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HOLIDAY NEWS
December 2010

Tax for Inherited Assets Grows More Complicated

With the 2010 repeal of the federal estate tax, the rules for determining income tax basis on inherited property became more complicated for deaths occurring in 2010. The income tax basis of a property is used to determine depreciation, as well as capital gains when an asset is sold. In prior years and in future years, the estate's basis in the property is the fair market value at date of death, regardless of whether this is an increase or decrease in the decedent's basis.

The basis of inherited assets in 2010 will be determined by a complicated process beginning with the lesser of (a) the decedent's basis in the property or (b) the fair market value of the property on date of death. For some, the basis still may be decreased, particularly for stocks that have decreased in

value. For assets whose basis is still less than the fair market value, each estate of a U.S. citizen or resident has \$1,300,000 of basis to add to the decedent's existing basis. If property passes to a surviving spouse either outright or in a qualified terminable interest, the estate has another \$3,000,000 of basis that the executor may allocate. The additional basis amount is increased by capital loss and net operating loss carryovers of the decedent and certain calculated losses. For non-resident aliens, the executor has only \$60,000 of basis to allocate. The executor may not increase the basis of any asset to more than the fair market value of the property at date of death. For example, if a U.S. citizen or resident has a \$2,000,000 estate with a \$700,000 basis before death the entire estate would receive a full step-up in basis. If the pre-death basis was \$200,000 and the assets do not pass to a spouse, there would not be a full basis step up. The estate would have only \$1,500,000 of basis. The

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*Wishing you a
joyous
holiday season and a
healthy and
prosperous
new year.*



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Know the Rules for Charitable Deductions

Here are the top 10 things the IRS wants every taxpayer to know before deducting charitable donations.

1. Charitable contributions must be made to qualified organizations to be deductible. Ask the organization whether it is a qualified organization and most will be able to tell you. Also check IRS Publication 78, Cumulative List of Organizations, which lists most qualified organizations. IRS Publication 78 is available at irs.gov. Searches can be done on this website.
2. Charitable contributions are deductible only if you itemize deductions using Form 1040, Schedule A.
3. You generally can deduct cash contributions and the fair market value of most property donated to a qualified organization. Special rules apply to several types of donated property, including clothing or household items, cars and boats.
4. If your contribution entitles you to receive merchandise, goods, or services in return – such as admission to a charity banquet or sporting event – you can deduct only the amount that exceeds the fair market value of the benefit received.
5. Keep good records of any contribution you make, regardless of the amount. For any cash contributions, you must maintain a record of the contribution such as a bank record (including a cancelled check or a bank or credit card statement), a written record from the charity containing the date and amount of the contribution and the name of the organization, or a payroll deduction record.
6. Only contributions actually made during the tax year are deductible. For example, if you pledged \$500 in September but paid the charity only \$200 by Dec. 31, your deduction would be \$200.
7. Include credit card charges and payments by check in the year they are given to the charity, even though you may not pay the credit card bill or have your bank account debited until the next year.
8. For any contribution of \$250 or more, obtain a written acknowledgment from the organization to substantiate your donation. This written proof must include the amount of cash and a description and good faith estimate of value of any property you contributed, and whether the organization provided any goods or services in exchange for the gift.
9. To deduct charitable contributions of items valued at \$500 or more, complete Form 8283, Non-cash Charitable Contributions, and attached the form to your return.
10. An appraisal generally must be obtained if you claim a deduction for a contribution of noncash property worth more than \$5,000. In that case, you must also fill out Section B of Form 8283 and attach the form to your return.

For more information see IRS Publication 526, Charitable Contributions, and for information on determining value, refer to Publication 561, Determining the Value of Donated Property. These publications are available at irs.gov or by calling 800-TAX-FORM.

Tax Update

Did you Know?

Please Note:: On December 7, 2010, the President announced that an agreement on taxes has been reached. If enacted as announced, the plan would extend the 2010 tax rates for two years for all taxpayers and provide a one-year payroll tax cut for all workers. The plan would also set the federal estate tax exclusion amount at \$5 million with a top estate tax rate of 35%. Please refer to our website at www.ohiocounsel.com for updates.

A number of important tax law changes become effective for 2010 or 2011. At the same time, there is much discussion over possibly extending certain tax provisions or making additional changes to tax provisions. Much uncertainty exists and more change is possible. A few tax provisions are summarized below; however, keep in mind that some of these are subject to change.

- Beginning in 2011, tax rates for **long-term capital gain income** increases from 0% and 15% to 10% and 20%.
- Beginning in 2011, the **10% income tax bracket is eliminated**, and individual tax brackets will be 15%, 28%, 31%, 36% and 39.6%. Extending the 2010 tax rates has been much discussed, but no action has been taken.
- **Tax free contributions to charities** from IRA accounts are no longer available (as of the end of 2009).
- For 2010 and 2011, **self-employed health insurance** may be deducted in calculating self-employment tax.
- For 2010 and 2011, 50% bonus depreciation is available for **qualified new capital purchases**.
- For 2010 and 2011, **cell phones are no longer listed property** (reduces recordkeeping

requirements).

- For 2010 and 2011, the **maximum Section 179 expensing election is \$500,000** and phases out if total purchases exceed \$2 million.
- **Rules that limit the ability to convert certain IRA and Retirement accounts to Roth IRAs have been liberalized.** Rollovers to Roth IRAs are generally taxable. Amounts rolled over to Roth IRA's in 2010 may be taxed one-half in 2011 and one-half in 2012.
- Beginning in 2011, **owners of rental properties will be required to file 1099 forms** for any payee that receives more than \$600 during the year.
- **Beginning in 2012, all taxpayers required to file 1099s** must report all payees who receive \$600 or more even if the payee is a corporation. This is a significant change for small businesses and may greatly increase the scope of 1099 filings. To further complicate matters, payments paid via credit card are reported by the bank rather than by the taxpayer.
- **The rules for exclusion of gain from sale of a principal residence have been restricted for some taxpayers.** The portion of gain for periods of non-qualified use during 2009 and thereafter is generally not excluded. This restriction may apply where a taxpayer converts a rental home or second home to their personal residence and the property is later sold.
- **The standard mileage rate** for business miles is \$.50 per mile for 2010 and \$.51 per mile for 2011.
- **The annual exclusion from gift tax reporting** amount is \$13,000 per donee for 2010 and 2011. **The maximum contribution to an IRA account for 2010 and 2011** is \$5,000 for qualifying taxpayers. Certain taxpayers over age 50 may qualify for \$1,000 additional catch-up contribution.

SPEAKING ENGAGEMENTS

December 5-7, 2010: **David Barrett** will speak at the National Grain and Feed Association Country Elevator Conference in Indianapolis, Indiana. The topic will be “Managing Contract and Counterparty Risk.”

December 7, 2010: Carolyn Eselgroth will be speaking at the Ohio Cattleman’s Association about non-profit association governance issues.

January 10, 2011: **David Barrett** will speak at the Michigan Agri-Business Association Winter Conference in Lansing, Michigan. The topic will be “Contracts and Contracting.”

Highlights of 2010 Health Care Legislation

The voluminous Patient Protection and Affordable Care Act was signed by the President on March 23, 2010. This complex legislation includes sweeping changes to health insurance and health care. The legislation will be implemented in stages over the next several years. Among the key provisions::

- Changes effective in 2010 include a small business tax credit of up to 35% (up to 50% after 2013) for certain employer contributions to employee health insurance costs, no lifetime limits on coverage, coverage for young persons until age 26 through parents’ insurance, rebate of \$250 to Medicare beneficiaries affected by the “donut hole” and no discrimination against children with pre-existing conditions.
- Starting in 2011, non-prescription medicines may no longer be purchased with Health Savings Account or medical reimbursement account dollars (10% penalty plus your tax rate will apply), and employers must report the value of health benefits on employees’ W-2s.

- Starting in 2013, Medicare tax increases for income more than \$200,000/\$250,000 and Medicare tax charged on net investment income of high income taxpayers, only medical expenses that exceed 10% of adjusted gross income may be included in itemized deductions, and flexible spending accounts will be capped at \$2,500. Also, the deduction for compensation paid to employees, officers, directors and consultants of health insurance providers is limited to \$500,000.

- Starting in 2014, most people must have a minimum health coverage or pay a penalty, employers with at least 50 employees will be required to offer health insurance coverage or pay a penalty, and premium assistance tax credits and cost sharing will be implemented to make coverage affordable based on income. Also, states will be required to establish insurance exchanges beginning in 2014.

- Starting in 2018, a 40% excise tax is imposed on insurance plans with annual premiums in excess of \$10,200 for individuals or \$27,500 for families (adjusted for inflation).

The Internal Revenue Service is charged with much of the enforcement and collection of taxes, fees and penalties associated with the legislation.

(taxes continued from page 1)

executor should be able to select the assets to which the executor allocates the basis.

The executor may not allocate basis to any property acquired by the decedent within three years of date of death if the property was acquired by gift or inter vivos transfer for less than full and adequate consideration, except for certain property that was received by gift from a spouse. This expands the old rules in a couple of ways. The old rules only applied to property acquired within one year of death and only if the property returned to the same person.

As under the old rules, the executor may not allocate basis to any property that falls within the definition of income in respect of a decedent, such as ordinary IRAs or other taxable retirement accounts.

The rules for 2010 can be a record keeping nightmare. Many people do not know the current basis of their property, and their children or heirs may have an even harder time finding the appropriate records. Executors may need to dig through several decades of records.

The IRS indicates on its website the following information. Executors must file an information return if the property acquired from the decedent exceeds \$1,300,000 or if the decedent acquired certain property by gift within three years of death. The information return is used to report the carryover basis of the decedent's property and the allocation of the basis increase allowed under the new basis rules.

The new information return is due with the decedent's final income tax return. Generally, this means that for decedent's dying in 2010, the due date is April 15, 2011. The IRS

has not yet released the new form. Failure to file this information return may result in a penalty of \$10,000.

In addition, executors must provide to each beneficiary a written statement that lists the information reported on the information return with respect to the property that the beneficiary acquired from the decedent. The executor must furnish the beneficiaries with this statement no later than 30 days after the filing of the estate information return. Failure to provide each beneficiary with this statement may result in a penalty of \$50 for each failure.

However, it is important to note that a similar basis system enacted for decedents' estates with dates of death after 1976 was postponed so that it did not apply to any dates of death before 1980 and then was retroactively repealed. Accordingly, you will want to continue to monitor these rules as Congress addresses the estate tax system in the coming months... or years.



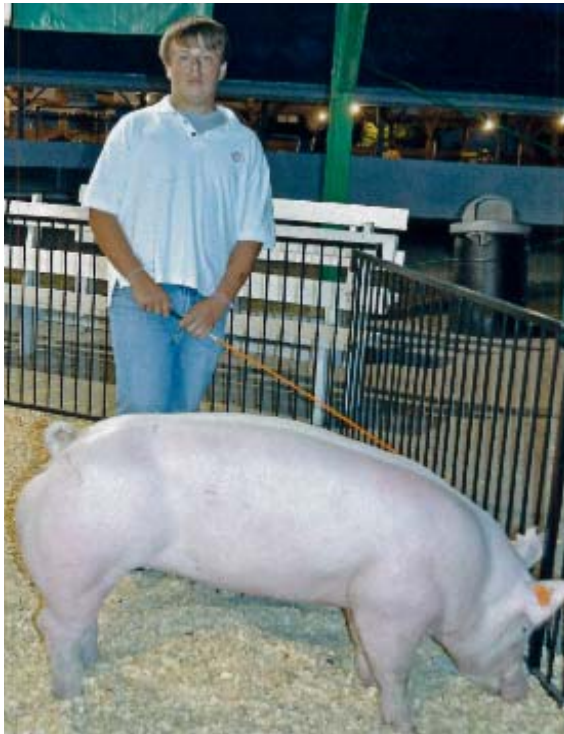
BECE Supports Ohio 4-H and FFA Exhibitors

Champaign County Fair

Mary Bline, champion
market lamb



Richwood Fair



Tucker Smith, market gilt



Skylar Foons, market goat



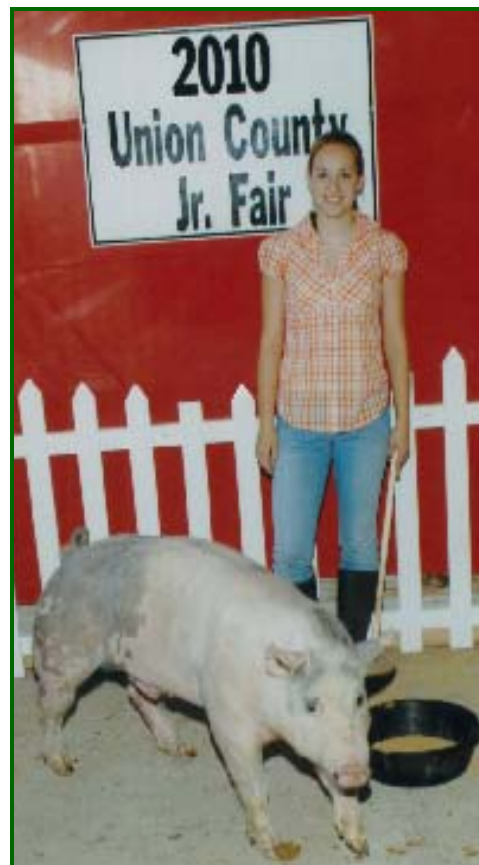
Casey Wilson, market wether

Congratulations to the Junior Fair exhibitors featured in our newsletter! We enjoy attending the many fairs and supporting Ohio's future in agriculture!

Union County Fair



Jason Cook, crossbred gilt



Erin Van Gorden, market gilt

Condominiums House More Than People

It is not unusual for individuals to reside in condominiums or to work in an office that is organized as a condominium. However, condominiums are not just for people. The attorneys at BECE recently helped one of our clients organize a grain condominium, an arrangement where local farmers were able to purchase condominium units in a shared arrangement to store their grain.

Under Ohio law, a “condominium” is defined as “a form of real property ownership in which a declaration has been filed submitting the property to the condominium form of ownership ... and under which each owner has an individual ownership interest in a unit with the right to exclusive possession of that unit and an undivided ownership interest with the other unit owners in the common ele-

ments of the condominium property.”

In the case of a grain condominium, each owner owns the right to store a certain number of bushels (*e.g.*, 5,000 bushels) of grain in a larger (*e.g.*, 750,000 bushel) grain storage bin or silo. The owners of the condominium units share in the expense of maintaining the overall grain storage bin or silo. It is an alternative to building on-farm storage or paying storage fees to a commercial warehouse operator. The ownership units are subject to sale or transfer to others in accordance with the condominium’s organizational documents and rules.

Contact David Barrett or Frank Fullin at BECE if you want to learn more about residential, office or grain condominiums.

Oil and Gas Regulatory Cost Recovery Assessment Enacted in Ohio

Substitute Senate Bill 165, effective June 30, 2010, makes a number of changes and updates to oil and gas law in Ohio, including the imposition of an Oil and Gas Regulatory Cost Recovery Assessment. The new assessment is levied on the owner of a well, other than an Exempt Domestic Well, on a quarterly basis. The amount of the assessment is ten cents per barrel of oil and one-half cent

per thousand cubic feet of gas, with a minimum \$15 (minus the Severance Tax) per well. The law authorizes an owner to designate a severer to pay the assessment on behalf of the owner. The tax is included on the severer’s return under the Severance Tax Law. The severer will recoup the amount of the assessment from the owner of the well. For more information, go to the Ohio Department of Natural Resources website for a link to the SB 165 legislative summary. The assessment is codified at Ohio Revised Code §1509.50.

Happy  Hanukkah!

The information provided in this newsletter is for educational purposes only and should not be used as a substitute for professional advice. There are often many exceptions to the general rules. Before applying any of this information to a specific legal problem, readers are urged to seek advice from an attorney.

Merry Christmas!



Back Row, left to right: Frank Fullin, David Barrett, Russell Cunningham, Troy Callicot, Jeff Easterday.
Front Row left to right: Trish Bradley, Rhonda Williams Wallace, Amanda Stacy, Carolyn Eselgroth

The partners and staff at BECE LLP thank you for your business and your referrals. Please let us know how we may better serve you in the new year.

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Our law firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution.

We are located in Dublin, Ohio, a northwest suburb of Columbus.

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