



March 31, 2010

Laura Urich Daly, Esq.
Office of Associate Chief Counsel
Pass Throughs and Special Industries
CC:PS1:4
Room 4107
1111 Constitution Avenue NW
Washington, DC 20224

Re: Internal Revenue Code 1022 Notice 2010-19

Dear Ms. Daly:

New IRC Section 1022, which replaces former IRC Section 1014, is adversely impacting our middle class clients who have transferred their homes to their children and retained life estates, or placed their home into an irrevocable trust with the children being the remainderpeople. It is not clear as to whether, upon the death of the parent, the children would be entitled to any basis increase under section 1022. Since the home is typically the largest, and sometimes the only, asset of the estate, if the children are not entitled to any basis increase, it would often decimate the estate. Many of our clients purchased their homes over thirty years ago, and the homes have appreciated since then with built in capital gains.

As a result of the wording of section 1022, it is unclear as to whether any basis increase is allocable to the home upon the death of a life tenant or an income beneficiary of an irrevocable trust, or whether a grantor trust would be treated differently as having been owned by the decedent. Under prior law, up until December 31, 2009, IRC Section 1014 provided a step-up in basis to the fair market value at time of death for assets, such as the home, that were acquired from a decedent, and section 2036 included in a decedent's taxable estate property in which the decedent retained the right to income for life or a life estate.

The real problem for the middle class clients is not with the \$1.3 million limit for basis adjustment (or \$3 million for a spouse) but rather with Section 1022's new qualification rules. Under Section 1022, in order for property to qualify for a basis increase, the property must be "owned by the decedent," as specifically described in Section 1022(d) and be "acquired from a decedent" as specifically described in Section 1022(e).

It is unclear as to whether the beneficiaries of a remainder interest in a deed where the decedent retained a life estate are entitled to any basis increase under section 1022. Similarly, it is unclear whether the children, who are remainderpeople of an irrevocable trust, are entitled to any basis increase upon the death of the parent.

We request that the IRS issue clarification in this regard, preferably with a notice stating that the remainderpeople of a deed where the decedent retained a life estate, and the remainderpeople of an irrevocable trust where the decedent retained the income interest for life, would be entitled to have the basis increased under section 1022.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen J. Silverberg". The signature is fluid and cursive, with the first and last names being the most prominent.

Stephen J. Silverberg, CELA
President