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C O U N S E L L O R S A T L A W

2010 Estate Tax Elections have a Deadline of November 15

August 15, 2011 by Deirdre Wheatley-Liss



2010 - The year of there wasn't an estate tax, there could be an estate tax, or you choose if there will be an estate tax (nice thoughtful tax law policy there Washington ... not).

However, we now do **have a date of when you must elect to go with the 2010 no estate tax law, or the 2011 \$5 million exemption per person law** (which estates of decedents who died in 2010 can choose to use). The deadline? November 15, 2011.

Question: Why would you pay estate tax if you don't have to? Answer: Capital gains tax.

For people who died in 2010 who elect the no-estate tax regime, the beneficiaries' basis in inherited assets is the cost basis of the decedent, plus some additional basis adjustment. For more information look at [Federal Estate Tax "Death" in 2010 Creates Capital Gains Trap](#) and ["Death" of Estate Tax in 2010 creates Tax Trap for Spouses](#). With capital gains tax rates at 15% federal and up to 10% state and looking to potentially rise, paying a fixed tax now can be attractive.

For people who died in 2010 where their estates elect the 2011 estate tax regime, they have the benefit of the current \$5 million exemption from estate taxes AND the cost basis of assets is stepped up to the date of death value (thus wiping out all that untaxed appreciation during lifetime).

While this tax issue only applies to a very small number of people, the right v. wrong decision can have large implications. Now that a deadline is looming, the time to do some analysis and decide how to act is now.

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