
	Form 706 & 709	866-699-4083
NJ	General Information	609-826-4400
	Estate & Inheritance	609-292-5033
NY	General Information	518-457-5181
	Estate Tax	518-457-5387

Important Phone Numbers

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