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The Case for Revisiting Carryover Basis

Mark W. Cochran

47 TAX NOTES 1241 (1990).

By reinstating a carryover basis, Congress can increase revenues by billions. The carryover basis would make tax law more fair by increasing economic efficiency by unlocking capital while maintaining rates, reinstating a capital gains preference, or adding new taxes. Section 1023 would have provided a carryover a basis for property acquired from decedents but never took effect because the Crude Oil Windfall Profit Tax Act of 1980 repealed section 1023 retroactively and reinstated the stepped-up basis rule of section 1014. No convincing rationale for the stepped-up death-basis rule has ever been offered; yet, one might reasonably speculate that the real objection was not section 1023's complexity, but its substance—the repeal of part of the estate planners' stock in trade.

Three developments have occurred since the repeal of section 1023 that potentially make stepped-up basis a more vulnerable target for reform. First, the Economic Recovery Tax Act of 1981 [describe what it did using verbs]. Second, the Tax Reform Act of 1986 [describe what it did using verbs]. Third and possibly the consideration that would provide the major impetus for the repeal of stepped-up basis, is the budget deficit [describe how the deficit is affected by the 1981 legislation using verbs].

Keywords: carryover basis, Congress, tax revenues, capital, economic efficiency, estate planner, section 1023, section 1014, stepped-up death basis rule, Crude Oil Windfall Profit Tax Act of 1980, Economic Recovery Tax Act of 1981, Tax Reform Act of 1986, budget deficit, section 2036(c), section 1015(d), section 1023.