



Cortes Law Firm Warns There Is No Step Up in Basis for Property in Irrevocable Trust Upon Death

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Cortes Law Firm, an estate planning law firm in Oklahoma City, OK, has warned that there is no more step-up in basis for purposes of capital gains tax for property that has not been included in the taxable estate upon death. A new ruling by the IRS might have a significant impact on the way capital gains is taxed. The issue is whether or not on death such property is part of the taxable estate when a person passes away. Basically, the IRS ruling states that if the property is in an irrevocable trust, it is no longer a part of a person's taxable estate when that person dies. If that property is not part of the taxable estate, capital gains tax should apply and the step-up in basis is no longer applicable.

The ruling affects property placed in irrevocable trusts. The goal of an irrevocable trust is to transfer the assets from the control and name of the grantor and then held in trust for the beneficiary. The effect is that it decreases the value of the estate of the grantor in terms of estate taxes and it protects the assets from creditors. With the grantor having effectively shifted all ownership of assets into the trust, the grantor no longer has rights of ownership to the assets and the trust. Thus, the irrevocable trust cannot be altered or terminated without the consent of the beneficiary or by the order of the court, although the exact rules can vary by state.

When people go into assisted living they need to draw down their assets to a particular point before government benefits start to become effective. What many people do is put their money and their house into an irrevocable trust, which basically means they can't control the property anymore. They are usually the beneficiary of the trust, but they no longer have control.

The question is whether or not that property is part of the taxable estate when the person passes away. The IRS ruling basically states that if the property is in an irrevocable trust, the IRS considers that property to be no longer part of the taxable estate when the person dies. If it is not part of the taxable estate, the capital gain should be applicable and there will be no step up basis. This means that the heir will not be benefiting from the step up basis.

For example, if that property was purchased for \$15,000 several decades ago and is currently worth \$200,000 in 2023, if the person dies in 2023 and the property is inherited by a son or daughter, a capital gains tax for \$185,000 has been triggered. A step up in basis considers the fair market value of the property when it was inherited instead of when it was acquired. This means there is a "step up" from the value when it was acquired to the present market value. Without a step-up in basis, the heir would need to pay capital gains tax on the difference between the current market value and the value when the property was acquired.

Thus, the IRS ruling has a significant meaning for people who have created an irrevocable trust and placed their real estate or other assets that can increase in value into the irrevocable trust. The result is that when they pass away, their heirs may need to pay a large capital gains tax. It would be a good idea to consult with an estate planning lawyer and a tax professional to come up with a solution.

Started in 2013 by Attorney Steve Cortes, Cortes Law Firm provides general counsel, probate services, and estate planning to clients in Oklahoma City and Lawton, OK. He has been providing estate planning services for clients for more than 22 years. He offers a one-of-a-kind perspective on the importance of proper estate planning for entrepreneurs, families, and businesses.

Those who want to learn more about the services offered by an estate planning lawyer can visit the Cortes Law Firm website or contact them on the phone or through email. They are open from 9:00 am to 5:00 pm, from Monday to Friday.

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For more information about Cortes Law Firm, contact the company here:[Cortes Law Firm](#) Stephen

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Cortes Law Firm

Cortes Law Firm, based in Oklahoma City, guides families through probate, estate administration, and planning. Led by Stephen L. Cortes, the firm is known for clear communication, client focus, and community commitment.

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