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THE REPEAL OF THE FEDERAL ESTATE TAX IN 2010 ONLY BROUGHT WITH IT A SPECIAL SET OF RULES FOR BASIS STEP UP FOR PERSONS DYING IN 2010 by Randy Spiro

Up until December 31, 2009, assets acquired from a deceased person (other than items of income in respect of a decedent such as IRAs) received a step up in basis for income tax purposes under Internal Revenue Code § 1014. For people dying in 2010 there is still no step up for items of income in respect of a decedent, but there is a limited step up on other assets owned by the deceased person under Internal Revenue Code § 1022 in the amount of \$1,300,000.

If a spouse receives assets from the person who died in 2010, there is an additional basis step up of \$3,000,000. Also, similar to pre 2010 law, the basis step up applies not only to the deceased spouse's half of the community property but to the surviving spouse's half of the community property as well.

The additional basis step up applies to assets passing directly to the surviving spouse and to assets passing to a QTIP Trust. For the Trust to qualify as a QTIP the surviving spouse must receive all the income at least annually and no person can have a power to appoint the property to any person other than the surviving spouse.

In existing A/B and QTIP Trusts, one of the trusts typically contains the lesser of (a) the first spouse to die's share of the assets or (b) the amount that can be passed on free of estate by reason of the first spouse to die's estate tax exemption. In some cases the trust or trusts containing the first spouse to die's share of the assets qualify as a QTIP and in some cases it does not. If it does not, then the additional \$3,000,000 of basis step up cannot be allocated to assets passing to that Trust.

The above new rules point to the importance of people reviewing their existing estate plans in light of these recent changes in the estate tax laws.