

As I've [mentioned before](#), Congress gave the personal representatives of estates of decedents who died in 2010 a choice:

1. Under the default rules, the estate would pay a 35 percent estate tax on assets that exceed the \$5 million exemption and the beneficiaries would take a stepped-up basis in the property; or
2. The personal representative could elect to pay no estate tax, but would forfeit the full basis step-up. Instead, the estate would be able to step up basis of up to \$3 million for property left to a spouse and \$1.3 million for property left to anyone.

The IRS recently published [Revenue Procedure 2011-41](#), which gives personal representatives safe harbor guidance on basis allocation. Under the Revenue Procedure, the \$1.3 million and \$3 million basis step-ups can be increased by the amount of the decedent's unused net operating loss and capital loss carryovers. If the decedent owned loss assets (assets worth less than their basis), the amount of the loss can also be added to the basis step up.

The Revenue Procedure also provides that when a beneficiary allocates basis to a depreciable asset, the added basis is treated as though it were part of a new asset that was first placed in use on the decedent's death.

Personal representatives are required to report basis allocations by November 15, but there's been a slight glitch: the IRS hasn't released a final version of the form that personal representatives need to make this allocation (Form 8939). The IRS has said that the form wouldn't be due until at least 90 days after it is issued.