

Basis of Property, 2010 Decedent

Purpose: To clarify the basis for figuring gain or loss of property inherited from a person who dies in 2010.

Tax programs: Personal income tax, inheritance tax

Statute: Oregon Revised Statute (ORS) 118.010, 316.007, and 316.048

Other references: Internal Revenue Code (IRC) § 1014 and IRC § 1022

Issue: The federal 2001 Economic Growth and Tax Relief Reconciliation Act (EGTRRA) changed how we determine the basis of property inherited from a person who dies in 2010. Oregon is connected to the federal law for figuring the basis of an asset. As a result, the property value we use to calculate the Oregon personal income tax changed, too.

Definitions for the purposes of this bulletin:

- *Basis* is the amount originally paid for the property plus improvement costs, minus depreciation.
- *Step-up* is the adjusted value of an appreciated asset for tax purposes upon inheritance. With a step-up in basis, the value of the asset is determined to be the fair market value of the asset at the time of death, not the value at which the original party purchased the asset.

Background: Before 2010, the person who inherited property could receive a step-up in basis of that property (IRC § 1014). In 2010, the basis of property inherited from someone who dies in 2010 is generally the decedent's basis in the property or the fair market value at the date of death, whichever is less. However, federal law allows certain allocations of basis to decrease the taxable gain that may otherwise be realized upon the sale of an asset.

There are two types of basis adjustments that may be made to property in an estate:

- A \$1.3 million aggregate basis increase; and
- A \$3 million aggregate spousal property basis increase. See IRC § 1022.

*****Special Note*** Congress is considering legislation that may change federal law and possibly reinstate the step-up in basis for 2010. We'll revise this ORB if the legislation passes.**

Generally, you must use federal law to calculate tax basis of property for personal income tax purposes.

Oregon's inheritance tax, which is a tax on the transfer of property from a decedent's estate to an heir or beneficiary, is generally calculated on the date-of-death fair market value of the transferred property. The Oregon inheritance tax is paid by the decedent's estate, not by the heir or beneficiary of the estate. The heir or beneficiary pays income tax on the gain when they sell the inherited property.

Discussion: Oregon Revised Statute (ORS) 316.007 and 316.048 states:

316.007 Policy. It is the intent of the Legislative Assembly, by the adoption of this chapter, insofar as possible, to:

Oregon Revenue Bulletins (ORBs) are informal statements of information issued for the public and employees of the Oregon Department of Revenue that is general in nature. ORBs are used to announce general information that the department believes to be useful in complying with the laws administered by the department.

- (1) Make the Oregon personal income tax law identical in effect to the provisions of the Internal Revenue Code relating to the measurement of taxable income of individuals, estates and trusts, modified as necessary by the state's jurisdiction to tax and the revenue needs of the state;
- (2) Achieve this result by the application of the various provisions of the Internal Revenue Code relating to the definition of income, exceptions and exclusions there from, deductions (business and personal), accounting methods, taxation of trusts, estates and partnerships, *basis*, depreciation and other pertinent provisions relating to gross income as defined therein, modified as provided in this chapter, resulting in a final amount called "taxable income."

316.048 Taxable income of resident. The entire taxable income of a resident of this state is the federal taxable income of the resident as defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter and other laws of this state applicable to personal income taxation.

Pre-2010: To determine how much income you'll receive by selling property, subtract the basis of the property from the sale price. The basis of property inherited under pre-2010 federal law could receive a step-up. This would generally be the fair market value of the property at the time of death, regardless of what the basis of the property was for the decedent.

For 2010: The basis for figuring gain or loss on the sale of property you inherit from a person who dies in 2010 will either be the adjusted basis for the decedent, or the fair market value of the property on the date of the decedent's death, whichever is less (IRC § 1022). The new law also provides for an aggregate basis increase of \$1.3 million for certain property. Consult a tax professional for more information. If you inherit property from someone who dies in 2010, use the same basis for state and federal individual income tax purposes [ORS 316.007(2)].

Examples

All of the people in these examples are Oregon residents.

Example 1: Lucy died March 1, 2010, leaving her assets to her children, Ed and Isabella. Lucy leaves her home to Ed and all other assets, including a classic car collection, to Isabella.

When Lucy's executor, Isabella, calculates how much Oregon inheritance tax is owed, she calculates the tax based the property's worth at the time of Lucy's death. An appraisal shows the fair market value of Lucy's home, originally purchased in 1965 for \$200,000, is \$1 million on March 1, 2010.

The cars were originally purchased between 1960 and 1980 for a total of \$500,000. They are appraised at \$1.5 million on March 1, 2010. The inheritance tax is based on the estate's value as of March 1, 2010, less allowable deductions.

Ed and Isabella sell the property Lucy left them. To calculate their capital gains, Ed and Isabella must use Lucy's basis in the property (under current federal and Oregon laws). Ed sells the house for \$900,000 and must pay personal income tax on the gain of \$700,000 (\$900,000 less \$200,000, Lucy's basis). His basis in the house is the same as Lucy's.

Isabella sells the car collection for \$1.2 million and must pay personal income tax on the gain of \$700,000 (\$1.2 million less \$500,000, Lucy's basis). Her basis in the car collection is the same as Lucy's. *** See note below ***

Example 2: Joe died January 2, 2010, leaving all of his assets to his son, Henry. An appraisal shows Joe's home was valued at \$245,000 on the date of his death. His stock portfolio had a date-of-death value of \$75,900. Because the gross fair market value of the assets on the date of death is under \$1 million, Henry, the executor, isn't required to file an Oregon inheritance tax return on behalf of his father's estate, or pay Oregon inheritance tax.

Joe had a basis in his home of \$20,000; he invested \$8,500 in his stock portfolio. Henry sells the inherited assets in 2011. He receives \$230,000 for the home, and \$78,900 for the stock portfolio. On the sale of the home, Henry has a \$210,000 gain (\$230,000 less \$20,000, Joe's basis). He'll have a \$70,400 gain on the sale of the stock (\$78,900 less \$8,500, Joe's basis). Henry will report the sale of the inherited assets on his 2011 personal income tax return and pay personal income tax on the gains. *** See note below ***

***Note: It's assumed that the \$1.3 million aggregate basis adjustment provided in IRC § 1022(b) has not been designated for the property described in these examples. It's possible that there would be no taxable gain if the basis adjustment were elected. Consult a tax professional for more information.

Effect of this document: ORBs provide general information. They don't replace legal or accounting advice. ORBs don't have the force or effect of law and aren't binding.

Watch for changes that may result from legislative action, court decisions, Attorney General opinions, or from enactments or amendments to Oregon Revised Statutes or Oregon Administrative Rules.

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