

# Tough Decisions Await Executors of 2010 Estates

**By Matthew Crider, JD  
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If you are the executor of the estate of a decedent who died in 2010 you may think you're in the clear. After all, there was no estate tax in 2010 right? Making distributions should be a piece of cake. Wrong. Because of the estate tax election available on the estates of 2010 decedents, administering those estates will actually be more work than you may think.

The repeal of the estate tax in 2010 also brought with it a repeal of the "step up in basis," meaning that heirs selling inherited assets were taxed based on the original acquisition cost of the assets, not on their value as of the date of the taxpayer's death. This generally resulted in a higher tax paid on assets than the normal estate tax rate—not good for taxpayers. But 2010 estates don't *have* to go by these rules. The legislation passed in December of 2010 gave 2010 estates the opportunity to *elect* whether they wanted to use the 2010 estate tax laws, or the new laws for 2011. This article in Forbes explains what this means:

"The 2010 Tax Relief Act restored the estate tax for individuals dying in 2010 with a \$5 million per person exemption and a maximum rate of 35%. It also repealed the modified carryover basis rules for property acquired from a decedent who died in 2010. However, estates of individuals dying in 2010 can elect zero estate tax and the modified carryover basis rules that would have applied before they were repealed. That means the basis of assets acquired from the decedent would be the lesser of the decedent's adjusted basis (carryover basis) or the fair market value of the property on the date of the decedent's death."

In general this tax election is a good thing, it allows executors to choose which tax formula will cost the beneficiaries the least in taxes; but it does mean a lot more paperwork and *a lot* more attention to detail. If you are the executor of an estate of a decedent who died in 2010, don't hesitate to call us. We can answer your questions and help you explore your options.

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## About Matthew Crider, J.D.

Matthew Crider formed [Crider Law PC](#) in 1999 so he could help individuals and business owners by providing creative solutions and be their trusted advisor and legal counselor. He serves his clients by listening closely to their goals, dreams and concerns and working with them to develop superior and comprehensive estate and asset protection plans. His estate planning practice focuses on preserving and growing wealth by providing comprehensive, highly personalized estate planning counsel to couples, families, individuals and businesses.

