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Has the "Stepped-Up Basis" Been Stepped Over?

In our most recent edition of *The DWS Connection*, we discussed some monumental law changes that took effect on January 1 regarding the federal death tax. But there were also some equally monumental tax law changes in what is known as the "stepped-up basis" rule. Like the federal death tax, this long-standing and well-established rule was repealed as of January 1, 2010!

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Quote of the Day

"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

-- Martin Luther King, Jr.

Points to Ponder

Prior to January 1, 2010, the stepped-up basis rule required a re-adjustment in the value (or "basis") of an appreciated asset upon one's death. In other words, when a person died, the basis of his or her assets was adjusted to the actual fair market value of those assets at the time of death, rather than the cost the decedent originally paid for the assets. With a few exceptions, this rule applied to all assets owned by the decedent, without limitation. In many instances, the stepped-up basis rule resulted in significant income tax savings to the heirs of the decedent when the inherited assets were sold.

However, the current law replaces the stepped-up basis rule with a new "carryover basis" rule. Generally speaking, the carryover basis rule requires that the basis of one's assets immediately prior to death "carryover" (i.e., remain exactly the same) to the decedent's heirs who inherit the assets--meaning the basis of the assets will not be re-valued at the time of death. Consequently, once the heirs sell the inherited assets, they will incur income taxes based on the difference between the price at which the assets are sold and the "carryover" basis of the assets. In many instances, this will result in substantially increased taxes to those who inherit property!

Under the carryover basis rule, there are limited circumstances in which the heirs of a decedent can still

If we all worked on the assumption that what is accepted as true was really true, there would be little hope of advance.

Looking Ahead

In a future issue of the DWS Connection we will address some additional concerns associated with the new carryover basis rule.

readjust the value of certain assets based on date of death values. However, unlike the rules applicable under the old stepped-up basis regime, these benefits can be permanently lost if not properly planned for in one's estate planning documents.

Although the stepped-up basis rules are slated to come back into effect next year, it's uncertain whether or not Congress will pass legislation to alter that result. We should also emphasize that very few, if any, tax and estate planning practitioners expected the repeal of the death tax and stepped-up basis rules to ever take effect. Consequently, it is highly unlikely that one's will or trust document would include the necessary provisions to maximize tax savings under the current law. We therefore urge you to call our offices and schedule an appointment with one of our attorneys to review your documents and ensure your estate plan is properly updated.

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